

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Eugene C. Griffith, Circuit Court Judge

JEROD HARRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000989

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
-VS-)
)
JEROD K. HARRIS,)
)
DEFENDANT.)
_____)

2011-GS-42-02429

TRANSCRIPT OF RECORD

MAY 31, 2012
SPARTANBURG, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. MARK HAYES, II

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

ATTORNEY FOR PLAINTIFF:

ABEL GRAY, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

ROBERT HALL
ASSISTANT PUBLIC DEFENDER

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX**WITNESS****PAGE NO.**

CERTIFICATE OF REPORTER

21

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	Photo	10	10
S-2	Photo	10	10
S-3	Photo	10	10
S-4	Photo	10	10

1 (Whereupon several defendants were before the Court to
2 be prequalified for guilty pleas)

3 **THE COURT:** All right. When I call your name - can
4 everyone hear me?

5 (Affirmative nods)

6 **THE COURT:** All right. When I call your name, if you
7 would, just raise your hand and let me just eyeball where
8 you are. Shanna Gates, Jerod Harris, Jalyssa Jones, Cecil
9 Leonard, Keith Pittman, Jason Pitts, Jamey Lee Trent, Gladys
10 Watson. All right. That should leave Terrance Garrett, and
11 then also Mr. Rodriquez, and then also Mr. Patrick Smith.
12 All right.

13 (Whereupon all defendants listed above were present and
14 raised their hand when called upon)

15 **THE COURT:** Everyone - Mr. Garrett, and Mr. Rodriquez,
16 and Mr. Smith, if y'all will just not listen to me while we
17 go through this process or at least don't participate in
18 this process. But for everyone else, I need for you to
19 please listen to me for a few moments.

20 I have been advised that each one of you has one or
21 more matters that are presently pending in the Court of
22 General Sessions. Now, I've also been told that each one of
23 you has expressed a desire or an intent to want to enter a
24 plea to those matters.

25 As part of every plea that is presented in front of me,

1 we make a recording. This lady that's sitting way down
2 there to my left, the lady with the mask, she is a court
3 reporter. She's taking down everything that's said.

4 I tell you that because if ever during this process,
5 now or later today, if you need to speak to me, I need you
6 to speak up loud enough so that both she and I can hear you.
7 If we can't hear you, then we cannot accept your plea.
8 Likewise, if ever during this process, now or later today,
9 if you cannot hear me, immediately let me know, and I will
10 speak up as well.

11 Now in just a few moments I'm going to ask you a series
12 of questions. I'm going to ask you these questions as a
13 group, but I do not want you to think, nor do I wish for you
14 to conclude, that for some reason simply because I'm asking
15 you these questions as a group that for some reason these
16 questions are not important, because these questions are
17 very important.

18 The questions that I ask you and the answers you give
19 me to these questions help me decide whether or not I can,
20 in fact, accept your plea. So I need you to please listen
21 to them.

22 If you need to respond to the questions, I'm going to
23 ask that you stand up and let me call on you individually.
24 Just don't everybody speak out at once, but stand up and let
25 me call on you.

1 Now, if ever during this process if any of you wish to
2 speak to your lawyer, you just let me know, and I'll allow
3 you to talk to your lawyer in private.

4 I'm now going to call the names once again. This time
5 when I call your name, if you would, please stand and remain
6 standing. After everybody's name's been called and the
7 court reporter has your names down, then I'm going to ask
8 the clerk of court, the lady down here in the middle, I'm
9 going to ask her to swear you in. So please listen to her
10 and respond out loud when she asks you to do so. All right.

11 We've got Gladys Watson, Jamey Lee Trent, Jason Pitts,
12 Keith Pittman, Cecil Leonard, Jalyssa Jones, Jerod Harris,
13 Shanna Gates.

14 (Whereupon all the called defendants were standing)

15 **THE COURT:** All right. If you would, please raise your
16 right hand.

17 **MADAME CLERK:** Do you solemnly swear or affirm the
18 testimony you're about to give will be the truth, the whole
19 truth and nothing but the truth so help you God?

20 (Whereupon all the defendants answered affirmatively)

21 **THE COURT:** Thank you. You may be seated. Now here
22 are the questions that I need for you to please listen to.
23 During the last twenty-four hours have you taken any type of
24 substance that is adversely or negatively affecting your
25 ability to understand what we're doing today? If you have

1 taken something, I need for you to please stand.

2 (No response)

3 **THE COURT:** If you've ever been treated for any type of
4 substance abuse issues, for any type of drug or alcohol
5 issues, I need for you to please stand at this time if
6 you've ever received any type of substance abuse treatment.

7 (No response)

8 **THE COURT:** If you are satisfied with the work that
9 your lawyer has done for you, then I need for you to please
10 stand at this time if you're satisfied with the work that
11 your lawyer has done.

12 (Whereupon all defendants stood except for Keith
13 Pittman)

14 **THE COURT:** Let the record reflect that everyone stood
15 except what's your name, sir?

16 **MR. PITTMAN:** Pittman.

17 **THE COURT:** Except Mr. Pittman. Thank you very much.
18 You may be seated.

19 If you have been made any promises or if you have been
20 threatened in any way in order to get you to make the
21 decision to enter the plea, then I need for you to please
22 stand at this time if you have been promised anything or
23 threatened in any way.

24 (No response)

25 **THE COURT:** If the decision by you to enter the plea is

1 a free and voluntary decision on your part, then I need for
2 you to please stand at this time if this is a free and
3 voluntary decision.

4 (Whereupon all defendants stood)

5 **THE COURT:** Let the record reflect that everyone stood.

6 Thank you very much. You may be seated.

7 I need for you to understand that under the law you are
8 presumed innocent of the charge or charges that are
9 presently against you. And you are entitled to have a jury
10 trial on each and every charge that's presently against you.

11 At any jury trial that would take place it would be the
12 State that has the burden of proof. And the State would
13 have to convince all twelve members of a jury that you are,
14 in fact, guilty beyond a reasonable doubt of the charge or
15 charges that are against you.

16 In order to enter a plea, however, you have to give up
17 your right to that jury trial. But if you wish to have a
18 jury trial on any of the charges that are presently against
19 you, that is perfectly fine. We will simply schedule a jury
20 trial for you.

21 Is there anyone who wishes to have a jury trial on any
22 of the charges that are presently against you? If so, then
23 I need for you to please stand at this time if you wish to
24 have a jury trial.

25 (Whereupon Keith Pittman stood)

1 **THE COURT:** And, again, you're Mr. Pittman?

2 **MR. PITTMAN:** Yes, sir.

3 **THE COURT:** Thank you, sir. You may be seated.

4 I need for you to also understand that there are other
5 very important constitutional rights that you are entitled
6 to but that you have to give up in order to enter a plea.
7 You have to give up your right to confront and cross examine
8 the State's witnesses.

9 You also have to give up your right to present evidence
10 which you or your lawyer may feel would establish a defense
11 to the charge or charges against you. And you have to give
12 up your right of subpoena. And you have to give up your
13 right to remain silent.

14 Now, if you wish to give up those rights and go forward
15 with entering the plea at this time, then I need for you to
16 please stand.

17 (Whereupon all the defendants stood except for Keith
18 Pittman)

19 **THE COURT:** Let the record reflect that everyone except
20 Mr. Pittman stood. Thank you very much. You may be seated.

21 Again, if any of you wish to speak to your lawyer
22 during this process, just let me know and I'll allow you to
23 do so in private. Thank you very much.

24 **MR. PITTMAN:** Sir, can I speak with him?

25 **THE COURT:** All right. He'll come and talk to you in

1 just a second. Thank you, sir.

2 (Whereupon prequalification was ended)

3 **MR. GRAY:** Jerod Harris.

4 (Whereupon State's exhibits 1 - 4 were marked for
5 identification)

6 **MR. GRAY:** Thank you, Your Honor. May it please the
7 Court. Before you is Mr. Jerod Keykendall Harris on
8 indictment 2011-GS-42-2429. That's a true billed indictment
9 for attempted murder.

10 He's pleading guilty to that charge. There's a
11 negotiated sentence of fifteen years in this matter. He's
12 represented by Mr. Robert Hall.

13 I also have attached four exhibits for this plea.
14 Beyond the fifteen years the State is also dismissing a drug
15 charge once the plea is completed, Your Honor.

16 (Whereupon State's exhibits 1 - 4 were admitted into
17 evidence)

18 **THE COURT:** You are Mr. Harris?

19 **MR. HARRIS:** Yes, sir.

20 **THE COURT:** Sir, I need to remind you that you remain
21 under oath. Do you understand that?

22 **MR. HARRIS:** Yes, sir.

23 **THE COURT:** And, sir, it is your intent to enter a plea
24 to the charge that was announced by the solicitor?

25 **MR. HARRIS:** Yes, sir.

1 THE COURT: How old are you, sir?

2 MR. HARRIS: Thirty years old.

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

4 MR. HARRIS: To the eleventh grade.

5 THE COURT: Eleventh grade?

6 MR. HARRIS: Yes, sir.

7 THE COURT: Did you ever obtain a GED?

8 MR. HARRIS: No, sir.

9 THE COURT: Are you married, single, divorced, widowed?

10 MR. HARRIS: Married.

11 THE COURT: Do you have children?

12 MR. HARRIS: I have three little boys.

13 THE COURT: How old are they?

14 MR. HARRIS: One's fixin' to be four next week. And I
15 have a three year old and a two year old.

16 THE COURT: Prior to being arrested on this charge did
17 you have a job outside of the home?

18 MR. HARRIS: No, sir.

19 THE COURT: How were you supporting yourself
20 financially at the time?

21 MR. HARRIS: I had just come home from SCDC.

22 THE COURT: Living with family?

23 MR. HARRIS: My wife and my in-laws.

24 THE COURT: Ever serve in the military?

25 MR. HARRIS: No, sir.

1 **THE COURT:** On this particular charge, how long of time
2 have you been in jail?

3 **MR. HARRIS:** Seventeen like seventeen months.

4 **THE COURT:** Sir, if you would, I need for you to please
5 listen to the solicitor. He is going to tell us the facts
6 that are behind this case. And then I'll have some more
7 questions for you.

8 **MR. HARRIS:** Yes, sir.

9 **MR. GRAY:** Thank you, Your Honor. To my right is the
10 victim in this case, Mr. Scott Pender, and his mother. This
11 happened on December 17th, 2010 at approximately 6:30 pm at
12 ■ Watson Road in Enoree, South Carolina.

13 The victim was there visiting his girlfriend. He heard
14 a commotion outside, came outside and saw this Defendant and
15 two other gentlemen in a car.

16 The two well, basically two gentlemen had weapons.
17 This Defendant got out of his car, started shooting in the
18 direction of the victim. The victim says he felt a force
19 against his body, knocked him down.

20 This gentleman came over to him. There was a street
21 lamp. It was about 6:30 at night, like I said, in December.
22 He could see his face clearly. He had seen him before. And
23 this gentleman pumped four bullets into him.

24 At that time he left, got in the car and left the
25 scene. Mr. Harris was found later along with co defendants

1 in Laurens County.

2 As you can see by the pictures, the victim in this case
3 went to the ICU. And he had numerous injuries, numerous
4 bullet holes, some through and through and extensive rehab
5 and has since moved out of the State to, for a general
6 location, to the North East, Your Honor, to avoid any
7 possible confrontation like this again.

8 My understanding, they do not wish to speak. We've
9 talked about the negotiated sentence. And the victim and
10 his mother are in agreement with it, Your Honor.

11 **THE COURT:** Mr. Harris, were you able to hear the
12 solicitor when he told me the facts?

13 **MR. HARRIS:** Yes, sir.

14 **THE COURT:** Do you believe that as he stated the facts
15 that he is substantially correct?

16 **MR. HARRIS:** Yes, sir.

17 **THE COURT:** And, sir, do you understand that this is
18 being presented to me as a negotiated plea?

19 **MR. HARRIS:** Yes, sir.

20 **THE COURT:** And, therefore, if I accept the plea I will
21 be bound by the negotiations and will have to impose the
22 fifteen year sentence?

23 **MR. HARRIS:** Yes, sir.

24 **THE COURT:** And that's what you want me to do?

25 **MR. HARRIS:** Yes, sir.

1 **THE COURT:** And, sir, do you understand that this
2 particular charge that you're pleading to is classified as
3 both a violent offense and also a most serious offense?

4 **MR. HARRIS:** Yes, sir.

5 **THE COURT:** And you have been able to talk to your
6 lawyer as to the consequences and ramifications of this
7 offense being classified as both a violent and most serious
8 offense?

9 **MR. HARRIS:** Yes, sir.

10 **THE COURT:** Understanding the negotiations as well as
11 the classification of violent and most serious and the
12 ramifications of those classifications, you still wish for
13 me to enter this plea?

14 **MR. HARRIS:** Yes, sir.

15 **THE COURT:** Or rather, you still wish for me to accept
16 this plea?

17 **MR. HARRIS:** Yes, sir.

18 **THE COURT:** Sir, are you, in fact, guilty of this
19 charge of attempted murder?

20 **MR. HARRIS:** Yes, sir, I am.

21 **THE COURT:** Have you been able to hear all of my
22 questions so far?

23 **MR. HARRIS:** Yes, sir.

24 **THE COURT:** Have all of your answers been truthful and
25 honest?

1 **MR. HARRIS:** Yes, sir.

2 **THE COURT:** Discovery's been shared with the Defense?

3 **MR. GRAY:** Yes, sir, Your Honor.

4 **THE COURT:** Prior record?

5 **MR. GRAY:** 1999, possession; 2001, two CDV's, pistol
6 violation, resisting arrest, MIPP, under a thousand dollars;
7 2002, pistol arrest, driving without a license; 2006,
8 ABHAN; 2008, assault and battery; 2009, pointing and
9 presenting, and an AWIK.

10 He received five years, suspended to two years and
11 three years probation. My understanding, we're not
12 addressing the probation violation today.

13 **THE COURT:** You say the victims do not wish to ---

14 **MR. GRAY:** No, sir.

15 **THE COURT:** --- address the Court? Anything else from
16 the State?

17 **MR. GRAY:** No, sir, Your Honor.

18 **THE COURT:** Yes, sir.

19 **MR. HALL:** May it please the Court, Your Honor. First
20 off, we want to thank the State and Mr. Pender and his
21 family for the understanding and working with us on
22 resolving this in this manner.

23 As you can tell by Jerod's history, he has had a
24 history of violence. What has happened since -- in the
25 seventeen months plus he's been in jail, his wife, who is

1 present, Brittney, back here, had gone from I'm tired of it,
2 he's not changing to she has communicated with him and feels
3 that he has changed. His outlook has changed.

4 He's, I think, in almost every conversation we've had
5 he's concerned about his sons and the fact that what he has
6 done is going to keep him from being around his sons while
7 they're growing up, which, quite frankly, I think was an
8 issue with him growing up, not having the proper role model
9 there.

10 But he realizes he is the only one that can change
11 that, that he has had a transformation in his life thinking
12 about he's got a good woman who is going to give him another
13 chance, that he's got to change his life, and the only way
14 to do that is to get this behind him.

15 He understands he's going to have to serve a
16 substantial amount of time and he's going to miss those boys
17 growing up. But to be able to come out and be part of their
18 life, he has to be a different person. He can't continue
19 this lifestyle. He understands that's going to be not
20 acceptable. To her, it's not acceptable, to society. That
21 if he doesn't change, he does anything like this again, he's
22 going to be in prison for the rest of his life.

23 He understands the great offer that the State has given
24 him here, this opportunity to cut the time that he would
25 have to serve substantially. And, Your Honor, we ask that

1 you take the plea, give him the sentence.

2 If he -- I don't know how much is available for an
3 evaluation in mental health. I know that I've been through
4 the Department of Corrections, a mental health evaluation,
5 but I know I've had other clients that the way they're doing
6 things in the Department of Corrections now, they're
7 actually -- I've heard people say they used to make people
8 walk around and drugged. They would just over-medicate
9 them, but now they're actually doing a lot better.

10 I've had clients that could not have a rational
11 conversation with me because of issues they have. But now,
12 they come back and they're on proper medications, they can
13 think more rationally and make better decisions.

14 Now, he has family members here on the front row, these
15 four, including an aunt, Reverend Ellen, who, I think, is --
16 wants to address the Court at the appropriate time on behalf
17 of the family.

18 **THE COURT:** Sir, do you agree with everything that your
19 lawyer has just stated?

20 **MR. HARRIS:** Yes, sir.

21 **THE COURT:** Thank you, sir. Ma'am, if you would, we
22 are making a recording of everything that's said here. So
23 please speak up loud so that both the court reporter and I
24 can hear you. And just start by giving us your full name.

25 **REVEREND EVANS:** Yes, sir. I am Reverend Catherine

1 Cullen Evans. I am Jerod's father's sister.

2 First of all, I'd like to say that I'm speaking on
3 behalf of my brother, who could not get here overnight, and
4 the rest of our family. We are devastated by the events.
5 We are praying for the full physical and mental recovery of
6 the victim.

7 We also know another side of Jerod. Jerod can be,
8 although the record does not say so, he can be a very
9 compassionate, a very loving young man. The thing that is
10 going to -- there are some things that are going to make
11 this very hard for him and, I believe, cause this to be a
12 life changing experience.

13 My parents, who are his grandparents, in the time that
14 he's going to spend in prison, in all probability, will not
15 be alive when he's released. The other thing that is going
16 to destroy him is that he loves his sons to no end. And it
17 is going to destroy him because he is not going to be able
18 to be a part of their lives as they grow up.

19 And I'd just like to thank you for taking this plea
20 bargain under consideration. I realize that there is
21 nothing that can be done to undo what has already been done.
22 And we are praying that this will be a life changing
23 experience for him because there is a lot of good in him if
24 he will just work with the system and allow it to come out.
25 And I thank you for hearing me, sir.

4 **MR. HARRIS:** Yes, sir. I want to first off apologize
5 to the court and to Mr. Pender for the whole situation and
6 everything that happened. But what happened ain't gonna
7 change what I did, but I still want to apologize as a man.
8 And I'm sorry for what I did. And I apologize to the Court
9 and thank y'all for giving me the opportunity to get this
10 behind me so I can move on with my life with my family.

12 (Pause)

18 On this case, it is a fifteen year sentence at the
19 Department of Corrections. I've indicated on the sentencing
20 sheet he will receive the credit for the time that he's
21 already served. Good luck to you, sir.

23 MR. HARRIS: Thank you.

25 (Hearing ended at 10:07 am)

1

(End of requested transcript of record)

1

2

10

12

13

14

15

16

FORM 5

2012-CF-42-4617

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

IN THE COURT OF COMMON PLEAS

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

Gerod Keykendall Harris sr. 255423

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (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 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 M^cCormick Correctional Institution
2. Name and location of Court which imposed sentence 7th Judicial Circuit Court of Spartanburg County
3. Name(s) of co-defendant(s) (if any) ~~7th Judicial Circuit Court~~ James Allen Cullen, and Dontayrious Omar Westfield
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) My Indictment/casett M-751588 murder/Attempted Murder
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 5-31-12 I was sentenced to a negotiated 15 years from a 0-30 years and probation violation run concurrent with the 15 years
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty yes
- (b) after a plea of not guilty no
- (c) after a plea of nolo contendere no
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I was told that I could not appeal nothing, that I waived all my rights once I took the plea for the 15 years
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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M. HOPE BLACKLEY

Counsel failed to investigate my case, and adequately prepare for trial.
 (a) Gave me erroneous advise which caused me to give up my rights
 (b) to trial by jury. I was Denied my 6th amendment Right
 (c) of the United States Constitution.

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

in (10): Counsel Failed to investigate my case, and adequately

(a) Prepare for trial. Gave me erroneous advise which caused
 (b) me to give up my rights to trial by jury. I was Denied
 (c) my 6th amendment Right of the United States Constitution.

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

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

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 M. HOPE BLACKLEY

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

no

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

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- (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. Robert B. Hall, Esquire, 366 North Church St. Suite 3000
Spartanburg, S.C. 29303
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
clearly had ground for a self defense claim/Time served.
20. Are you now under sentence from any other court that you have not challenged?
no

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 NOV -5 PM 2:29
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

Gerard K.
Harris
SC

I, Gerard K. Harris, 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.

Gerard K. Harris Sr.

SWORN to and subscribed before me this 8th
day of October, 2012

[Signature] (L.S.)
Notary Public

My Commission Expires
October 8, 2014
My Commission Expires: _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 NOV -5 PM 2:29
M. HOPE BLACKLEY

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

I, Gerod K. Harris Sr., 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.

Gerod K. Harris Sr.
Applicant

SWORN or affirmed to and subscribed before me this

8th day of October, 2012

[Signature]
Notary Public

My Commission Expires

October 8, 2014

My Commission Expires: _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 NOV -5 PM 2:29
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2012-CP-42-4617
Jerod Keykendall Harris, #255423,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 5, 2012, 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 Spartanburg County Clerk of Court. The Applicant was indicted at the May 2011 term of the Spartanburg County Grand Jury for attempted murder (2011-GS-42-2429). Applicant was represented by Robert Hall, Esquire. On May 31, 2012, Applicant pled guilty to as indicted. Applicant was sentenced by the Honorable J. Mark Hayes, II to a negotiated sentence of fifteen (15) years imprisonment. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject convictions, 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, in that;
 - a. Counsel failed to investigate my case and adequately prepare for trial,
 - b. Counsel gave me erroneous advice which caused me to give up my rights to trial by jury,
 - c. "I was denied my 6th amendment right of the United States Constitution."

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

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

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve 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 expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the allegation of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

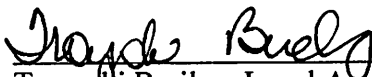
 25, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2012-CP-42-4617
	)	
JEROD K. HARRIS, #255423	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent	)	
_____	)	

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

J. Brandt Rucker, Esq.
522 North Church St.
Greenville, SC 29601

DATED this 25th day of February, 2014


 Troyeshi Brailey, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Jerod Keykendall Harris,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2012-CP-42-4617
7 The State.) April 7, 2014
8 Spartanburg, South Carolina
9
10

11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE
13
14

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

16 J. BRANDT RUCKER, ESQUIRE
17 Attorney for the Applicant

18 SUZANNE H. WHITE, ESQUIRE
19 Attorney for the State
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 MS. WHITE: Thank you, Your Honor.

2 This is the case of Jarod Harris vs. the State. It's
3 case No. 2012-CP-42-4617.

4 Mr. Harris is represented today by Mr. Brandt Rucker,
5 and I've been informed that he may have a motion to present
6 to the Court. So I'll turn over to him at this time.

7 THE COURT: Mr. Rucker.

8 MR. RUCKER: Your Honor, my client informs me that he
9 would rather have a private, retained attorney at this time
10 after thinking the case over. And that's all he's told me
11 about that issue.

12 THE COURT: All right. Mr. Harris, what have you got
13 to say about it?

14 THE APPLICANT: I didn't feel comfortable and that Mr.
15 Brandt Rucker was in my best interest, so I wanted to go
16 ahead and get me a paid attorney.

17 THE COURT: When are you going to do that?

18 THE APPLICANT: It'll be -- it should be soon.

19 THE COURT: Okay. Well, now, do you understand that
20 what you're asking me to do today is to terminate
21 Mr. Rucker's representation of you?

22 THE APPLICANT: Yes, sir.

23 THE COURT: In other words, you've got a
24 court-appointed lawyer, and if you terminate his services
25 today, then you're telling me you don't want a

1 court-appointed lawyer, you're going to hire somebody.

2 THE APPLICANT: Yes, sir.

3 THE COURT: If I -- your case is here today for a
4 hearing --

5 THE APPLICANT: Yes, sir.

6 THE COURT: -- on your application. If I terminate
7 his services today and I continue it so you can hire a
8 lawyer, do you understand in the future you're not going to
9 get another court-appointed lawyer?

10 You'll either have to hire one or you'll be
11 representing yourself.

12 THE APPLICANT: Okay.

13 THE COURT: Do you understand that?

14 THE APPLICANT: Yes, sir.

15 THE COURT: Do you still want to release him from any
16 further obligation?

17 THE APPLICANT: Yes, sir.

18 THE COURT: And you're going to hire somebody or
19 represent yourself.

20 THE APPLICANT: Yes, sir.

21 THE COURT: Do you understand you will not be allowed
22 to have another court-appointed lawyer?

23 THE APPLICANT: Yes, sir.

24 THE COURT: Okay. All right. Mr. Rucker is relieved
25 from any further obligation.

1 Mr. Harris is going to hire counsel. And he will not
2 be permitted to have another court-appointed lawyer.

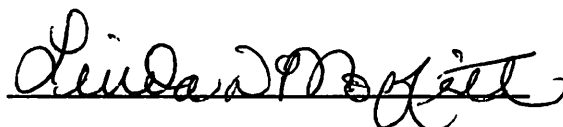
3 END OF REQUESTED TRANSCRIPT OF RECORD
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 7th day of April 2014.

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

April 23, 2015

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

I N D E X**Jerod K. Harris PCR****Page:**

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W I T N E S S E S**Mr. Robert Hall, Esquire:****Page:**

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E X H I B I T S**Applicant's Exhibits:****Marked:****Received:**

(None)

Respondent's Exhibits:**Marked:****Received:**

(None)

Court's Exhibits:**Marked:****Received:**

(None)

Reporter's Certification:..... 14

Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

Reporter's Note: Some names in this transcript are spelled phonetically.

42

1

November 4, 2014

9:58 A. m.

2

(Off-the-Record Comments)

3

THE COURT: Sir, you're Mr. Jerod Harris?

4

MR. HARRIS: Yes, sir.

5

THE COURT: Okay, Mr. Harris. We're here on a — a PCR. You

6

don't have a lawyer with you?

7

MR. HARRIS: No, sir.

8

THE COURT: Okay. You're going to represent yourself in this

9

matter?

10

MR. HARRIS: Yes, sir. I'm going to have to, sir.

11

THE COURT: Okay.

12

MR. HARRIS: I was told I had to.

13

THE COURT: All right.

14

(Brief Pause)

15

MS. WHITE: And, Your Honor, just to clarify. He had an attorney

16

that had been appointed in our last term. He asked for that attorney to be

17

relieved. And Judge Couch informed him that, if he wanted to relieve his

18

appointed attorney, he would not be allowed to have another appointed

19

attorney, but he could retain an attorney or proceed pro se.

20

THE COURT: Okay.

21

MR. HARRIS: Yeah, that was Judge Cole, sir.

22

MS. WHITE: Oh, Judge Cole, sorry.

23

THE COURT: Okay. All right. All right, sir, what are the issues

24

that you want to discuss here today? I mean, I have your post-conviction relief

25

application paperwork, and I have looked at this. Is there any one, two, or

1 three things that you would like to point out?

2 **MR. HARRIS:** Well, the main thing I wanted to point — I wanted to
3 discuss was about that — about that one, my indictment issue.

4 **THE COURT:** An indictment issue?

5 **MR. HARRIS:** Yes, sir. I — I had — I had an amended
6 indictment (phonetic) under — under South Carolina Code 14-9-170, 14-5-
7 710, and 14-9-210.

8 **THE COURT:** Okay. 14-9-210, 14-5-710, and what was the other
9 code section?

10 **MR. HARRIS:** Sir?

11 **THE COURT:** You had three different code sections.

12 **MR. HARRIS:** Yes, sir. The other one was 14-9-170.

13 **THE COURT:** One, seven, zero (170)?

14 **MR. HARRIS:** Yes, sir.

15 **THE COURT:** Okay. All right. If you'll bring your paperwork and
16 — and come on --- I'll tell you what I'm going to do. You need that table right
17 there. I'm going to let you be sworn right there.

18 You've got to speak up loud so she can hear you, okay?

19 **MR. HARRIS:** Yes, sir.

20 **THE COURT:** Raise your right hand.

21 (Whereupon,

22 **Jerod K. Harris**

23 having been duly sworn, testified as follows:)

24 **THE COURT:** Okay. All right, sir.

25 **MR. HARRIS:** Yeah, hmmm — yeah, I was — my indictment

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1 issue, I was — that the Applicant — I had a lot of errors and was denied — I
2 was denied due process under the law and under equal protection — the
3 equal protection clause, you know, due to ah --- my — my indictment wasn't
4 convened when they said it was convened.

5 During the — during the General Sessions Court term under — under
6 the code 14 — 14-5-710. And the Court — the Court of General Sessions —
7 "The Court of General Sessions shall be held in Spartanburg for the month of
8 May on the third Monday after the fourth..." — normally, are made for one
9 week. And my indictment — I was indicated on the first Monday of May.

10 And then like those under *Evans vs. State* (phonetic), 611, S.E. 2 —
11 2(d), 510, that an indictment — an indictment will be deemed annulled — will
12 be deemed annulled (phonetic) if it's — if it's not a meeting (phonetic) during
13 such General Sessions Court term. (Phonetic)

14 (Brief Pause)

15 THE COURT: Okay.

16 MR. HARRIS: And, you know, the — and the South Carolina
17 Constitution, Article 102 mandates that — mandates that "No person may be
18 held to answer for any crime that — any crime in which that is not within the
19 —within the court unless all presentment of the indictments and that — and
20 under a similar indictment of the grand jury of the county where the crime had
21 been committed."

22 And ah — the equal — the equal protection — the equal protection
23 clause must — the equal protection clause under the South — of South
24 Carolina has chosen to uphold the provisions (phonetic) of the protected
25 indictment because it must be — you know, must be — must be satisfied and

1 such a determination can be made on — to the law that the state — the state
2 government, the procedure under — under -- the procedure under US —
3 under the seizure of US 4063 02 80 — 84 (phonetic) — 84 — the — the 14th
4 South Carolina Code 14-9-170 states that — states that the grand jury as
5 drawn, in accordance with the law, serves upon the Court of General Sessions
6 in each of the counties shall constitute the grand jury for the county court and
7 will meet with the county court of each — of each of its terms. (Phonetic)

8 And during — during the month of May — May the 5th, 2011, there was
9 not a term when they said they was a term to convene when they took an
10 oath.

11 And so, therefore — so therefore, that right there under — under *Evans*
12 *v. State*, 611, 5 — at 611, S.E. (2)(d) 510, that, that right there would be to be
13 anul — anything deemed annulled is invalid (phonetic) — is — is invalid.

14 (Brief Pause)

15 **MR. HARRIS:** And ah — you know, also that — that the absence
16 of an indictment, or any prior indictment, if the judge says there's a defect
17 which deprives — which deprives the Court to act — to act to — to sentence
18 me back in 2012, on May the 31st, when — when the indictment wouldn't be
19 nulled. (Phonetic)

20 But they didn't — so they didn't have the — I — I wasn't supposed to
21 get — I didn't supposed to get sentenced that day under that indictment.

22 (Brief Pause)

23 **THE COURT:** Okay. So your argument is that the indictment is —
24 is null and void under state law?

25 **MR. HARRIS:** Yes, sir.

46

1 THE COURT: Okay.

2 MR. HARRIS: And I — yes, sir, under state law and under the
3 Constitution.

4 THE COURT: Okay, yeah. Okay. Anything else you'd like to tell
5 me?

6 MR. HARRIS: No, sir, no, sir.

7 THE COURT: Okay. Would you like to call any other witness or
8 anybody? You have a right to do that. You're representing yourself now.

9 MR. HARRIS: Yeah, I — I want to call on Mr. Robert Hall.

10 THE COURT: Okay. Well, just a minute. I'm going to give the —
11 I'm going to give the State a chance to cross-examine. Yes, ma'am?

12 MS. WHITE: Your Honor, just one brief question.

13 Cross Examination by Ms. White: 10:05 A.m.

14 Q. Mr. Harris, was this an issue you raised to your attorney prior to your
15 guilty plea?

16 A. I didn't even know anything about that until after I got to prison and got
17 doing my research. It took me — it took me almost six months writing the clerk of
18 court to get my indictment. My attorney never gave me my indictment.

19 And I wrote — I wrote my counsel to get my motion. When I got my
20 motion a few weeks later, I'm going to trial. I wasn't supposed to be going to trial and
21 I did not have my — my discovery — it wasn't in my discovery or nothing. I didn't
22 know nothing about that.

23 Q. Okay. All right.

24 A. He never — he never explained nothing to me about it — about none of
25 that.

1 Q. And you acknowledge you pled to a negotiated sentence of 15 years —

2 A. Yes.

3 Q. ---- for attempted murder?

4 A. Yes, ma'am.

5 Q. And that a drug charge was dismissed?

6 A. Yes, ma'am.

7 MS. WHITE: Okay. Thank you. That's all I have here.

8 THE COURT: Okay. You want to call Mr. Hall?

9 MR. HARRIS: Yes, sir.

10 THE COURT: Okay. Mr. Hall, come up and be sworn.

11 (The witness complied with the request.)

12 (Whereupon,

13 Mr. Robert Hall, Esquire

14 having been duly sworn, testified as follows:)

15 THE COURT: Thank you. Tell us your name, please, on the
16 record.

17 THE WITNESS: Robert Hall.

18 THE COURT: All right. Yes, sir, you may — you may question
19 your witness.

20 Direct Examination by Mr. Harris:

21 Q. Yeah, okay. I want to know that, was you aware of the indictment
22 being — being — that it wasn't — that is wasn't valid? That it was invalid? Did you
23 that it was invalid? That it was invalid?

24 A. I'm sorry, Mr. Harris ----

25 Q. Was you ----

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1 **A.** If you'll let me finish.

2 **Q.** Oh, I'm sorry.

3 **THE COURT:** Let him answer.

4 **Q.** All right.

5 **A.** I was communicating with some of my clients through the KIOSK, while
6 you were making your motion. I'm not exactly sure what you're saying is defective in
7 the indictment.

8 **Q.** And is was supposed — it — it's very defective. But ah, you didn't —
9 but you didn't never come to me and talk with me about this and I want to know why
10 didn't you challenge this? Did you study this and do your proper investigation upon
11 this?

12 **A.** Again, Mr. Harris, I'm not exactly sure what you are saying is wrong with
13 the indictment; why you're saying it's invalid.

14 **Q.** You not — you're not seeing why? Is that — is that what you said?

15 **A.** You're saying — you're saying that I didn't discuss the indictment being
16 invalid with you or being wrong. I don't know what you're saying is wrong with the
17 indictment.

18 **Q.** They hadn't been convened during General Sessions Court term like
19 they supposed to be, like it said it was. They did not have General Sessions Court
20 during that term, it being —

21 **A.** Oh, so, you're saying the term that you were going to be tried that you
22 would have to be indicted right before that?

23 **Q.** Yeah, you got to be — you got to be indicted during General Sessions
24 Court term when they got a General Sessions. That's the only time the grand jury
25 can be — can indict you.

1 **A.** No. The Supreme Court sets a schedule to make special jury —
2 General Session term for every time the grand jury is going to meet. I think the
3 Attorney General can request those. The solicitor can request those. And those are
4 set each year.

5 Occasionally, they have other terms, but that — that is a special
6 General Sessions term.

7 **Q.** During a trial, right?

8 **A.** No, it's — it's set as a General Sessions term for a grand jury.

9 **Q.** But General Sessions will be, regardless of what the trial — a trial is a
10 trial, not a jury trial, but the — the — the grand jury wouldn't consist of a jury trial,
11 right?

12 **A.** It's my understanding, that you do not have to be indicted and tried in
13 the same — at the same time that the special term of the oath (phonetic).

14 The — the grand jury is impaneled, the schedule is set, under a special
15 General — General Sessions term, just for the grand jury. That they meet on a day
16 and they con — and — and they're in session until their term is concluded.

17 That's the step that has to be made for somebody to be tried.

18 **Q.** Under 14-9- — 14-9-147 (phonetic) states that — states that the grand
19 jury — that the grand jury, upon General — the Court of General Sessions shall
20 constituted — shall be constituted for the county court and shall meet with the county
21 of each of its terms. (Phonetic)

22 Now, you have an appointed of term where they can and determine and
23 said they — they said that was done. So you didn't have — after you did your
24 proper investigation for appointment that day (phonetic). Didn't you go to school for
25 this?

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1 **A.** I — I still don't understand what you're saying is wrong. If you're saying
2 the grand jury met and then, some months later, your — your case was up, there's
3 nothing improper with that.

4 **Q.** It violated my due process for one because it take— you got to — you
5 got to — they got to indict you within 90 days. I was indicted 9 months later. And
6 you was my attorney; you supposed to recognize all of that.

7 **A.** No, no, sir. You don't have to be indicted within 90 days.

8 **Q.** Well — well — well, that's not true.

9 **THE COURT:** Don't argue with him now. Just ask him questions.

10 **MR. HARRIS:** Yes, yes, sir.

11 **A.** That's not right.

12 **MR. HARRIS:** That's all — that's all, Your Honor. That's all, Your
13 Honor.

14 **THE COURT:** You can ask him all the questions; you just can't
15 argue with him, okay? Are you through?

16 **MR. HARRIS:** Yeah, yeah. I'm through. I'm done.

17 **THE COURT:** Okay. Yes, ma'am?

18 **MS. WHITE:** Thank you. Just briefly, Your Honor.

19 **Cross Examination by Ms. White:**

20 **Q.** Mr. Hall, Mr. Harris I believe is arguing that he was not properly indicted
21 at a term of General Sessions. To your knowledge, are the terms sometimes not —
22 are set at different times. It's not necessarily the same time every month or every —
23 I mean, some counties don't even have the grand jury every month; do they?

24 **A.** That's correct. When I was a prosecutor in Gaffney, I don't think they
25 met every month. It was I think every three months.

1 **Q.** And the Supreme Court sets the schedule, but don't they also give the
2 administrative judge of the — of the County's General Sessions the ability to — to
3 schedule?

4 **A.** That's my understanding; they can. And the Solicitor can request that
5 the grand jury be convened additional time if they have more cases. So — but that's
6 something the — the authority given to them by the Supreme Court.

7 **Q.** In regards to reviewing the indictment, if you had seen an issue that you
8 thought rendered the — the indictment invalid, would you have raised that or
9 discussed that with Mr. Harris?

10 **A.** Absolutely. I've done that many times.

11 **Q.** And, in this situation, did you see anything that was irregular to you?

12 **A.** No. No, I did not.

13 **Q.** Okay. Did you — do you recall if you ever had a chance to go over
14 discovery or — or have Mr. Harris review the indictment?

15 **A.** I don't recall specifically reviewing the indictment. But we did go over
16 discovery. There was some — from the original discovery, we got — I think I had a
17 request through the solicitor and his secretary or whatever they're called,
18 administrative assistants, that I was missing some discovery.

19 I think in December of 2011, I finally got the rest of the discovery and
20 minus his — I made a copy and I believe hand delivered it; took it over to Mr. Harris
21 at that time. And my note says 12/9 of '11.

22 And we had been, for probably six months or better — more than six
23 months, I realized we had been missing discovery. They were slow about getting —
24 getting that discovery to us, but we did.

25 And we went over everything, back and forth negotiating. Mr. Harris

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and his family felt like the victim was going to stay in New Jersey or New York, up in the northeast where he was;

2

3

And, even though Mr. Gray was contending that he had contact with him and they had the funds to bring him back, then, we filed a speedy trial motion. We filed it in March, April, May, in there.

4

5

6

And the motion was granted and it was set for trial and they had everybody lined up to testify.

7

8

Q. And, ultimately, was Mr. Harris, to your knowledge, aware of the charge he was being tried for?

9

10

A. Absolutely.

11

Q. Was he on notice of what he was being tried for?

12

A. Absolutely.

13

MS. WHITE: Okay. Thank you. That's all I have, Your Honor.

14

THE COURT: Anything further, sir?

15

MR. HARRIS: No, sir.

16

THE COURT: Okay. Thank you. That concludes the hearing.

17

MR. HARRIS: Thank you.

18

MS. WHITE: Thank you, Your Honor.

19

THE COURT: Thank you.

20

(Whereupon, the hearing concluded at 10:14 a.m.)

21

22

23

24

25

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 13, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

March 28, 2015

/s/ Pamela S. Faucette

Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
	)	SEVENTH JUDICIAL CIRCUIT	
COUNTY OF SPARTANBURG	)		
	)		
Jerod Keykendall Harris, #255423,	)	2012-CP-42-4617	
	)		
Applicant,	)		
	)		
v.	)	ORDER OF DISMISSAL	
	)		
State of South Carolina,	)		
	)		
Respondent.	)		
_____	)		

FILED

2014 DEC -2 AM 8:35

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 5, 2012. The Respondent made its Return on February 25, 2014. An evidentiary hearing was convened on November 4, 2014, at the Spartanburg County Courthouse. The Applicant was present at the hearing and proceeded *pro se*¹. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, testimony was provided by the Applicant and Robert B. Hall, Esquire. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the PCR Application, the Return, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the May 2011 term of the Spartanburg County Grand Jury for attempted murder (2011-GS-42-2429). Applicant was represented by Robert Hall, Esquire. On May 31, 2012,

¹ This Court notes that at a prior hearing on April 7, 2014, Applicant requested a continuance to allow him time to retain an attorney for this matter. Applicant was advised that if he chose to relieve appointed counsel, he would be required to either retain an attorney or proceed *pro se*. The Applicant chose to relieve appointed counsel and the Honorable J. Derham Cole signed an order on July 18, 2014, allowing for the continuance and relieving appointed counsel.

Applicant pled guilty to as indicted. Applicant was sentenced by the Honorable J. Mark Hayes, II to a negotiated sentence of fifteen (15) years imprisonment. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that:
 - a. Counsel failed to investigate my case and adequately prepare for trial.
 - b. Counsel gave me erroneous advice which caused me to give up my rights to trial by jury,
 - c. "I was denied my 6th amendment right of the United States Constitution."

At the hearing, Applicant indicated that he would proceed solely on an allegation of ineffective assistance of counsel for failing to object to a lack of jurisdiction because of an improperly convened grand jury. This Court finds that the Applicant voluntarily abandoned the other claims of ineffective assistance of counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the

evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCPP). 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 v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

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).

Applicant testified that he believed his indictment was invalid because of an illegally convened grand jury based upon S.C. Code Ann. §§ 17-5 710; 17-9-170; 17-9-210. Applicant testified that the signature of the foreman of the grand jury was dated May 5, 2011, and the indictment was filed with the Spartanburg Clerk of Court's office on May 11, 2011. Applicant testified that he reviewed the scheduled terms and the week of May 5, 2011, was not a term of General Sessions. Applicant argued that his due process and equal protection rights afforded through the S. C. Constitution Articles 1 & 2 were violated. Applicant testified that he only discovered this issue once he received a copy of his discovery materials after he was incarcerated.

Counsel testified that the South Carolina Supreme Court had issued an Order allowing for scheduling of grand jury terms and the Solicitor or Attorney General can request additional terms. Counsel testified that he did not recall seeing an issue with the indictment; however, he testified that if he believed there was an issue, he would have made a motion to quash. Counsel testified that he did review discovery materials with the Applicant, as well as file a speedy trial motion on Applicant's behalf, which was granted.

This Court finds that Counsel's testimony is most credible. This Court also finds that the Applicant has failed to meet his burden of proof as to this claim. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g., Tate v. State*, 345 S.C. 577, 549 S.E.2d 601 (2001); *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986). The Applicant failed to make a showing that the indictment was not properly true billed by the grand jury.

This Court also finds that any "challenge to the indictment on the ground of insufficiency must be made before the jury is sworn." *State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 500

(2005). Counsel testified that he saw no issues with the sufficiency of the indictment, but would have made a motion to quash if he had. This Court finds no deficient conduct on Counsel's behalf. This Court also finds that because the Applicant failed to meet his burden of proving that the grand jury was improperly convened according to the laws of this State, this claim is denied and dismissed.

CONCLUSION

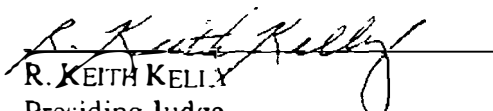
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. 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 26 day of November, 2014.


R. KEITH KELLY
Presiding Judge

, South Carolina

2014 DEC -2 AM 8:35
CLERK OF COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

R. Keith Kelly, Circuit Court Judge

JEROD KEYKENDALL HARRIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002693

PETITION FOR WRIT OF CERTIORARI

JOHN H. STROM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR court err in finding that Petitioner knowingly, voluntarily, and intelligently waived his right to PCR counsel where the PCR court failed to conduct a *Faretta*¹ hearing to ensure that Petitioner was aware of the dangers and disadvantages of self-representation?

¹ 301 U.S. 422 (1990).

STATEMENT

Indictment and Guilty Plea

On May 5, 2011, Petitioner was indicted for one count of attempted murder. App. 60 - 61. On May 31, 2012, Petitioner pled guilty as indicted before the Honorable Mark J. Hayes. App. 4 - 21.

Robert Hall represented Petitioner and Assistant Solicitor Abel Gray represented the State. Pursuant to a negotiated plea agreement, Judge Hayes sentenced Petitioner to fifteen years imprisonment. App. 19, ll. 1-24.

PCR Application

On November 5, 2012, Petitioner filed an application for post-conviction relief alleging that, among other grounds, plea counsel was ineffective for failing to investigate his case and for providing Petitioner with erroneous advice resulting in an involuntary guilty plea. App. 22 - 28. The State filed a Return on February 25, 2014. App. 29 - 33.

PCR Waiver of Counsel Hearing

On April 7, 2014, a hearing was held before the Honorable J. Durham Cole. App. 34 - 39. Petitioner's court-appointed counsel, J. Brandt Rucker, was present and Assistant Attorney General Suzanne H. White represented the State.

PCR counsel informed the court that Petitioner wished to "have a private, retained attorney at this time." App. 36, ll. 8-11. Petitioner confirmed this and noted, "I didn't feel comfortable . . . that [PCR counsel] was in my best interest. . ." *Id.* at ll. 14-16.

The Court asked Petitioner:

Q: [D]o you understand that what you're asking me to do today is to terminate [PCR counsel's] representation of you?

A: Yes, sir.

Q: In other words, you've got a court-appointed lawyer, and if you terminate his services today, then you're telling me you don't want a court-appointed lawyer, you're going to hire somebody.

A: Yes, sir.

Q: . . . If I terminate his services today and I continue [the hearing] so you can hire a lawyer, do you understand in the future you're not going to get another court-appointed lawyer?

You'll either have to hire one or you'll be representing yourself.

A: Okay.

App. 36, ll. 19 - 37, ll. 12. Petitioner then again confirmed that he still wanted to relieve PCR counsel and attempt to secure private counsel. App. 37, ll. 15 - 38, ll. 3.

The court then relived counsel and ruled that "[Petitioner] is going to hire counsel. And he will not be permitted to have another court-appointed lawyer." App. 38, ll. 1-2. The court never inquired about Petitioner's education level and never warned Petitioner about the hazards of self-representation.

PCR Hearing

On November 4, 2014, Petitioner's evidentiary hearing was held before the Honorable R. Keith Kelly. App. 40 - 53. Petitioner represented himself and Assistant Attorney General Suzanne White again represented the State. App. 40 - 53. Petitioner and plea counsel both testified at the hearing.

At the beginning of the hearing, the PCR court asked Petitioner if he was representing himself. App. 42, ll. 5-13. Petitioner replied that "I'm going to have to, sir. . . I was told I had to."

Id. at ll. 10-12. The State then explained to the court:

And, Your Honor, just to clarify. He had an attorney that had been appointed in our last term. He asked for that attorney to be relieved. And Judge [Cole] informed him that, if he wanted to relieve his appointed attorney, he would not be allowed to have another appointed attorney, but he could retain an attorney or proceed *pro se*.

Id. at ll. 15-19.

Testimony of Petitioner

After being sworn, Petitioner then attempted to explain why he was entitled to post-conviction relief, “I had a lot of errors and was denied - I was denied due process under the law and under equal protection - the equal protection clause, you know, due to ah -- my -- my indictment wasn’t convened when they said it was convened.” App. 44, ll. 1-4. Petitioner argued that his indictment was “annulled”. *Id.* at ll. 5-13.

When prompted by the court, Petitioner summarized that his indictment was “null and void.” App. 45, ll. 23 - 46, ll. 3. On cross-examination, Petitioner testified that plea counsel never explained the Grand Jury process to him or how a Grand Jury issues an indictment. App. 46, ll. 14 - 47, ll. 6.

Testimony of Plea Counsel

Petitioner asked plea counsel, “was you aware of the indictment being - being - that it wasn’t - that it wasn’t valid? App. 47, ll. 21-23. Plea counsel countered that he did not know how the indictment was invalid or defective. App. 48, ll. 8-21.

After a prolonged series of back-and-forth questioning with plea counsel, Petitioner eventually clarified that he was alleging that plea counsel failed to determine whether Petitioner was indicted within ninety days of the alleged attempted murder. App. 48, ll. 23 - 49, ll. 7.

Plea counsel stated that there was no such ninety day deadline for issuing an indictment. App. 50, ll. 4-7. Petitioner responded that he disagreed with plea counsel, but ended his examination.

App. 50, ll. 4-7. During cross-examination, plea counsel stated that he did not believe that Petitioner's indictment was invalid. App. 51, ll. 1-18.

The hearing began at 9:58 a.m. and ended at 10:14 a.m.

Order of Dismissal

On December 2, 2014, the PCR Court denied Petitioner's application by written order. App. 54 - 58. The order specifically noted that Petitioner, "was advised that if he chose to relieve appointed counsel, he would be required to either retain an attorney or proceed *pro se*." App. 54, n. 1. The order summarily concluded that Petitioner had failed to prove plea counsel was ineffective for not challenging the validity of Petitioner's indictment. App. 56 -58.

ARGUMENT

The PCR court erred in finding that Petitioner knowingly, voluntarily, and intelligently waived his right to PCR counsel where the PCR court failed to conduct a *Faretta*² hearing to ensure that Petitioner was aware of the dangers and disadvantages of self-representation.

Introduction

At the April 7, 2014 hearing, the court failed to inform Petitioner of the risks and disadvantages of representing himself during his PCR evidentiary hearing. App. 36, ll. 8 - 38, ll. 2; *see State v. Boykin*, 324 S.C. 552, 556, 478 S.E2d 689, 690 (Ct. App. 1996) (a trial judge must determine if the waiver is the product of a knowing, voluntary, and intelligent decision). The court only explained that if Petitioner was unable to secure private counsel, he would have to represent himself. App. 37, ll.6-23.

The Court did not expound on the numerous risks that a *pro se* inmate faces by electing to represent himself. *See Wroten v. State*, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990) (“the ultimate test [for determining a valid waiver] is not the trial judge’s advice but rather the defendant’s understanding.”). Therefore, the PCR court erred in allowing Petitioner to represent himself because there was no evidence that Petitioner knowingly, voluntarily, and intelligently, waive his right to counsel. *Id.*

The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment.” *Faretta v. California*, 422 U.S. 806, 807 (1975). However, “[a] defendant may surrender his right to counsel through (1) waiver by affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture. *State v. Thompson*, 355 S.C.

² 301 U.S. 422 (1990).

255, 261, 584 S.E.2d 131, 134 (Ct. App. 2003) (citing *State v. Boykin*, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App. 1996)).

Specifically, a waiver is an intentional and voluntary relinquishment of a known right. *Maxwell v. Genez*, 350 S.C. 563, 571, 567, S.E.2d 496, 500 (Ct. App. 2002). The courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and do not presume acquiescence in the loss of fundamental rights. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). To effectuate a valid waiver of the right to counsel, the two-pronged *Faretta* test must be met in which the accused is (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. *Prince v. State*, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990) (citing *Faretta*, 422 U.S. 806).³

“[I]t is the responsibility of the trial judge to determine whether there has been an intelligent and competent waiver.” *State v. Bateman*, 296 S.C. 367, 369, 373 S.E.2d 470, 471 (1998) (citations omitted); *see also Boykin*, 324 S.C. 552, 478 S.E.2d 689 (a trial judge must determine if the waiver is the product of a knowing, voluntary, and intelligent decision). “While a specific inquiry by the trial judge expressly addressing the disadvantages of a *pro se* defense is preferred, *the ultimate test* [for determining a valid waiver] *is not the trial judge’s advice but rather the defendant’s understanding.*” *Wroten*, 301 S.C. at 294, 391 S.E.2d at 576. (*emphasis added*).

Finally, in the absence of a specific inquiry by the trial judge addressing the disadvantages of proceeding *pro se*, appellate courts will look to the record to determine whether a petitioner had

³ A notable exception to this general rule requiring a contemporaneous objection is found when the record does not reveal a knowing and intelligent waiver of the right to counsel. *State v. Cash*, 304 S.C. 223, 403 S.E.2d 632 (1991). A *pro se* defendant cannot be expected to raise this issue without the aid of counsel. *State v. Rocheville*, 310 S.C. 20, 24, 425 S.E.2d 32, 35 (1993).

sufficient background or was apprised of his rights by some other source. *State v. Bridwell*, 306 S.C. 518, 413 S.E.2d 30 (1992). If, on appeal, this Court does not find the waiver of counsel was knowing and voluntary, the court will remand for a new trial. *Id.*

In Petitioner's case, the trial judge at the April, 2014 hearing never warned Petitioner of the dangers and disadvantages of proceeding *pro se*. App. 36, ll. 19 - 37, ll. 12. The court's singular focus was on admonishing Petitioner that if he failed to secure private counsel, he would have to represent himself as the court would not appoint another attorney. *Id.*

The court did not inform Petitioner of the hazards of self-representation. This was in error; the trial court has a duty to explain to Petitioner the risks of proceeding *pro se*. *Prince v. State*, 301 S.C. at 424, 392 S.E.2d at 463.

Since the trial court did not undertake a specific inquiry regarding the disadvantages of proceeding *pro se*, this Court must now determine, based on the record, whether Petitioner made a knowing, voluntary, and intelligent waiver of the right to PCR counsel. *Bridwell*, 306 S.C. 518, 413 S.E.2d 30. There is no evidence in the record that Petitioner was "apprised of his rights by some other source." *Id.*

It is also clear from the record that Petitioner did not have a sufficient background or experience to understand the dangers of self-representation absent an instruction from the court. *Id.* Petitioner did not graduate from high-school and does not have a GED. App. 11, ll. 3-8. In addition, during his guilty plea, counsel referenced that Petitioner suffers from unspecified mental health problems. App. 17, ll. 2-17.

Petitioner's original PCR application contained multiple grammatical errors. App. 22 - 27. Further, his attempted questioning of plea counsel on the validity of his indictment - the sole

issue he presented at the hearing - was full of legal malapropisms and completely ineffectual. App. 47, ll. 15 - 50, ll. 7.

In sum, there was no evidence petitioner was aware of the hazards of proceeding *pro se*. The transcript of Petitioner's **sixteen minute** PCR hearing illustrates exactly the kind of dangers that *pro se* litigants face and underscores the crucial importance of trial court's providing an adequate warning.

Accordingly, this Court should reverse the denial of Petitioner's PCR application and remand the case for a new trial as the PCR court erred in finding that Petitioner's waiver of counsel was knowingly, voluntarily, and intelligently made. App. 54, n. 1; *High v. State*, 300 S.C. 88, 386 S.E.2d 463 (1989) (this Court will not uphold PCR judge's finding if there is no evidence to support it).

CONCLUSION

Based on the foregoing reason, Petitioner, Jerod K. Harris, respectfully requests that his petition for writ of certiorari be granted to allow full briefing on the issue.

Respectfully submitted,



John H. Strom
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of October, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
R. Keith Kelly, Circuit Court Judge

JEROD KEYKENDALL HARRIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002693

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Alicia Olive, Esquire this 13th day of October, 2015.



John H. Strom
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day
of October, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2014-002693

Jerod Keykendall Harris, ...Petitioner,

v.

State of South Carolina, ...Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

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ATTORNEYS FOR RESPONDENT

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QUESTIONS PRESENTED

- I. Should this Court deny review because the post-conviction relief judge made no findings regarding Petitioner's right to counsel and the issue is not preserved for this Court's review?
- II. Should this Court deny review because the post-conviction relief judge did not err in allowing Petitioner to proceed *pro se* at his evidentiary hearing where Petitioner had his appointed attorney removed seven months earlier and was admonished on the record that he would not be allowed to have another court-appointed attorney?
- III. Should this Court deny review because there is no Sixth Amendment right to counsel in a post-conviction relief proceeding and Faretta v. California and its progeny are inapplicable?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Petitioner was indicted at the May 2011 term of the Spartanburg County Grand Jury for attempted murder (2011-GS-42-2429). Robert Hall, Esquire, represented Petitioner. On May 31, 2012, Petitioner pleaded guilty as indicted before the Honorable J. Mark Hayes, II. Pursuant to a negotiated sentence, Judge Hayes sentenced Petitioner to confinement for a period of fifteen years. Petitioner did not appeal.

Petitioner filed an application for post-conviction relief ("PCR") on November 5, 2012. Respondent made its Return on February 25, 2014, requesting that an evidentiary hearing be held. An evidentiary hearing was scheduled to take place on April 7, 2014, at the Spartanburg County Courthouse. Petitioner was present and represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, represented Respondent. At that time, Petitioner requested to relieve counsel and to continue the evidentiary hearing so that he could secure retained counsel. Respondent took no position on the matter.

The Honorable J. Derham Cole issued a written order dated July 18, 2014, granting the motion to continue and relieving counsel. (Supp. App. pp. 2-3). The order also stated that the court instructed Petitioner that if he chose to relieve his appointed counsel, the court would not appoint further counsel if Petitioner was unable to retain an attorney. (Supp. App. pp. 2-3).

A subsequent evidentiary hearing into the matter was convened on November 4, 2014, at the Spartanburg County Courthouse. Petitioner was present and proceeded *pro se*. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office represented Respondent. In a written order dated November 26, 2014, and filed December 2, 2014, the Honorable R. Keith Kelly denied and dismissed the matter with prejudice. (Supp. App. pp. 4-9).

STANDARD OF REVIEW

This Court must affirm the PCR court's factual findings if there is any evidence of probative value in the record to support them. Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005) (citing Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989)). This Court should not reverse the PCR court unless the decision was controlled by an error of law. Kolle v. State, 386 S.C. 578, 589, 690 S.E.2d 73, 79 (2010).

ARGUMENTS

I. This Court should deny review because the post-conviction relief judge made no findings regarding Petitioner's right to counsel and the issue is not preserved for this Court's review.

Initially, Respondent submits the issue of whether Petitioner waived his right to PCR counsel is not preserved for review. After the PCR judge files a written order granting or denying relief, "[e]ither party must timely file a Rule 59(e), SCRCP, motion to preserve for review any issues not ruled upon by the court in its order." Al-Shabazz v. State, 338 S.C. 354, 364-65, 527 S.E.2d 742, 747 (2000) (citing Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992) (issue must be raised to and ruled on by the PCR judge in order to be preserved for review); Plyler v. State, 309 S.C. 408, 424 S.E.2d 477 (1992) (same)).

Here, the issue was not raised to or ruled upon by the PCR judge. When the PCR hearing commenced, the judge asked Petitioner if he was "going to represent [himself] in [the] matter" and Petitioner replied, "Yes sir. I'm going to have to, sir[.]" and stated he "was told [he] had to." (App. p. 42, lines 8-12). Respondent then told the judge that Petitioner "had an attorney that had been appointed" and that he "asked for that attorney to be relieved[.]" and that Judge Cole had "informed him that if he wanted to relieve his appointed attorney, he would not be allowed to have another appointed attorney, but he could retain an attorney or proceed pro se." (App. p. 42, lines 15-19). Petitioner made no objection or indication that he did not wish to proceed without counsel. (App. pp. 42-52). The issue was not raised to or ruled upon by the PCR judge and his Order of Dismissal did not address or make any findings on the issue. (Supp. App. pp. 4-9). Additionally, Petitioner did not file a motion pursuant to Rule 59(e), SCRCP, or otherwise request that the PCR judge reconsider his order. Accordingly, Respondent submits the issue was not preserved for appellate review.

II. This Court should deny review because the post-conviction relief judge did not err in allowing Petitioner to proceed *pro se* at his evidentiary hearing where Petitioner had counsel removed seven months earlier and was admonished on the record that he would not be allowed to have another court-appointed lawyer.

Without waiving its argument that the issue is not preserved, Respondent submits the PCR judge did not err in allowing Petitioner to proceed *pro se* at his PCR hearing. There is no constitutional right to counsel in a post-conviction relief action. Pennsylvania v. Finney, 481 U.S. 551, 556-57 (1987); Richardson v. State, 377 S.C. 103, 105-06, 659 S.E.2d 493, 494-95 (2008) ("[T]here is no constitutional obligation to appoint counsel in a PCR matter in South Carolina."). However, "[a]n indigent applicant who is granted a [post-conviction relief] hearing has a statutory right to be represented by a court-appointed attorney," Al-Shabazz v. State, 338 S.C. 354, 364, 527 S.E.2d 742, 747 (2000) (citations omitted), "or a knowing, intelligent waiver of the right to counsel must be obtained." Richardson v. State, 377 S.C. at 106, 659 S.E.2d at 495 (citing S.C. Code Ann. § 17-27-60 (2003); Rule 71.1(d), SCRPC; Whitehead v. State, 310 S.C. 532, 426 S.E.2d 315 (1992)). "A waiver is a voluntary and intentional abandonment or relinquishment of a known right." Sanford v. S.C. State Ethics Comm'n, 385 S.C. 483, 496, 685 S.E.2d 600, 607 (2009). "Waiver requires a party to have known of a right and known that right was being abandoned." Id. at 496-97, 685 S.E.2d at 607. "The determination of whether one's actions constitute waiver is a question of fact." Id. at 497, 685 S.E.2d at 607.

Nevertheless, "a PCR applicant is not entitled to appointed counsel of choice." Id. Though he "may have the right to reject or discharge court-appointed counsel and proceed *pro se* or retain his own counsel, he does not have the right, without a showing of satisfactory cause to refuse or dismiss the counsel appointed and have other counsel appointed." Id. (citing State v. Jones, 270 S.C. 587, 243 S.E.2d 461 (1978)).

Here, Petitioner was appointed an attorney—he simply decided he preferred an attorney of his own choosing. J. Brandt Rucker, Esquire, was appointed as counsel for Petitioner at the outset of his PCR action. (Supp. App. p. 1). On the date that his evidentiary hearing was initially scheduled, Petitioner asked the court to relieve his appointed counsel so that he could hire private counsel. (App. p. 36, lines 14-16). At the hearing on Petitioner's motion to relieve counsel, his attorney stated the following to the court: "my client informs me that he would rather have a private, retained attorney at this time after thinking the case over. And that's all he's told me about that issue." (App. p. 36, lines 8-11). In support of his request, Petitioner simply said, "I didn't feel comfortable that Mr. Brandt Rucker was in my best interest, so I wanted to go ahead and get me a paid attorney." (App. p. 36).

At the same hearing, the court admonished Petitioner that if it granted Petitioner's motion to relieve counsel, he would not be appointed a second attorney. (App. p. 37, lines 5-11). Judge Cole informed Petitioner: "If I terminate [your attorney's] services today and I continue [the evidentiary hearing] so you can hire a lawyer, do you understand in the future you're not going to get another court-appointed lawyer? You'll either have to hire one or you'll be representing yourself." (App. p. 37, lines 6-11). The court asked him if he still wished to relieve his attorney, asked several more times if he understood, and informed him again that he would not receive another court-appointed attorney. (App. p. 37, lines 13-22). Petitioner indicated he understood. (App. p. 36, line 19-p. 37, line 25). The Court also issued a written order to that effect, which was filed July 21, 2014. (Supp. App. pp. 2-3). Petitioner did not object to or attempt to appeal that order.

Petitioner's PCR hearing occurred on November 4, 2014, which was seven months after the April 7, 2014, hearing in which Judge Cole granted Petitioner's request to remove appointed

counsel. There is no indication in the record that Petitioner ever requested another attorney or otherwise indicated that he did not wish to proceed with his PCR hearing without counsel. Furthermore, at the hearing before Judge Cole, Petitioner gave no specific reason for his desire to relieve counsel, but only said "he didn't feel comfortable that Mr. Brandt Rucker was in [his] best interest[.]" (App. p. 36).

Respondent submits that by asking the Court to relieve his court-appointed counsel and indicating that he understood he would not be allowed to receive a second court-appointed attorney but would be required to either retain counsel or proceed *pro se*, Petitioner waived his statutory right to PCR counsel. Accordingly, the PCR judge did not err when he allowed Petitioner to proceed *pro se* at his PCR hearing.

III. This Court should deny review because there is no Sixth Amendment right to counsel in a post-conviction relief proceeding and Faretta v. California and its progeny are inapplicable.

Petitioner argues that the PCR court erred in failing to conduct a hearing to determine if Petitioner knowingly, voluntarily, and intelligently waived his right to PCR counsel pursuant to Faretta v. California, 422 U.S. 806 (1975). However, Faretta involved the waiver of the Sixth Amendment right to counsel. Id. at 807. The Sixth Amendment is not implicated in this case because PCR is a collateral proceeding and there is no constitutional right to counsel in such proceedings. Richardson, 377 S.C. at 105-06, 659 S.E.2d at 494-95. Accordingly, Faretta and its progeny are not triggered in this case. Therefore, the PCR judge did not err in failing to conduct a hearing pursuant to Faretta to determine if Petitioner knowingly, voluntarily, and intelligently waived his right to PCR counsel.

CONCLUSION

For the foregoing reasons, this Court should deny the Petitioner's Petition for Writ of Certiorari. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issue discussed above.

Respectfully submitted,

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By: 
ATTORNEYS FOR RESPONDENT

March 2, 2016.

STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari to Spartanburg County
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2014-002693

JEROD K. HARRIS, #255423,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Return to Petition for Writ of Certiorari has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

John H. Strom, Esquire
SC Commission of Indigent Defense
Appellate Defense
Post Office Box 11589
Columbia, SC 29211

This 2nd day of March, 2016



ASHLEY HAWORTH
LEGAL ASSISTANT

The Supreme Court of South Carolina

Jerod Keykendall Harris, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-002693

Lower Court Case No. 2012-CP-42-04617

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is granted. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.

FOR THE COURT

BY



CLERK

Columbia, South Carolina
February 10, 2017

cc:

John Harrison Strom, Esquire

Alicia A. Olive, Esquire

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Supreme Court County

Honorable R. Keith Kelly, Circuit Court Judge

JEROD KEYKENDALL HARRIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2014-002693

BRIEF OF PETITIONER

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ISSUE PRESENTED

Did the PCR court err in finding that Petitioner knowingly, voluntarily, and intelligently waived his right to PCR counsel where the PCR court failed to conduct a *Faretta*¹ hearing to ensure that Petitioner was aware of the dangers and disadvantages of self-representation?

¹ 422 U.S. 806, 95 S.Ct. 2525 (1975).

STATEMENT

Indictment and Guilty Plea

On May 5, 2011, Petitioner was indicted for one count of attempted murder. App. 60 - 61. On May 31, 2012, Petitioner pled guilty as indicted before the Honorable Mark J. Hayes. App. 4 - 21.

Robert Hall represented Petitioner and Assistant Solicitor Abel Gray represented the State. Pursuant to a negotiated plea agreement, Judge Hayes sentenced Petitioner to fifteen years imprisonment. App. 19, ll. 1-24.

PCR Application

On November 5, 2012, Petitioner filed an application for PCR alleging that, among other grounds, plea counsel was ineffective for failing to investigate his case and for providing Petitioner with erroneous advice resulting in an involuntary guilty plea. App. 22 - 28. The State filed a Return on February 25, 2014. App. 29 - 33.

PCR Waiver of Counsel Hearing

On April 7, 2014, a hearing was held before the Honorable J. Derham Cole. App. 34 - 39. Petitioner's court-appointed counsel, J. Brandt Rucker, was present and Assistant Attorney General Suzanne H. White represented the State.

PCR counsel informed the court that Petitioner wished to "have a private, retained attorney at this time." App. 36, ll. 8-11. Petitioner confirmed this and noted, "I didn't feel comfortable . . . that [PCR counsel] was in my best interest. . ." *Id.* at ll. 14-16.

The Court asked Petitioner:

Q: [D]o you understand that what you're asking me to do today is to terminate [PCR counsel's] representation of you?

A: Yes, sir.

Q: In other words, you've got a court-appointed lawyer, and if you terminate his services today, then you're telling me you don't want a court-appointed lawyer, you're going to hire somebody.

A: Yes, sir.

Q: [i]f I terminate his services today and I continue [the hearing] so you can hire a lawyer, do you understand in the future you're not going to get another court-appointed lawyer?

You'll either have to hire one or you'll be representing yourself.

A: Okay.

App. 36, l. 19 - 38, l. 3. The court relieved counsel and ruled that "[Petitioner] is going to hire counsel. And he will not be permitted to have another court-appointed lawyer." App. 38, ll. 1-2. The court never inquired about Petitioner's education level and never warned Petitioner about the hazards of self-representation.

PCR Hearing

On November 4, 2014, Petitioner's evidentiary hearing was held before the Honorable R. Keith Kelly. App. 40 - 53. Petitioner represented himself and Assistant Attorney General Suzanne White again represented the State. App. 40 - 53. Petitioner and plea counsel both testified at the hearing.

At the beginning of the hearing, the PCR court asked Petitioner if he was representing himself. App. 42, ll. 5-13. Petitioner replied that "I'm going to have to, sir. . . I was told I had to." *Id.* at ll. 10-12. The State then explained to the court:

And, Your Honor, just to clarify. He had an attorney that had been appointed in our last term. He asked for that attorney to be relieved. And Judge [Cole] informed him that, if he wanted to relieve his appointed attorney, he would

not be allowed to have another appointed attorney, but he could retain an attorney or proceed *pro se*.

Id. at ll. 15-19.

Testimony of Petitioner

After being sworn, Petitioner then attempted to explain why he was entitled to post-conviction relief, “I had a lot of errors and was denied - I was denied due process under the law and under equal protection - the equal protection clause, you know, due to ah -- my -- my indictment wasn’t convened when they said it was convened.” App. 44, ll. 1-4. Petitioner argued that his indictment was “annulled”. *Id.* at ll. 5-13.

When prompted by the court, Petitioner summarized that his indictment was “null and void.” App. 45, ll. 23 - 46, ll. 3. On cross-examination, Petitioner testified that plea counsel never explained the Grand Jury process to him or how a Grand Jury issues an indictment. App. 46, ll. 14 - 47, ll. 6.

Testimony of Plea Counsel

Petitioner asked plea counsel, “was you aware of the indictment being - being - that it wasn’t - that it wasn’t valid?” App. 47, ll. 21-23. Plea counsel countered that he did not know how the indictment was invalid or defective. App. 48, ll. 8-21.

After a series of back-and-forth questions with plea counsel, Petitioner eventually clarified that he was alleging that plea counsel failed to determine whether Petitioner was indicted within ninety days of the alleged attempted murder. App. 48, ll. 23 - 49, ll. 7.

Plea counsel stated that there was no such ninety day deadline for issuing an indictment. App. 50, ll. 4-7. Petitioner responded that he disagreed with plea counsel, but ended his examination. *Id.* During cross-examination, plea counsel stated that he did not believe that Petitioner’s indictment was invalid. App. 51, ll. 1-18.

The hearing began at 9:58 a.m. and ended at 10:14 a.m.

Order of Dismissal

On December 2, 2014, the PCR Court denied Petitioner's application by written order. App. 54 - 58. The order specifically noted that Petitioner, "was advised that if he chose to relieve appointed counsel, he would be required to either retain an attorney or proceed *pro se*." App. 54, n. 1. The order summarily concluded that Petitioner had failed to prove plea counsel was ineffective for not challenging the validity of Petitioner's indictment. App. 56 -58.

ARGUMENT

The PCR court erred in finding that Petitioner knowingly, voluntarily, and intelligently waived his right to PCR counsel where the PCR court failed to conduct a *Faretta*² hearing to ensure that Petitioner was aware of the dangers and disadvantages of self-representation.

Introduction

At the April 7, 2014 hearing, the court failed to inform Petitioner of the risks and disadvantages of representing himself. App. 36, ll. 8 - 38, ll. 2; *see also State v. Boykin*, 324 S.C. 552, 556, 478 S.E2d 689, 690 (Ct. App. 1996) (a trial judge must determine if the waiver is the product of a knowing, voluntary, and intelligent decision). The court only explained that if Petitioner was unable to secure private counsel, he would have to represent himself. App. 37, ll.6-23.

The Court did not expound on the numerous risks that a *pro se* inmate faces by electing to represent himself. *see also Whitehead v. State*, 310 S.C. 532, 426 S.E.2d 315 (1992) (holding that since trial court reached the merits of Petitioner’s PCR application, the court should have either appointed counsel or obtained a knowing and intelligent waiver of the right to counsel). *See Wroten v. State*, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990) (“the ultimate test [for determining a valid waiver] is not the trial judge’s advice but rather the defendant’s understanding.”).

Therefore, the PCR court erred in allowing Petitioner to represent himself because there was no evidence that Petitioner knowingly, voluntarily, and intelligently, waived his right to counsel.

Discussion:

The right to counsel for a criminal defendant and the right to counsel for a post-conviction relief (“PCR”) applicant arise from different legal authorities. Nevertheless, our case law has treated the two rights are closely analogous. As such, our courts consistently apply doctrines addressing a

² 422 U.S. 806, 95 S. Ct. 2525 (1975).

criminal defendant's right to counsel to questions regarding a PCR applicant's right to counsel.

In a criminal prosecution, the Sixth and Fourteenth Amendments of federal constitution and Article I, Section Fourteen of the South Carolina constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment. *See also* S.C. Code Ann. § 17-3-10.

The right to counsel for an indigent applicant in a PCR proceeding is guaranteed by S.C. Code Ann. § 17-27-60. An indigent PCR applicant is also entitled to the appointment of counsel under Rule 71.1(d), SCRPC, “[i]f, after the State has filed its return, the application presents questions of law or fact which will require a hearing, the court shall promptly appoint counsel to assist the applicant if he is indigent.”

Concomitant with the right to representation by counsel, criminal defendants and PCR applicants have the right to represent themselves. However, the right to self-representation is not absolute. A defendant or applicant may be denied the right to represent himself by “deliberately engage in serious and obstructionist misconduct” during the case. *See Fareta*, 422 U.S. at 834-35, 96 S.Ct. at 2541 n. 46; *McKaskle v. Wiggins*, 465 U.S. 168, 177-178, 104 S.Ct. 994, 950-951 n. 8 (1984).

Moreover, neither indigent defendants nor indigent PCR applicants have the right to counsel of their choice. *State v. Jones*, 270 S.C. 587, 243 S.E.2d 461 (1978) (holding that indigent defendant is entitled to representation by counsel, not by counsel of his choosing). As this Court noted in *Richardson v. State*:

While there is no constitutional obligation to appoint counsel in a PCR matter, in South Carolina, if a PCR application presents questions of law or fact requiring a hearing, and the applicant is indigent, **state law provides that counsel must be appointed or a knowing, intelligent waiver of the right to counsel must be obtained.** However, a PCR applicant is not entitled to appointed

counsel of choice. While an applicant may have the right to reject or discharge court-appointed counsel and proceed *pro se* or retain his own counsel, he does not have the right, without a showing of satisfactory cause to refuse or dismiss the counsel appointed and have other counsel appointed.

377 S.C. 103, 659 S.E.2d 493 (2008) (affirming PCR court’s refusal to relieve appointed counsel) (*citations omitted*) (*emphasis added*).

Our courts have long recognized that a litigant may knowingly waive constitutional or statutory rights. *Sanford v. S.C. State Ethics Comm’n*, 385 S.C. 483, 495, 685 S.E.2d 600, 607, *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009) (holding that governor knowingly waived statutory right to keep Commission’s investigatory papers and other documents related to ethics complaint against governor); *see also State v. Torrence*, 317 S.C. 45, 46, 451 S.E.2d 883, 883 (1994) (a capital defendant, who is competent, may waive his right to appeal if the decision to do so is knowing, intelligent, and voluntary.).

Regardless of the source of the right being waived, a waiver must be an intentional and voluntary relinquishment of a known right. *Maxwell v. Genez*, 350 S.C. 563, 571, 567, S.E.2d 496, 500 (Ct. App. 2002); *Huckaby v. State*, 305 S.C. 331, 408 S.E.2d 242 (1991) (*abrogated on other grounds by, Turner v. State*, 384 S.C. 451, 682 S.E.2d 792 (2009)) (waiving right to counsel in probation revocation hearings); *see also In re Christopher H.*, 359 S.C. 161, 166, 596 S.E.2d 500, 503 (Ct. App. 2004) (holding that record did not show that juvenile knowingly waived constitutional right to counsel).

“[I]t is the responsibility of the trial judge to determine whether there has been an intelligent and competent waiver.” *State v. Bateman*, 296 S.C. 367, 369, 373 S.E.2d 470, 471 (1998) (*citations omitted*); *see also Boykin*, 324 S.C. 552, 478 S.E.2d 689 (a trial judge must determine if the waiver is the product of a knowing, voluntary, and intelligent decision). Courts indulge every reasonable

presumption against waiver of fundamental rights, and do not presume acquiescence in the loss of fundamental rights. *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023 (1938).

South Carolina law does not distinguish between the level of knowledge required for the waiver of a statutory right and that required for the waiver of a constitutional right. *Sanders v. State*, 412 S.C. 611, 773 S.E.2d 580, n. 2 (2015) (holding that a defendant who waives statutory right to collateral review is entitled to challenge whether advice received in agreeing to waiver was constitutionally defective and cautioning against guilty pleas that require defendant to waive ineffective assistance of counsel claims); *compare State v. Barnes*, 407 S.C. 27, 753 S.E.2d 545 (2014) (declining to adopt a higher competency standard for waiver of right to counsel than that of competency to stand trial).³

The only proper inquiry following a timely invocation of the right to self-representation is that mandated by *Faretta*. *State v. Winkler*, 388 S.C. 574, 698 S.E.2d 596 (2010). To establish a valid waiver of the right to counsel by a PCR applicant, the applicant must be (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. *Faretta*, 422 U.S. at 807, 95 S.Ct. at 2527; *see also Whitehead*, 310 S.C. at 535, 426 S.E.2d at 317 (holding that, in a PCR proceeding, the trial court should have either appointed counsel or obtained a knowing and intelligent waiver of the right to counsel).

In the absence of a specific inquiry by the trial judge addressing the disadvantages of proceeding *pro se*, appellate courts will look to the record to determine whether a petitioner had sufficient background or was apprised of his rights by some other source. *State v. Bridwell*, 306

³ A notable exception to this general rule requiring a contemporaneous objection is found when the record does not reveal a knowing and intelligent waiver of the right to counsel. A *pro se* defendant cannot be expected to raise this issue without the aid of counsel. *State v. Rocheville*, 310 S.C. 20, 24, 425 S.E.2d 32, 35 (1993).

S.C. 518, 413 S.E.2d 30 (1992). “While a specific inquiry by the trial judge expressly addressing the disadvantages of a *pro se* defense is preferred, **the ultimate test [for determining a valid waiver] is not the trial judge’s advice but rather the defendant’s understanding.**” *Wroten*, 301 S.C. at 294, 391 S.E.2d at 576. (*emphasis added*).

Relevant factors for assessing Petitioner’s understanding of the consequences of self-representation include:

- (1) The accused's age, educational background, and physical and mental health;
- (2) Whether the accused was previously involved in criminal trials;
- (3) Whether he knew of the nature of the charge and of the possible penalties;
- (4) Whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case;
- (5) Whether he was attempting to delay or manipulate the proceedings;
- (6) Whether the court appointed stand-by counsel;
- (7) Whether the accused knew he would be required to comply with the rules of procedure at trial;
- (8) Whether he knew of legal challenges he could raise in defense to the charges against him;
- (9) Whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and
- (10) Whether the accused's waiver resulted from either coercion or mistreatment.

State v. Cash, 309 S.C. 40, 419 S.E.2d 811 (Ct. App. 1992). If, on appeal, this Court does not find the waiver of counsel was knowing and voluntary, the court will remand for a new trial. *State v.*

Cash, 304 S.C. 223, 403 S.E.2d 632 (1991).

Here Petitioner sought to relieve his appointed PCR counsel and to retain a private attorney. App. 36, ll. 19 - 37, ll. 12; *Cf. Richardson*, 377 S.C. at 106, 659 S.E.2d at 495 (holding that “mere disagreement” between an applicant and his attorney is not sufficient cause, without more, to relieve appointed counsel). As an initial matter, the PCR court did not have to immediately relieve appointed counsel, but could have simply ordered that appointed counsel be relieved upon the filing of a notice of appearance by a privately retained attorney.

Instead, the court terminated appointed counsel’s representation. The court’s advisement provided Petitioner with only part of the information that he needed in order to effectuate a knowing and voluntary waiver of the right to counsel. The court’s singular focus was on admonishing Petitioner that, if he failed to secure private counsel, he would have to represent himself as the court would not appoint another attorney. App. 36, ll. 19 - 37, ll. 12.

The court did not inform Petitioner of the hazards of self-representation. *See Faretta*, 422 U.S. at 820-821, 95 S.Ct. at 2534; *see Whitehead*, 310 S.C. at 316, 426 S.E.2d at 535 (holding that PCR judge must appoint counsel or obtain a knowing and intelligent waiver of right to counsel); *see also Watts v. State*, 347 S.C. 399, 556 S.E.2d 368 (2001) (reversing conviction where trial judge failed to warn petitioner of dangers of entering into *pro se* guilty plea). This was in error; the court had a duty to fully explain the risks of proceeding *pro se* in the likely event Petitioner was unable to privately retain an attorney. *Prince v. State*, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990) (holding that defendant was not sufficiently aware of the dangers of self-representation).

Furthermore, it is clear from the record that Petitioner did not have the experience or the background to understand the dangers of self-representation absent a *Faretta* warning from the court. *Cf. Cash*, 309 S.C. at 43, 419 S.E.2d at 813 (holding that despite lack of *Faretta* warnings,

defendant has sufficient educational background and litigation experience to understand the disadvantages of self-representation). Petitioner did not graduate from high-school and does not have a GED. App. 11, ll. 3-8. In addition, during the guilty plea, defense counsel averred that Petitioner suffers from unspecified mental health problems. App. 17, ll. 2-17.

Petitioner's original PCR application contained multiple grammatical errors. App. 22 - 27. His attempted questioning of plea counsel on the validity of his indictment - the sole issue he presented at the hearing - was full of legal errors and completely ineffectual. App. 47, ll. 15 - 50, ll. 7; *see State v. Gentry*, 363 S.C. 93, 102-103, 610 S.E.2d 494, 500 (2005) (holding that indictments are a notice document, not the basis for subject matter jurisdiction); *see also Richardson*, 377 S.C. at 106, 659 S.E.2d at 495 (observing that "many times . . . an applicant does not understand the PCR process.").

In sum, there was no evidence that Petitioner's background or experience would allow him to – in the absence of a specific warning from the court – knowingly appreciate the dangers and disadvantages of self-representation. *Whitehead*, 310 S.C. at 535, 426 S.E.2d at 316-317 (*citing Prince* 301 S.C. at 424, 392 S.E.2d at 463 ("[t]o establish a valid waiver of the right to counsel, the PCR applicant must be made aware of the right to counsel and the dangers of self-representation")). The transcript of Petitioner's **sixteen minute** PCR hearing illustrates exactly the kind of dangers that an unwitting *pro se* litigant faces and underscores the crucial importance of providing an adequate warning. App. 43, l. 22 – 52, l. 19.

Accordingly, this Court should reverse the denial of Petitioner's PCR application and remand the case for a new hearing as the PCR court erred in finding that Petitioner's waiver of counsel was knowingly, voluntarily, and intelligently made. App. 54, n. 1; *High v. State*, 300

S.C. 88, 386 S.E.2d 463 (1989) (this Court will not uphold PCR judge's finding if there is no evidence to support it or controlled by an error of law).

CONCLUSION

By reason for the foregoing arguments, Petitioner Jerod Harris respectfully requests this Court to reverse the trial court's order of dismissal and remand his case for a new evidentiary hearing.

Respectfully Submitted,



John H. Strom
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of March, 2017,

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

JEROD KEYKENDALL HARRIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

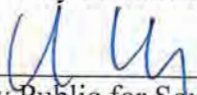
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Petitioner in the above referenced case has been served upon Alicia Olive, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Brief of Petitioner have been served on Jerod Keykendall Harris, #255423, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 7th day of March, 2017.


John H. Strom
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 7th day of March, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025

103
ORIGINAL

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2014-002693

RECEIVED

MAY 19 2017

S.C. SUPREME COURT

Jerod Keykendall Harris,.....Petitioner,

v.

State of South Carolina, ...Respondent.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

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Assistant Attorney General
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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Should this Court deny review of whether the post-conviction relief court erred in allowing Petitioner to proceed *pro se* because the issue was not preserved where Petitioner relieved his appointed counsel, never objected to proceeding forward *pro se*, never requested counsel be appointed, and the post-conviction relief court never ruled upon the issue?
- II. Should this Court affirm the lower court's ruling because the post-conviction relief judge did not err in allowing Petitioner to proceed *pro se* at his evidentiary hearing where Petitioner had his appointed attorney removed seven months earlier, was admonished on the record that he would not be allowed to have another court-appointed attorney, did not request another attorney, and did not object to proceeding *pro se*?
- III. Should this Court affirm the lower court's ruling because there is no Sixth Amendment right to counsel in a post-conviction relief proceeding and Faretta v. California and its progeny are inapplicable?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Petitioner was indicted at the May 2011 term of the Spartanburg County Grand Jury for attempted murder (2011-GS-42-2429). Robert Hall, Esquire, represented Petitioner. On May 31, 2012, Petitioner pleaded guilty as indicted before the Honorable J. Mark Hayes, II. Pursuant to a negotiated sentence, Judge Hayes sentenced Petitioner to confinement for a period of fifteen years. Petitioner did not appeal.

Petitioner filed an application for post-conviction relief (“PCR”) on November 5, 2012. Respondent made its Return on February 25, 2014, requesting that an evidentiary hearing be held. A hearing was convened on April 7, 2014, at the Spartanburg County Courthouse before the Honorable J. Derham Cole. Petitioner was present and represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, represented Respondent. At the start of the hearing, Petitioner requested to relieve counsel and to continue the evidentiary hearing so that he could retain private counsel. Respondent took no position on the matter. From the bench, Judge Cole granted Petitioner’s motion and relieved Rucker.

Thereafter, Judge Cole issued a written order dated July 18, 2014, continuing the matter and formally relieving post-conviction relief counsel. (Supp. App. pp. 2-3). Judge Cole further instructed Petitioner the court would not appoint further counsel if Petitioner was unable to retain an attorney. (Supp. App. pp. 2-3).

A subsequent evidentiary hearing into the matter was convened on November 4, 2014, at the Spartanburg County Courthouse before the Honorable R. Keith Kelly. Petitioner was present and proceeded *pro se*. Suzanne H. White, Esquire, of the South Carolina Attorney General’s

Office represented Respondent. Petitioner and plea counsel testified during the evidentiary hearing. By written order signed November 26, 2014, and filed December 2, 2014, Judge Kelly denied and dismissed the matter with prejudice. (Supp. App. pp. 4-9).

Petitioner filed a notice of appeal on December 5, 2014. On October 13, 2015, a petition for a writ of certiorari was filed on Petitioner's behalf by John H. Strom, Esquire. Respondent made its Return on March 2, 2016. On February 10, 2017, this Court granted Petitioner's petition for a writ certiorari and dispensed with further briefing. Petitioner filed his brief of petitioner on March 7, 2017. This brief follows.

STANDARD OF REVIEW

This Court must affirm the post-conviction relief court's factual findings if there is any evidence of probative value in the record to support them. Dempsey v. State, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005) (citing Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989)). This Court should not reverse the PCR court unless the decision was controlled by an error of law. Kolle v. State, 386 S.C. 578, 589, 690 S.E.2d 73, 79 (2010).

ARGUMENTS

- I. Whether the post-conviction relief court erred in allowing Petitioner to proceed *pro se* is not preserved for this Court's review, where Petitioner relieved his appointed counsel, never objected to proceeding forward *pro se*, never requested counsel be appointed, and the post-conviction relief court never ruled upon the issue.**

Initially, the issue of whether Petitioner waived his right to post-conviction relief counsel was never raised to or ruled upon by the post-conviction relief court and therefore is not preserved for appellate review. Only a matter that has been ruled on below can be reviewed, otherwise, the appellate court would be exercising original jurisdiction. State v. Gee, 262 S.C. 373, 204 S.E.2d 727 (1974) (holding it is well settled that an issue that has not been presented to or passed upon by trial judge will not be considered on appeal); see also State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (finding argument advanced on appeal was not raised and ruled on below and therefore was not preserved for review). This same standard is employed on appellate review of PCR matters. See Kolle v. State, 386 S.C. 578, 589, 690 S.E.2d 73, 79 (2010) (noting an issue that was neither raised to nor ruled upon by the PCR court is not preserved for appellate review).

Moreover, Petitioner did not file a Rule 59(e), SCRCP, motion requesting the PCR court rule on the merits of this claim. This Court has held “that to properly preserve an issue for appellate review, it is incumbent upon a party in a PCR action to file a Rule 59(e) motion in the event the PCR court fails to make specific findings of fact and conclusions of law regarding an issue.” Burgess v. State, 402 S.C. 92, 95, 738 S.E.2d 264, 265 (Ct. App. 2013) (citing Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007)); Al-Shabazz v. State, 338 S.C. 354, 364-65, 527 S.E.2d 742, 747 (2000) (citing Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992) (issue must

be raised to and ruled on by the PCR judge in order to be preserved for review); Plyler v. State, 309 S.C. 408, 424 S.E.2d 477 (1992) (same)). The “notable exception to [the] general rule requiring a contemporaneous objection [...] when [the] record does not reveal a knowing and intelligent waiver of the right to counsel” is not applicable in this case, where Petitioner made a valid waiver. Ex parte Jackson, 381 S.C. 253, 261 n.3, 672 S.E.2d 585, 589 n.3 (Ct. App. 2009) (citing State v. Rocheville, 310 S.C. 20, 25 n.4, 425 S.E.2d 32, 35 n.4 (1993)).

Here, the issue was not raised to or ruled upon by the post-conviction relief court. When the post-conviction relief hearing commenced, the judge asked Petitioner if he was “going to represent [himself] in [the] matter” and Petitioner replied, “Yes sir. I’m going to have to, sir[,]” and stated he “was told [he] had to.” (App. p. 42, lines 8-12). Respondent then told the judge that Petitioner “had an attorney that had been appointed” and that he “asked for that attorney to be relieved[,]” and that Judge Cole had “informed him that if he wanted to relieve his appointed attorney, he would not be allowed to have another appointed attorney, but he could retain an attorney or proceed pro se.” (App. p. 42, lines 15-19). Petitioner did not object or otherwise indicate he did not wish to proceed without counsel. (App. pp. 42-52). The issue was not raised to or ruled upon by the post-conviction relief judge and his Order of Dismissal did not address or make any findings on the issue. (Supp. App. pp. 4-9). Additionally, Petitioner did not file a motion pursuant to Rule 59(e), SCRCP, or otherwise request that the post-conviction relief court reconsider his order. Accordingly, the issue was not preserved for appellate review.

response to this motion, his attorney stated, “my client informs me that he would rather have a private, retained attorney at this time after thinking the case over. And that’s all he’s told me about that issue.” (App. p. 36, lines 8-11). Petitioner replied, “I didn’t feel comfortable that Mr. Brandt Rucker was in my best interest, so I wanted to go ahead and get me a paid attorney.” (App. p. 36).

Judge Cole admonished Petitioner if it granted his motion to relieve counsel, the court would not appoint him a second attorney in the future, stating, “[i]f I terminate [your attorney’s] services today and I continue [the evidentiary hearing] so you can hire a lawyer, do you understand in the future you’re not going to get another court-appointed lawyer? You’ll either have to hire one or you’ll be representing yourself.” (App. p. 37, lines 6-11). Judge Cole asked him if he still wished to relieve his attorney, asked several more times if he understood, and informed him again that he would not receive another court-appointed attorney. (App. p. 37, lines 13-22). In response to Judge Cole’s question, “[d]o you still want to release him from any further obligation[,]” Petitioner responded, “[y]es, sir.” (App. p. 37, ll. 15-17). In response to Judge Cole’s question, “you’re going to hire somebody or represent yourself[,]” Petitioner responded, again, “[y]es, sir.” (App. p. 37, ll. 18-20). Petitioner indicated he understood. (App. p. 36, line 19-p. 37, line 25). The Court also issued a written order to that effect, which was filed July 21, 2014. (Supp. App. pp. 2-3).

Additionally, the record demonstrates Petitioner’s familiarity with the criminal justice system and understanding of his rights based on his lengthy prior record. (App. p. 15, ll. 5-9) This Court held in State v. Roberson, 382 S.C. 185, 675 S.E.2d 732 (2009), that a waiver of the right to counsel can be inferred from a defendant’s actions. (citing State v. Cain, 277 S.C. 210,

counsel, and the court advised him to seek counsel. Id.

Similar to Jacobs, Judge Cole warned Petitioner if he did not hire counsel, as Petitioner asserted he would, he would have to proceed *pro se*. Judge Cole also continued the case for seven months to give Petitioner sufficient time to retain counsel, like the court in Jacobs.

In light of his criminal history, his opportunity to work with his appointed attorney, his adamant request to relieve his appointed attorney so that he could retain another, Judge Cole's ample warnings that he would not be appointed a second attorney but must proceed with private counsel or *pro se*, his failure to hire private counsel, request appointed counsel, move for a continuance to find counsel, or otherwise indicate he did not wish to proceed *pro se*, Petitioner waived his statutory right to PCR counsel. Accordingly, the post-conviction court did not err when he allowed Petitioner to proceed *pro se* at his post-conviction relief hearing.

III. This Court should affirm the lower court's ruling because there is no Sixth Amendment right to counsel in a post-conviction relief proceeding and Faretta v. California and its progeny are inapplicable.

Petitioner argues the post-conviction relief court erred in failing to conduct a hearing to determine if Petitioner knowingly, voluntarily, and intelligently waived his right to post-conviction relief counsel pursuant to Faretta v. California, 422 U.S. 806 (1975). However, Faretta involved the waiver of the Sixth Amendment right to counsel. Id. at 807. The Sixth Amendment is not implicated in this case because PCR is a collateral proceeding and there is no constitutional right to counsel in such proceedings. Richardson, 377 S.C. at 105-06, 659 S.E.2d at 494-95. Furthermore, Whitehead does not extend Faretta to post-conviction relief proceedings

Other jurisdictions presented with a similar question have determined there is no constitutional right to post-conviction relief counsel and Faretta is inapplicable. In Colorado, the

Supreme Court of Colorado held that although there is no constitutional right to a post-conviction counsel, there is a limited statutory right to counsel in post-conviction relief proceedings. Silva v. People, 156 P.3d 1164 (2007). The court relied on the Colorado Court of Appeals decision in People v. Duran, 757 P.2d 1096 (1988). In Duran, the court held because a “defendant’s right to counsel in [a post-conviction] proceeding is statutory and not constitutional, its waiver must be voluntary and need not be knowing and intelligent.” Id. at 1097. Vermont’s Supreme Court adopted a similar approach in In re Chapman, 155 Vt. 163, 166, 581 A.2d 1041, 1043 (1990). Indiana also followed suit, and in Carter v. State, the Court of Appeals of Indiana found it unnecessary to apply constitutional standards of waiving the right to post-conviction relief counsel because there is no such constitutional right and declined to extend Faretta to PCR actions. Carter 560 N.E.2d 687 (Ind. Ct. App. 1990). In its opinion, the court relied on the Supreme Court of Indiana’s opinion in Baum v. State, 533 N.E.2d 1200 (1989), and reasoned that post-conviction relief is not generally regarded as a criminal proceeding and as such, the constitutional standards for a valid waiver of the right to counsel are not applicable in a post-conviction relief setting. Carter at 689. The court opined because the right to an attorney at post-conviction relief was expressly provided by state statute, a petitioner in a post-conviction relief action must assert his statutory right to counsel. Id.

Similar to the opinions cited above, South Carolina’s right to counsel in post-conviction relief actions is statutory. As such, the constitutional standards for a valid waiver of that right are not applicable. Accordingly, Faretta and its progeny are not triggered in this case. Therefore, the post-conviction relief court did not err in failing to conduct a hearing pursuant to Faretta to determine if Petitioner knowingly, voluntarily, and intelligently waived his right to post-

conviction relief counsel.

CONCLUSION

For the reasons stated above, this Court should affirm the post-conviction relief court's order and deny the requested relief.

Respectfully submitted,

ALAN WILSON
Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General
S.C. Bar # 102524

Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

May 19, 2017

By: 
ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2014-002693

JEROD KEYKENDALL HARRIS, ... Petitioner,

v.

STATE OF SOUTH CAROLINA, ... Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Respondent, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

John H. Strom, Esquire
SC Commission of Indigent Defense
Post Office Box 11589
Columbia, SC 29201

This 19th day of May, 2017.


BRIANNA ARNONE
Legal Assistant for Respondent

**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 Supreme Court**

Jerod Keykendall Harris, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-002693

ON WRIT OF CERTIORARI

Appeal from Spartanburg County
R. Keith Kelly, Post-Conviction Relief Judge

Memorandum Opinion No. 2018-MO-011
Submitted September 15, 2017 – Filed February 28, 2018

REVERSED

Appellate Defender Laura Ruth Baer, of Columbia, for
Petitioner.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Valerie Garcia Giovanoli, both of
Columbia, for Respondent.

PER CURIAM: In this post-conviction relief (PCR) action, Jerod Keykendall Harris contends the PCR court erred by allowing him to represent himself at his PCR

trial without first obtaining a valid waiver of his right to counsel. We agree and reverse.

Harris appeared in PCR court and requested that his court-appointed attorney be relieved, stating, "I wanted to go ahead and get me a paid attorney." When the court asked when Harris planned to hire an attorney, Harris responded that "it should be soon." After assuring Harris he would not receive another appointed attorney, the court granted his request and continued the hearing to allow him time. The court stated, "You'll either have to hire [an attorney] or you will be representing yourself."

Seven months later Harris again appeared in PCR court, this time before a different judge. The PCR court asked Harris:

Court: Okay. You're going to represent yourself in this matter?

Harris: Yes, sir. I'm going to have to, sir.

Court: Okay.

Harris: I was told I had to.

Court: All right.

The State then explained the events that occurred at the prior PCR hearing:

Your Honor, just to clarify. He had an attorney that had been appointed in our last term. He asked for that attorney to be relieved. And [the judge] informed him that, if he wanted to relieve his appointed attorney, he would not be allowed to have another appointed attorney, but he could retain an attorney and proceed pro se.

The PCR court immediately asked Harris about his claims and proceeded with the trial, without any attempt to seek a waiver from Harris of his right to counsel.

In *Whitehead v. State*, 310 S.C. 532, 426 S.E.2d 315 (1992), we held that "when a PCR application is not dismissed *before* a hearing is held, the PCR judge must appoint counsel or obtain a knowing and intelligent waiver of that right by the

applicant." 310 S.C. at 535, 426 S.E.2d at 316; *see also Richardson v. State*, 377 S.C. 103, 105-06, 659 S.E.2d 493, 494-95 (2008) (discussing the two requirements for a valid waiver of counsel in a PCR proceeding). Under *Richardson* and *Whitehead*, the PCR court clearly erred by failing to seek from Harris a valid waiver of his right to counsel. See *Hilton v. State*, Op. No. 27772 (S.C. Sup. Ct. filed Feb. 28, 2018) (Shearouse Adv. Sh. No. 9 at 94) (holding "the PCR court clearly erred by failing to ensure Hilton understood the dangers and disadvantages of self-representation before granting the motion to relieve his appointed attorney" (citing *Whitehead*, 310 S.C. at 535, 426 S.E.2d at 316-17)). We remand for the appointment of counsel and a new PCR trial.

REVERSED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

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APPELLATE

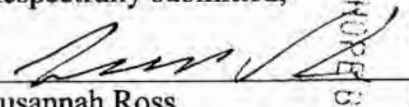
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
JEROD HARRIS,	)	AMENDED APPLICATION
APPLICANT.	)	
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	CASE # 2012-CP-42-4617
RESPONDENT.	)	

This matter comes before the Court by way of application of post conviction relief filed November 5, 2012, alleging ineffective assistance of trial counsel for failure to investigate and prepare for trial, giving erroneous advise, and denial of 6th Amendment rights . An Amended Return was made on May 7, 2018. This application is intended to incorporate the allegations of the original application and add the following allegations:

1. Ineffective assistance of trial counsel for

- (a) failing to advise the Applicant of his self-defense claims;
- (b) advising him to plea when he had a strong self defense case;
- (c) failing to investigate and use in mitigation history of mental health issues;
- (d) failing to challenge the indictment; and
- (e) failure to assure credit given for time served.

Respectfully submitted,


 Susannah Ross
 Attorney for the Applicant
 330 E. Coffee St,
 Greenville, SC 29601
 (864) 242-0029

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2018 SEP 11 AM 8:52
 M. NOPE BLACKLEY

This 4 day of September, 2018

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Gerald Harris

Applicant

7TH JUDICIAL CIRCUIT

CASE # 2012CP024617

vs
G/ite

Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the

In this action dated

9-4

2018

on

9-11-18

Amended Application

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Megan Jameson
Suzanne Ross
Gerald Harris

9-11-18

(Date)

Corrie S. [Signature]

(Signature)

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

JEROD HARRIS,
APPLICANT.

AMENDED APPLICATION

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

CASE # 2012-CP-42-4617

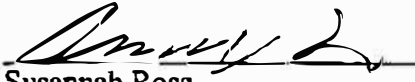
This matter comes before the Court by way of application of post conviction relief filed November 5, 2012, alleging ineffective assistance of trial counsel for failure to investigate and prepare for trial, giving erroneous advise, and denial of 6th Amendment rights. An Amended Return was made on May 7, 2018. This application is intended to incorporate the allegations of the original application and add the following allegations:

1. Ineffective assistance of trial counsel for

- (a) failing to advise the Applicant of his self-defense claims;
- (b) advising him to plea when he had a strong self defense case;
- (c) failing to investigate and use in mitigation history of mental health issues;
- (d) failing to challenge the indictment; and
- (e) failure to assure credit given for time served.

2. Lack of subject matter jurisdiction due to invalid indictment procedure;

Respectfully submitted,


Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
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This 18 day of Sept, 2019

2019 SEP 23 AM 10:21
CLERK OF COURT
SPARTANBURG COUNTY
JAY W. COX

FILED

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

JEROD HARRIS,
APPLICANT.

AFFIDAVIT OF SERVICE
BY MAIL

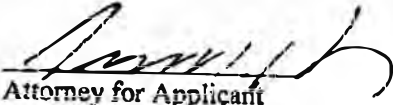
v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

CASE # 2012-CP-42-4617

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is proper circumstance of service by mail.
3. I have this day served a copy of the Amended Application in the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

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


Attorney for Applicant

This 19 day of Sept., 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG) CASE NO.: 2012-CP-42-4617

JEROD K. HARRIS)
)
vs.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA)

NOVEMBER 12, 2019
SPARTANBURG, SOUTH CAROLINA

BEFORE THE HONORABLE EUGENE C. GRIFFITH

APPEARANCES:

SUSANNAH C. ROSS, ESQUIRE
GREENVILLE, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

JACOB A. ISENBERG, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
JEROD HARRIS				
By Ms. Ross	8			
By Mr. Isenberg		11		
ROBERT HALL				
By Mr. Isenberg	15			
By Ms. Ross		22		

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
A-1	Administrative Order	10	
A-2	Research	10	

1 THE COURT - All right, ready?

2 MR. ISENBERG - Thank you, Your Honor. The next
3 case is Jerod Harris vs. State of South Carolina. That is
4 case number 2012-CP-42-4617. This case comes based upon
5 the application filed by Mr. Harris on November 5th, 2012.
6 He's presently confined in The State of South Carolina
7 Department of Corrections pursuant to Orders of Commitment
8 from The Spartanburg County Clerk of Court. During the
9 May, 2011 term, The Spartanburg County Grand Jury indicted
10 him for attempted murder. The charges stemmed from a
11 December 17th incident. Assistant Public Defender Robert
12 Hall of The Spartanburg Public Defender's office,
13 obviously, represented him. Assistant Solicitor, Abel
14 Gray, of The Seventh Circuit Solicitor's Office prosecuted
15 the case. On May 31st, 2012 he appeared in Spartanburg
16 County Court of General Sessions before the Honorable J.
17 Mark Hayes where he pled guilty as indicted. Pursuant to
18 negotiations entered between the applicant and the State,
19 Judge Hayes sentenced him to 15 years imprisonment. He did
20 not appeal his convictions or sentence. This is going to
21 be a little bit of a long one, so bear with me.

22 THE COURT -

23 MR. ISENBERG - On November 5th, 2012 he filed a
24 timely application for Post Conviction relief alleging he
25 was being held unlawfully based upon various allegations of

1 ineffective assistance of counsel. We made our return on
2 February 25th, 2014 requesting that an evidentiary hearing
3 be held. A hearing was convened on April 7 -- at April
4 7th, 2014 at The Spartanburg County Courthouse before The
5 Honorable J. Derham Cole. He was present and represented
6 by J. Brandt Rucker, Esquire. Suzanne (sic) White,
7 formerly of the SCAG's office represented the respondent,
8 The State of South Carolina. At the start of the hearing
9 he requested to relieve counsel, to continue the
10 evidentiary hearing so that he could retain private
11 counsel. Respondent took no position on the matter. From
12 the bench, Judge Cole granted his motion and relieved
13 Rucker as counsel for applicant. Thereafter, Judge Cole
14 issued a written Order dated July 18th, 2014 continuing the
15 matter and formally relieving Rucker as Post Conviction
16 relief counsel. Judge Cole further instructed applicant
17 the Court would not appoint further counsel if he was
18 unable to retain an attorney. An evidentiary hearing was
19 held on November 4th, 2014 before The Honorable R. Keith
20 Kelly. The applicant was present and proceeded pro se.
21 Suzanne White represented Respondent, The State of South
22 Carolina. Applicant and plea counsel testified during that
23 hearing. By written Order signed November 26th of 2014,
24 Judge Kelly denied and dismissed that matter with
25 prejudice. Thereafter, the applicant filed a notice of

1 appeal. On October 13th, 2015 a Petition for Writ was
2 filed on his behalf by John Strom, Esquire, formerly of the
3 SC Office of Indigent Defense. He argued that the PCR
4 Court erred in finding that he knowingly and voluntarily
5 waived his right to PCR counsel, and thereafter, The South
6 Carolina Supreme Court reversed the PCR Court's denial of
7 the relief and remanded the matter back to Spartanburg
8 County Court for a new evidentiary hearing after the
9 appointment of counsel. Thereafter he was appointed
10 counsel, Susannah Ross, who now represents him, and this
11 evidentiary hearing is a result of that Supreme Court
12 Order, and on August 18th of this year he filed an amended
13 application for allegations, and I'll let Ms. Ross proceed
14 forward unless you have any questions for me.

15 THE COURT - No, not yet.

16 MR. ISENBURG - Thank you, Your Honor.

17 MS. ROSS - Judge, I filed an amended application.

18 This was for failing to advise the applicant of his self
19 defense claims, advising him to plea when he had a strong
20 self defense case, failing to investigate and use
21 mitigation history, failing to challenge the indictment and
22 failing to assure credit given for time served. I've met
23 with Mr. Harris, and I believe his main issue at this point
24 is the irregularity and the grand jury proceeding and the

1 flaws in the indictment, so I would call him to the stand
2 at this time to address his issues.

3 THE COURT - Fair enough. He can come forward and
4 be sworn.

5 MR. HARRIS - I have -- ask a question.

6 THE COURT - Sure.

7 MR. HARRIS - Do I have to ---

8 THE COURT - Do you swear or affirm, that's what
9 I'll ask you.

10 MR. HARRIS - I'm gonna tell the truth, ---

11 THE COURT - Okay.

12 MR. HARRIS - --- the whole truth.

13 THE COURT - But you gonna affirm that?

14 MR. HARRIS - I'm confirming that now.

15 THE COURT - I want you to affirm it, not confirm
16 it.

17 MS. ROSS - Mr. Harris, if you don't want to swear
18 an oath on the Bible, you can just affirm which means say
19 yes, I'm going to tell you the truth.

20 MR. HARRIS - It's against -- it's against my
21 religion.

22 THE COURT - Okay. So you can affirm. That's what
23 he's gonna say, -- swear -- he's going to say swear or
24 affirm and you're going to say I affirm. Okay, go ahead.

1 JEROD K. HARRIES, AFTER BEING FIRST DULY SWORN,

2 TESTIFIES AS FOLLOWS -

3 DIRECT EXAMINATION

4 BY MS. ROSS -

5 Q Okay, Mr. Harris, you understand that if you're
6 granted relief today, you could be facing up to 30 years
7 for the attempted murder, the original charge.

8 A Yes.

9 Q And it's your wish to proceed?

10 A Yes.

11 Q What are your allegations of ineffective assistance of
12 counsel or violations that you feel should be corrected
13 that were -- denied you a fair trial and ---

14 A Well, it should be corrected and recognized is that my
15 indictment none the made the filled (phonetic) in 2011
16 there was no Court being convened -- being convened due to
17 Title 14-5- -- 14-5-710 for the month of May -- for the
18 month of May to the third Monday after the fourth Monday of
19 May for one week is General Sessions Court supposed to be
20 convened and that's the only time that the grand jury can -
21 - can be convened when General Sessions Court is open, and
22 May the 5th they was not open and there was no special
23 grand jury -- special grand jury being held then.

24 Q So you're saying that the State lacked subject matter
25 jurisdiction to proceed with your case ---

1 A Yes.

2 Q --- because they did not have a valid indictment?

3 A Yes.

4 Q Okay, and you've done quite a bit of research on this
5 issues. Is that correct?

6 A Yes.

7 Q I'm going to hand you two things that you mailed to me
8 if you can just tell us what those are.

9 A One is the -- the first one is the grand jury
10 reporting dates dealing with the grand -- uh, grand jury,
11 uh ---

12 Q And how did you get those?

13 A I got -- I retained them from somebody that, uh -- I
14 got it from somebody that was -- that was locked with me
15 got them from their lawyer.

16 Q Okay. And then what's -- what's the other one?

17 A The other one is dealing with -- is dealing with --
18 dealing with the grand jury and void (phonetic) indictment
19 -- and deal with the void indictment grand jury -- illegal
20 grand jury and the uh, the criminal acts -- criminal acts
21 having been committing a perjury.

22 Q Okay. And what -- what is the committing a perjury
23 aspect have to do with the indictment?

24 A Once they -- once -- once they said and swore -- and
25 broke the oath of office and swore that they -- that said

1 that this is what happened on this day, it -- it didn't do
2 it, they lied.

3 Q Okay. And they lied about the body of the indictment
4 or they lied about when the grand jury was ---

5 A The whole indictment is no good at all once -- once
6 the, uh -- once they done took that oath and didn't --
7 didn't tell the truth period. They killed the whole body -
8 - they killed the whole body of indictment. They killed
9 the whole indictment.

10 Q All right.

11 A And make the indictment null and void.

12 MS. ROSS - Can I have these marked as Applicant's
13 Exhibits 1 and 2, please?

14 (WHEREUPON, DOCUMENT MARKED FOR IDENTIFICATION AS
15 APPLICANT'S EXHIBITS 1 and 2)

16 Q All right, would you like the Judge to take a look at
17 those?

18 A (No response)

19 MS. ROSS - If I could approach?

20 (WHEREUPON, DOCUMENTS HANDED UP TO THE COURT.)

21 Q Is there anything else, any other allegations you'd
22 like to make against your counsel or ---

23 A Only thing is that he could've went on ahead and
24 properly investigated the whole case properly because the
25 indictment is -- is the seed -- is the seed of the case.

1 When you get -- put the person on notice for what they may
2 answer for what dismisses the warrant, so when -- without
3 that indictment, you basically violating -- violating your
4 client rights, you helped them violating the client rights.

5 Q All right. Now, any other issues before cross
6 examination from the State?

7 A No, ma'am.

8 MS. ROSS - Thank you.

9 MR. ISENBERG - May it please the Court?

10 THE COURT - Yes, sir.

11 MR. ISENBERG - Good morning, Mr. Harris.

12 MR. HARRIS - Good morning.

13 MR. ISENBERG - How are you doing today?

14 MR. HARRIS - All right.

15 MR. ISENBERG - Good, good.

16 CROSS EXAMINATION

17 BY MR. ISENBERG -

18 Q Now, you testified on direct that you think that the
19 indictment is deficient?

20 A Excuse me?

21 Q You think the indictment is deficient? Is that what
22 you're saying?

23 A Yeah, it's no good; it's void.

24 Q Okay. And it's void because they didn't meet on the
25 day they said they met?

1 A Not only on the date because they said they met,
2 during Title -- see, Title 14-5-710, they have certain days
3 -- they have the, um, that the grand jury have to meet, and
4 that's only during General Sessions Court term. And
5 they've haven't -- and they haven't did that. That right
6 there -- without -- without that, the grand jury lost the
7 power to hand down the indictment and the -- the Courts
8 lose the power to act upon that indictment.

9 Q Okay. So you're saying because they didn't meet on
10 the day they should've, the indictment's null and void.
11 Right?

12 A Yeah.

13 Q And because the indictment's null and void, you
14 shouldn't be in jail. Correct?

15 A Correct.

16 Q Okay. And ---

17 A Because it's not putting me on notice.

18 Q Okay. And so you're saying that the indictment's the
19 reason that you shouldn't be in jail. Correct?

20 A There's no indictment.

21 Q Okay. So it doesn't matter that you shot someone four
22 times, it just matters about the date. Correct?

23 A Oh, I accept -- I accept responsibility for my
24 actions.

25 Q Okay.

1 A That's one thing about that, but the thing about it
2 when the next person in the room can they accept their
3 responsibility for their actions.

4 Q Okay.

5 A Okay.

6 Q And so you're saying that you accept responsibility,
7 which is why you pled guilty. Correct?

8 A Yeah.

9 Q Okay. And you pled guilty to avoid trial. Correct?

10 A No, I avoid -- I did that to go ahead and go about my
11 business and get this over with.

12 Q You didn't want to go to trial, did you?

13 A I could've went to trial.

14 Q Okay, and so at trial you would've lost. Correct,
15 because you ---

16 A I don't -- I don't know. I'm not God; I don't know.
17 I can't say that.

18 Q Okay. So when you agreed with the solicitor that you
19 shot at someone four times, you didn't think you were
20 guilty of attempted murder?

21 A Oh, I knew I was guilty of attempted murder.

22 MR. ISENBERG - Okay, well, no further questions.

23 MR. HARRIS - What that got to do with the
24 indictment? Nothing.

25 MS. ROSS - I have no further questions.

1 THE COURT - All right.

2 MS. ROSS - You can step down.

3 THE COURT - You can step down.

4 MR. HARRIS - Yes, sir.

5 THE COURT - Thank you, sir.

6 MR. HARRIS - You welcome.

7 MS. ROSS - We have nothing further.

8 THE COURT - All right, the grand jury met on the
9 5th of May, '11 consistent with Judge Couch's
10 Administrative Order which sets the grand jury meeting
11 dates, is that right? I mean his position is because
12 that's not during a actual week of General Sessions Court
13 that that makes it invalid?

14 MS. ROSS - I believe so, Your Honor, that he's
15 saying that, you know, under the original statute they were
16 -- the grand jury is supposed to convene at certain
17 specific times, though they were not followed by -- that
18 requirement.

19 THE COURT - Okay. Okay, I understand.

20 What's the State got?

21 MR. ISENBERG - Your Honor, the State would call
22 plea counsel, Robert Hall.

23 THE COURT - All right.

24 ROBERT HALL, AFTER BEING FIRST DULY SWORN,

25 TESTIFIES AS FOLLOWS -

1 THE COURT - All right, have a seat.

2 MR. ISENBERG - May it please the Court?

3 THE COURT - Yes, sir.

4 MR. ISENBERG - Good morning, Mr. Hall.

5 MR. HALL - Good morning.

6 MR. ISENBERG - How are you doing today?

7 MR. HALL - Fine, thank you.

8 MR. ISENBERG - I appreciate you being here. I
9 won't waste too much of your time.

10 DIRECT EXAMINATION

11 BY MR. ISENBERG -

12 Q How long have you been a lawyer?

13 A I was sworn in January 6th, 1986.

14 Q During your time as a lawyer of the State, how long
15 have you been practicing in criminal law?

16 A Well, in 1987 I came to the solicitor's office in
17 Spartanburg County. I stayed there until June, July of
18 1994. I spent, approximately, just short of 14 years as a
19 magistrate. I did criminal, civil, presided over the jury
20 trials, jury selection, most of those being criminal. I
21 could not tell you how many criminal jury trials and bench
22 trials I presided over. Couldn't tell you how many cases I
23 prosecuted; I didn't keep up with that. And I've been
24 doing public defender work since June of 2008, so pretty
25 much my whole career.

1 Q So it's fair to say you've been involved in criminal
2 law as a solicitor, judge and a part of the defense bar.
3 Correct?

4 A That is correct.

5 Q And about how many times a week do you receive an
6 indictment for one of your clients?

7 A It depends. Sometimes we get -- sometimes we have to
8 ask for the indictments, but uh -- I can tell you -- any
9 given time right now we have between a hundred and fifty
10 and two hundred clients which would be probably close to
11 six hundred indictments in this circuit. Um, and ---

12 Q So it's fair to say with your current clients, you've
13 reviewed almost six hundred indictments. Correct?

14 A The ones that -- yeah, -- yeah, somewhere in there.

15 Q And that's not even counting all the countless
16 indictments you reviewed as a magistrate and a solicitor.
17 Correct?

18 A Well, as a solicitor. I didn't say indictments as a
19 magistrate. We operated on warrants.

20 Q But you reviewed several indictments as a solicitor?

21 A Oh, yes, signed them.

22 Q So you're -- you're pretty tried and true when it
23 comes to indictments?

24 A Yes.

25 Q Okay. And when did you begin representing Mr. Harris?

1 A Um, let me see. My first note of meeting was in April
2 of 2011. I was appointed to his case probably January
3 probably when I got -- of 2011 when I got his file, and I
4 have several different notes of meeting, talking with
5 family and things like that.

6 Q And at that point he had not been indicted.

7 A No, he had not. He had not been indicted until he was
8 -- shortly before a -- he was coming up on a trial docket.
9 In this circuit, we -- if you had a case, they have,
10 basically, two months to get us discovery, and then we have
11 two months to review that and, hopefully, get an offer to
12 go over with the client, and in this case we got a 20 year
13 offer and I talked them -- negotiated it down to a 15 year
14 offer.

15 Q Right. And during that first meeting, did y'all
16 discuss the charge of attempted murder?

17 A Yes, I did, and, in fact, uh, I had the discovery.
18 This was a preliminary hearing; we went over the discovery.
19 I, specifically, said went over attempted murder; there
20 were statements of witnesses; there were several people
21 present, and his concern at that time was that the victim
22 wasn't going to show up. He had fled to the State of New
23 York. I think it, actually, turned out to be New Jersey.
24 He was -- moved up there to get away, but in questioning
25 from then, uh, for a next month or so was will he show back

1 up, and the answer was, yes, he will, and then he did show
2 up.

3 Q Okay. So it's fair to say that based upon your
4 conversations you believe Mr. Harris knew that he was going
5 to, potentially, be charged with attempted murder.
6 Correct?

7 A Oh, yeah, he, absolutely, understood that.

8 Q So that meeting occurred in April. What happened
9 after that to cause the indictment to occurred in May?

10 A After the time for offers and either just after that
11 or just before that they present cases to the grand jury.
12 Sometimes they do it sooner. Mr. Gray tended to wait four
13 or five months then indict a case. They all do it
14 differently. We had some that when we go to a prelim
15 within two months they've already presented the case to the
16 grand jury, and others take a little more time. Mr. Gray,
17 generally, took a little more time and was not -- did not
18 rush the process like some solicitors do.

19 Q So when did the potential plea offer expire? I just
20 want to get my dates consistent.

21 A The first plea offer we got was 20 years. I went --
22 went and talked to him about that. His concern at that
23 point was, why does Abel Gray always prosecute me, and, you
24 know, I didn't have no answer to that, and I said but I

1 will talk to him about a better offer, maybe get it 15, a
2 negotiated 15, and we were able to get that.

3 Q When did you have that -- do you know right around
4 what time you got that 15 year offer accepted?

5 A Now, do -- I know that I was there on the 29th of May
6 at the jail and went over the 20 year offer. I don't have
7 a note when I got -- exactly when I got the 15 year offer.
8 I assume -- looks like I put down I was there a little
9 before four o'clock talking to him on that day, so it was
10 probably the next day, and two days after I gave him the 20
11 year offer we were in Court with a negotiated 15, so it had
12 to be on the 30th, because, quite frankly, I think Mr.
13 Gray, generally, was gone. By the time I had gotten back
14 on the 29th, he probably wasn't there. I spoke with him on
15 the 30th and ---

16 Q So he'd already been indicted by the time you ---

17 A Oh, absolutely, yes.

18 Q And did you have a chance to review those indictments
19 ---

20 A Yes, sir.

21 Q --- or that indictment? I apologize.

22 A Yes.

23 Q And did you review that indictment with Mr. Harris?

24 A I don't recall having the indictment and going over
25 with him, but I know at least on the day of the plea we

1 have the indictment, the original indictment and everything
2 there.

3 Q Well, based upon your personal review of the
4 indictment, what, if any, issues did you see with it?

5 A I did not see any issues. I know, um, -- because when
6 I was in the solicitor's office, I had a staff member who
7 left out malice aforethought in an attempted murder
8 indictment that created a problem. I, specifically, looked
9 for that. It's got the true bill stamp, the signature, the
10 date May 5th, 2011, and everything looked right to me. It
11 had what it needed.

12 Q So you -- when you're reviewing an indictment, your
13 custom is to review the elements, the true bill stamp, the
14 date and then the signature?

15 A Absolutely, because I've, actually, been getting ready
16 for a trial and looked at an indictment and realized they
17 could not go forward, because they had some mistakes in it.

18 Q Right. And so after reviewing all that in this case,
19 though, you decided that the indictment as sufficient.
20 Correct?

21 A Absolutely.

22 Q Okay, and have you reviewed that indictment since the
23 guilty plea?

24 A Yes.

1 Q And do you see any issues with it now that you may not
2 have seen then?

3 A No, I -- I know that it sounds like we're talking
4 about -- Mr. Harris is talking about the old code pleadings
5 that, um -- the old statutes that regulate everything, ---

6 Q Right.

7 A --- that -- and I remember that, because in 1985 when
8 I graduated from law school and was preparing for the Bar,
9 they, specifically, told us, don't worry about code
10 pleading, we're switching to the rules, and that's what
11 you're going to be practicing with, that's what you need to
12 know, and ---

13 Q Right.

14 A --- then probably a month or -- month or -- month and
15 a half before the Bar they said, sorry, we're testing you
16 on code plea, so I'm ---

17 Q Tried to trick you.

18 A --- very much aware that the system has changed and --
19 -

20 Q Are you surprised the Bar tried to trick you?

21 A I don't think they tried to trick us, it's just that I
22 think they forgot to tell the guy who was doing that part
23 of the Bar to do it on the rules instead of the code.

1 Q I can certainly appreciate that. But you're saying
2 based upon your experience, it's more about notice, not
3 about the code rules that you're ---

4 A Oh, absolutely, make sure the charge, the date and --
5 unfortunately, case law says, um -- because I tried a case
6 and appealed one where they had the wrong date for the
7 event, that that on or about is very broad.

8 Q Right. And so I won't drag this out too much, in your
9 legal opinion you gave him and he had from surrounding
10 circumstances notice that he was going to be charged with
11 attempted murder before he pled guilty. Correct?

12 A Yes.

13 Q Okay.

14 MR. ISENBERG - Okay. No further questions.

15 THE COURT - Ms. Ross?

16 CROSS EXAMINATION

17 BY MS. ROSS -

18 Q So you got an original plea offer of 20 years and then
19 it was reduced to 15?

20 A That's correct.

21 Q And did you get discovery and review it with your
22 client?

23 A Yes, I did. And on -- let's see, the -- have a note
24 December 9th, 2011 I got additional discovery, and I made
25 sure he had everything at that time.

1 Q Okay. I didn't get -- what date, 2011?

2 A (No response)

3 Q That makes sense. Sorry, I was looking at the wrong -

4 --

5 A Yeah.

6 Q Okay, now, as far as the indictment -- we're talking
7 about code pleading, and what it does say in The South
8 Carolina Code that indictments have to be procured by a grand
9 jury called in this manner on these days believed, um, and
10 those codes have not been repealed, have they?

11 A No, not that I know of.

12 Q And also, Rule 3 of The South Carolina Rules of
13 Criminal Procedure also states that an indictment has to be
14 sworn within 90 days of the warrant, and that Rule has not
15 been amended or changed, has it?

16 A Well, in this circuit we operate under a special rule
17 that says that prelims have to be requested by the initial
18 appearance, not the ten days, so several things have
19 changed. They have a system that, um -- procedure that
20 discovery, preliminary hearing request by two months after
21 -- roughly two months after arrest, and then it's plea or
22 trial four months after, has to be announced, there has to
23 be an offer made in a timely manner. We -- our idea of a
24 timely manner and some of the solicitors' idea of a timely
25 manner is totally different, but -- and I don't,

1 specifically, recall about the indictment. They can indict
2 them pretty much anytime, and I don't know what harm there
3 is if they're not indicted within 90 days.

4 Q Okay, but I guess this is just -- but that Rule -- if
5 I was -- Mr. Harris and I went down to the law library at
6 SCDC, and I typed up The Rules of Criminal Procedure in
7 there or looked them up, that Rule 3 would say, an
8 indictment should be made within 90 days. That's what it
9 says on those books.

10 A I can't dispute that.

11 Q Okay. And ---

12 MS. ROSS - I've got nothing further.

13 THE COURT - All right, you can step down.

14 MR. HALL - Thank you.

15 MR. ISENBERG - Your Honor, at this point I would
16 ask that Mr. Hall be excused. That concludes his cases for
17 the day.

18 MS. ROSS - No objection.

19 THE COURT - Sure. You may go, Mr. Hall. Good
20 luck.

21 MR. HALL - Thank you.

22 MR. ISENBERG - Your Honor, at this point the
23 State has no further witnesses. We would just request a
24 brief closing argument.

25 THE COURT - Okay.

1 MR. ISENBERG - With respect to the indictment
2 allegation brought forward by the applicant, counsel
3 currently testified that he talked to the applicant about
4 the -- talked to the applicant about attempted murder, the
5 charge, the evidence, the fact that he was, potentially,
6 going to be indicted for that and the fact that there was
7 on-going plea negotiations about that charge, and, in fact,
8 the applicant, eventually, pled pursuant to that charge, so
9 based upon that evidence alone, I would say, number one,
10 counsel wasn't deficient as he, eventually, reviewed the
11 indictment and didn't think there was any issues with it,
12 and number two, there was no prejudice, because the
13 applicant had notice. He pled based upon attempted murder
14 which was a -- which was a part of an on-going plea
15 negotiation he had well before he was indictment, and on
16 top of that, he had a month after he pled to figure out
17 whether he believed that he was on sufficient notice of
18 indictment and figure out whether he wanted to challenge
19 that insufficiency and he didn't. The Rule says you have
20 to challenge it before, um -- before they plead I believe
21 to the best of my knowledge, therefore, I believe that
22 there's no deficiency or prejudice in this case. As a
23 result I would request his application be dismissed with
24 prejudice. Thank you.

25 THE COURT - Okay.

1 Ms. Ross?

2 MS. ROSS - Thank you, Your Honor. I just point
3 out Mr. Harris points out to me that subject matter
4 jurisdiction can be brought up at anytime. He's done his
5 research; he's gone down and looked at these things down at
6 the jail. He handed me U.S. v. Golden, which is 893 F.2nd
7 894, and it's a Federal case talking about Federal
8 indictments, but it's, basically, -- it's talking about the
9 importance of indictments and how indictments and improper
10 that say the case should be dismissed, and it is, so that
11 we have case law that the grand jury's not a play thing;
12 this has to be a serious thing and quite often we've just
13 continued to kick the ball down the road on this issue
14 leaving clients and defendants in jail and not
15 understanding why the indictment was proper, so with that
16 argument we would just ask that you consider remanding this
17 case so that he can start over again and maybe get this
18 indictment -- oh, he wants to vacate the case because of
19 the improper indictment.

20 THE COURT - Now, he realizes -- I mean they could
21 represent to the grand jury same facts, same witnesses,
22 same probable cause threshold to procure a true bill
23 indictment? I mean he realizes that?

24 MS. ROSS - I discussed that with him.

1 (WHEREUPON, DISCUSSION IS HELD BETWEEN MS. ROSS
2 AND MR. HARRIS OUT OF THE HEARING OF THE COURT AND EVERYONE
3 WHICH WAS NOT REPORTED)

4 MS. ROSS - Okay, he's saying -- I believe he
5 amended his testify here today just to talk about the
6 indictment because his -- the remedy he is looking for is
7 to vacate the sentence due to an invalid indictment. He
8 does not want to risk the 30 years, and I thought we -- we
9 had discussed that prior, but at that point I tell the
10 Court that ---

11 THE COURT - All right, well, it'd be my
12 understanding though that the procedures employed by the
13 statute and the notice requirements to the indictment is
14 that the grand juries are convened and qualified during the
15 first term of General Sessions Court each calendar year,
16 and then the grand jury meeting dates -- when the grand
17 jury after convening -- all 18 have to be there, and the
18 alternates all qualify and placed under oath and given
19 instructions, after that, the practice is the chief
20 administrative judge sets a meeting date for the grand jury
21 to meet, and that was done. Judge Couch issued an
22 Administrative Order which set the grand jury meeting dates
23 for -- for following years, so consistent with his Order,
24 the grand jury met on the day appropriated by the chief
25 administrative judge for The Court of General Sessions in

1 the Seventh Circuit. I don't see that the indictment's
2 invalid because of that. I mean certainly -- there's an
3 old statute that says code pleas mean thus and so, but
4 there's been an Order of practice statewide that most grand
5 juries do not meet during the week of General Sessions;
6 they meet the preceding week ---

7 MS. ROSS - Right.

8 THE COURT - --- because of the convenience of the
9 court staff, security, but more importantly the prosecutors
10 and the witnesses who have to be called before the grand
11 jury so that doesn't interfere with terms of court and
12 trials and also meeting space because it is -- and common -
13 -- and the courthouses across the state that some grand
14 jury are convened in the courthouse in the same rooms that
15 the petit jurors use as well as -- it's just meeting space
16 time, but what was done -- I mean Judge Couch did this in
17 2011. I think it'd been going on several years to my
18 knowledge. It's been going on every year since in,
19 virtually, every court in circuit I've held court in.

20 MR. ISENBERG - And, Your Honor, this is the very
21 reason they changed the law on this issue to -- the
22 indictment's a notice document that -- this isn't a
23 substantive defect. He's just alleging that the date was
24 wrong, the date was invalid and the grand jury couldn't
25 amended the state or they shouldn't amended the state.

1 This has nothing to do with the substantive defect on the
2 indictment.

3 THE COURT - Well, the grand jury was directed to
4 meet pursuant to Judge Couch's Order in January, I believe.

5 MR. ISENBERG - Correct, Your Honor, and even if -
6 - as I was saying, even if there was some issue with the
7 date, that this would not -- it's the State's opinion this
8 wouldn't qualify as a substantive defect to allow him to
9 proceed forward on a remedy under ineffective assistance of
10 counsel. And on top of that, subject matter jurisdiction -
11 - this is not a subject matter jurisdiction issue. The --
12 the indictment is true billed; the indictment was used to -
13 - pursuant to his plea deal. The indictment is being
14 challenged today based upon his counsel not reviewing it
15 and challenging it at the time. That's an ineffective
16 assistance of counsel issue. That's not a subject matter
17 jurisdiction issue.

18 THE COURT - Well, then the counsel also testified
19 he did review it and looked for a particular language of
20 which he was aware when he used to be a prosecutor if it
21 was omitted that would create ---

22 MR. ISENBERG - Correct, Your Honor. Based upon
23 his experience, the State -- that's -- the State would
24 argue that there's no deficiency in the indictment, and
25 there's no deficiency in his review of the indictment.

1 THE COURT - It seems counsel was fairly effective
2 in reviewing the discovery and the indictment with Mr.
3 Harris. I don't find the indictment to be defective or
4 invalid, I think is the wording. I think it was done --
5 the grand jury met at the direction of the chief
6 administrative judge that year and every year since, so ---

7 Anything else, Ms. Ross?

8 MS. ROSS - No, Your Honor.

9 THE COURT - Mr. Harris, I'm sorry. I think the
10 indictment's valid, because it -- the procedures
11 established back in the late 80s regarding notice document
12 of indictment procedures as opposed to the old code -- code
13 allegations -- it's just -- it's changed, and so that's no
14 longer the appropriate rules to follow, so, unfortunately,
15 I'm going to have to deny your application.

16 MS. ROSS - Thank you, Judge.

17 MR. ISENBERG - Your Honor, the State would
18 request 30 days to prepare ---

19 THE COURT - Sure.

20 MR. ISENBERG - Thank you.

21 (END OF TRANSCRIPT)

22

23

24

25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 30 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Jerod K. Harris vs. State of South Carolina, as taken by me in Court of Common Pleas for the Seventh Judicial Circuit on November 12th, 2019, and provided by me this the 30th day of June, 2023.

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

/s/SHIRLEY BROOM

Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina -
RETIRED

(Att 5)

STATE OF SOUTH CAROLINA

7th Judicial Circuit Court

COUNTY OF SPARTANBURG

Administrative Order

IN RE:

Grand Jury Reporting Dates

Whereas the terms of General Sessions Court Spartanburg County for the period of January 1, 2011 through June 30, 2011 have been set by order of the Chief Justice of the South Carolina Supreme Court.

IT IS THEREFORE ORDERED that the Grand Jury for Spartanburg County shall report to the Spartanburg County Courthouse for service at 9:00am on each of the following dates, unless otherwise by order of the Chief Justice for Administrative purposes:

Friday, January 14, 2011
 Friday, February 18, 2011
 Friday, March 25, 2011
 Thursday, May 5, 2011
 Friday, June 17, 2011

IT IS SO ORDERED.

2010 OCT 15 PM 12:35
 M. HOPE BLACKLEY
 CLERK OF COURT
 SPARTANBURG COUNTY


 Honorable Roger L. Couch
 Administrative Judge
 Seventh Judicial Circuit

Spartanburg, SC

10/15 2010



(A.H.5) 6 Pages

368 out of 384
that was completed

Spartanburg County
Grand Jury

Date: 5/3/11

157

M. HOPE BLACKLEY

2011 MAY -5 AM 10:18

CLERK OF COURT
SPARTANBURG COUNTY

The Spartanburg County Grand Jury met on the 3rd day of May, 2011 and
"TRUE BILLED" the following indictments. At least twelve (12) of the Grand Jurors
were in agreement with the TRUE BILL decision.

1 2011-GS-42 <u>2211</u>	2011-GS-42 <u>2212</u>	2011-GS-42 <u>2213</u>	2011-GS-42 <u>2210</u>
2 2011-GS-42 <u>2308</u>	2011-GS-42 <u>2351</u>	2011-GS-42 <u>2224</u>	2011-GS-42 <u>2226</u>
3 2011-GS-42 <u>22490</u>	2011-GS-42 <u>2306</u>	2011-GS-42 <u>22543</u>	2011-GS-42 <u>22578</u>
4 2011-GS-42 <u>22263</u>	2011-GS-42 <u>2282</u>	2011-GS-42 <u>22305</u>	2011-GS-42 <u>22353</u>
5 2011-GS-42 <u>2362</u>	2011-GS-42 <u>2385</u>	2011-GS-42 <u>2401</u>	2011-GS-42 <u>22420</u>
6 2011-GS-42 <u>2449</u>	2011-GS-42 <u>2458</u>	2011-GS-42 <u>2465</u>	2011-GS-42 <u>2468</u>
7 2011-GS-42 <u>2471</u>	2011-GS-42 <u>2474</u>	2011-GS-42 <u>2479</u>	2011-GS-42 <u>2320</u>
8 2011-GS-42 <u>2334</u>	2011-GS-42 <u>2350</u>	2011-GS-42 <u>2343</u>	2011-GS-42 <u>2427</u>
9 2011-GS-42 <u>2481</u>	2011-GS-42 <u>2485</u>	2011-GS-42 <u>2492</u>	2011-GS-42 <u>2501</u>
10 2011-GS-42 <u>2511</u>	2011-GS-42 <u>2524</u>	2011-GS-42 <u>2529</u>	2011-GS-42 <u>2534</u>
11 2011-GS-42 <u>2536</u>	2011-GS-42 <u>2552</u>	2011-GS-42 <u>2554</u>	2011-GS-42 <u>2557</u>
12 2011-GS-42 <u>2561</u>	2011-GS-42 <u>2566</u>	2011-GS-42 <u>2579</u>	2011-GS-42 <u>2583</u>
13 2011-GS-42 <u>2585</u>	2011-GS-42 <u>2587</u>	2011-GS-42 <u>2589</u>	2011-GS-42 <u>2540</u>
14 2011-GS-42 <u>2545</u>	2011-GS-42 <u>2547</u>	2011-GS-42 <u>2549</u>	2011-GS-42 <u>2551</u>
15 2011-GS-42 <u>2590</u>	2011-GS-42 <u>2592</u>	2011-GS-42 <u>2593</u>	2011-GS-42 <u>2596</u>
16 2011-GS-42 <u>2598</u>	2011-GS-42 <u>2599</u>	2011-GS-42 <u>2379</u>	2011-GS-42 <u>2376</u>


Foreperson, Spartanburg County Grand Jury

Spartanburg County
Grand Jury

Date: 5-5-11

The Spartanburg County Grand Jury met on the 5th day of MAY, 2011 and "TRUE BILLED" the following indictments. At least twelve (12) of the Grand Jurors were in agreement with the TRUE BILL decision.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
M. HOPE BLACKEY
2011 MAY -5 AM 10:18

2011-GS-42 2380 2011-GS-42 238 2011-GS-42 2279 2011-GS-42 2298
2011-GS-42 2299 2011-GS-42 2301 2011-GS-42 2378 2011-GS-42 2320
2011-GS-42 2327 2011-GS-42 2357 2011-GS-42 2361 2011-GS-42 2321
2011-GS-42 2315 2011-GS-42 1253 2011-GS-42 2232 2011-GS-42 2234
2011-GS-42 2253 2011-GS-42 2254 2011-GS-42 2267 2011-GS-42 2269
2011-GS-42 2271 2011-GS-42 2273 2011-GS-42 2574 2011-GS-42 2485
2011-GS-42 2387 2011-GS-42 2389 2011-GS-42 2391 2011-GS-42 2396
2011-GS-42 2493 2011-GS-42 2495 2011-GS-42 2497 2011-GS-42 2499
2011-GS-42 2504 2011-GS-42 2304 2011-GS-42 2313 2011-GS-42 2274
2011-GS-42 2447 2011-GS-42 2453 2011-GS-42 2455 2011-GS-42 2457
2011-GS-42 2460 2011-GS-42 2462 2011-GS-42 2472 2011-GS-42 2149
2011-GS-42 2242 2011-GS-42 2249 2011-GS-42 2255 2011-GS-42 2257
2011-GS-42 2261 2011-GS-42 2265 2011-GS-42 2475 2011-GS-42 2478
2011-GS-42 2486 2011-GS-42 2244 2011-GS-42 2246 2011-GS-42 2248
2011-GS-42 2573 2011-GS-42 2555 2011-GS-42 2560 2011-GS-42 _____
2011-GS-42 _____ 2011-GS-42 _____ 2011-GS-42 _____ 2011-GS-42 _____

5

[Signature]
Foreperson, Spartanburg County Grand Jury

Spartanburg County
Grand Jury

Date: 2-1-11

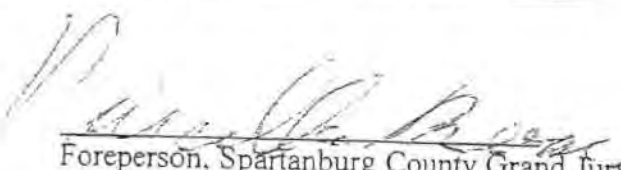
M. HOPE BLACKLEY

2011 MAY -5 AM 10:18

CLERK OF COURT
SPARTANBURG COUNTY

The Spartanburg County Grand Jury met on the 1st day of May, 2011 and "TRUE BILLED" the following indictments. At least twelve (12) of the Grand Jurors were in agreement with the TRUE BILL decision.

2011-GS-42 <u>2276</u>	2011-GS-42 <u>2300</u>	2011-GS-42 <u>2302</u>	2011-GS-42 <u>2519</u>
2011-GS-42 <u>2505</u>	2011-GS-42 <u>2354</u>	2011-GS-42 <u>2360</u>	2011-GS-42 <u>2384</u>
2011-GS-42 <u>2314</u>	2011-GS-42 <u>2277</u>	2011-GS-42 <u>1912</u>	2011-GS-42 <u>2192</u>
2011-GS-42 <u>2235</u>	2011-GS-42 <u>0028</u>	2011-GS-42 <u>2266</u>	2011-GS-42 <u>2268</u>
2011-GS-42 <u>2270</u>	2011-GS-42 <u>2272</u>	2011-GS-42 <u>2287</u>	2011-GS-42 <u>2386</u>
2011-GS-42 <u>2388</u>	2011-GS-42 <u>2390</u>	2011-GS-42 <u>2395</u>	2011-GS-42 <u>2400</u>
2011-GS-42 <u>2494</u>	2011-GS-42 <u>2496</u>	2011-GS-42 <u>2498</u>	2011-GS-42 <u>2503</u>
2011-GS-42 <u>2303</u>	2011-GS-42 <u>2306</u>	2011-GS-42 <u>0029</u>	2011-GS-42 <u>2275</u>
2011-GS-42 <u>2451</u>	2011-GS-42 <u>2454</u>	2011-GS-42 <u>2456</u>	2011-GS-42 <u>2459</u>
2011-GS-42 <u>2461</u>	2011-GS-42 <u>2463</u>	2011-GS-42 <u>1377</u>	2011-GS-42 <u>2241</u>
2011-GS-42 <u>2364</u>	2011-GS-42 <u>2250</u>	2011-GS-42 <u>2256</u>	2011-GS-42 <u>2258</u>
2011-GS-42 <u>2262</u>	2011-GS-42 <u>2446</u>	2011-GS-42 <u>2477</u>	2011-GS-42 <u>2484</u>
2011-GS-42 <u>2243</u>	2011-GS-42 <u>2245</u>	2011-GS-42 <u>2247</u>	2011-GS-42 <u>2572</u>
2011-GS-42 <u>2571</u>	2011-GS-42 _____	2011-GS-42 _____	2011-GS-42 _____
2011-GS-42 _____	2011-GS-42 _____	2011-GS-42 _____	2011-GS-42 _____
2011-GS-42 _____	2011-GS-42 _____	2011-GS-42 _____	2011-GS-42 _____


Foreperson, Spartanburg County Grand Jury

Spartanburg County
Grand Jury

Date: 5/5/11

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 MAY - 5 AM 10:18
M. HOPE BLACKLEY

The Spartanburg County Grand Jury met on the 5th day of May, 2011 and "TRUE BILLED" the following indictments. At least twelve (12) of the Grand Jurors were in agreement with the TRUE BILL decision.

2011-GS-42 <u>2450</u>	2011-GS-42 <u>2317</u>	2011-GS-42 <u>2399</u>	2011-GS-42 <u>23923</u>
2011-GS-42 <u>2430</u>	2011-GS-42 <u>2432</u>	2011-GS-42 <u>2434</u>	2011-GS-42 <u>2407</u>
2011-GS-42 <u>2409</u>	2011-GS-42 <u>2411</u>	2011-GS-42 <u>2413</u>	2011-GS-42 <u>2415</u>
2011-GS-42 <u>2418</u>	2011-GS-42 <u>2332</u>	2011-GS-42 <u>2335</u>	2011-GS-42 <u>2337</u>
2011-GS-42 <u>2359</u>	2011-GS-42 <u>2342</u>	2011-GS-42 <u>2344</u>	2011-GS-42 <u>2346</u>
2011-GS-42 <u>2348</u>	2011-GS-42 <u>2355</u>	2011-GS-42 <u>2297</u>	2011-GS-42 <u>2436</u>
2011-GS-42 <u>2438</u>	2011-GS-42 <u>2445</u>	2011-GS-42 <u>2442</u>	2011-GS-42 <u>2444</u>
2011-GS-42 <u>2423</u>	2011-GS-42 <u>2425</u>	2011-GS-42 <u>2507</u>	2011-GS-42 <u>2509</u>
2011-GS-42 <u>2522</u>	2011-GS-42 <u>2525</u>	2011-GS-42 <u>2532</u>	2011-GS-42 <u>2537</u>
2011-GS-42 <u>2542</u>	2011-GS-42 <u>2582</u>	2011-GS-42 <u>2403</u>	2011-GS-42 <u>2402</u>
2011-GS-42 <u>2564</u>	2011-GS-42 <u>2568</u>	2011-GS-42 <u>2569</u>	2011-GS-42 <u>2510</u>
2011-GS-42 <u>2514</u>	2011-GS-42 <u>2516</u>	2011-GS-42 <u>2318</u>	2011-GS-42 <u>2323</u>
2011-GS-42 <u>2331</u>	2011-GS-42 <u>2281</u>	2011-GS-42 <u>2286</u>	2011-GS-42 <u>2288</u>
2011-GS-42 <u>2290</u>	2011-GS-42 <u>2292</u>	2011-GS-42 <u>2294</u>	2011-GS-42 <u>2296</u>
2011-GS-42 <u>2366</u>	2011-GS-42 <u>2368</u>	2011-GS-42 <u>2370</u>	2011-GS-42 <u>2372</u>
2011-GS-42 <u>2374</u>	2011-GS-42 <u>2317</u>	2011-GS-42 <u>2381</u>	2011-GS-42 <u>2383</u>


Foreperson, Spartanburg County Grand Jury

TABLE OF CASES

- 1) STATE V. HEYWARD 564 SE 2d 379 (SC App. 2002) – [p. 5]
- 2) ANDERSON V. ANDERSON 299 SC 110, 115 382 SE 2d 897, 900 (Emphasis added) – [p. 5]
- 3) STATE V. McCLURE 277 SC 432, 289 SE 2d 158 (SC 1982) – [p. 5, 8]
- 4) STATE V. FUNDERBURK 259 SC 256, 191 SE 2d 520 (1972) – [p. 6, 8]
- 5) STATE V. WHEELER 259 SC 571, 193 SE 2d 515 (1972) – [p. 6, 8]
- 6) HODGES V. RAINEY 341 SC 79, 85 533 SE 2d 578, 581 (2000) – [p. 6]
- 7) STATE V. MARTIN 293 SC 46 358 SE 2d 679 (1987) – [p. 6]
- 8) CAROLINA POWER & LIGHT CO. V. CITY OF BENNETTSVILLE 314 SC 137 139 442 SE 2d 177 (1994) – [p. 7]
- 9) BRYANT V. CITY OF CHARLESTON 295 SC 408, 368 SE 2d 899 (1998) – [p. 7]
- 10) STATE V. BLACKMON 304 SC 270 403 SE 2d 660 (SC 1991) – [p. 8]
- 11) STATE V. LEE 564 SE 2d 372 (SC App. 2002) – [p. 8]
- 12) STATE V. BROWN 570 SE 2d 559 (Ct. App. 2002) – [p. 8]
- 13) STATE V. FELDER 437 SE 2d 575 (SC 1993) – [p. 8]
- 14) STATE V. RICHBURG 304 SC 162 403 SE 2d 315 (1991) – [p. 8]
- 15) STATE V. LOFTIN 275 SE 2d 575 (SC 1981) – [p. 8]
- 16) GRAY V. STATE 276 SC 634, 281 SE 2d 226 (SC 1981) – [p. 8]
- 17) STATE V. BRUNSON 274 SC 220, 262 SE 2d 44 (1980) – [p. 8]
- 18) STATE V. CASTLEMAN 64 SE 2d 250 (1951) – [p. 8]
- 19) STATE V. DUNCAN 264 SE 2d 421 (SC 1980) – [p. 9]
- 20) STATE V. BEST 257 SC 361, 186 SE 2d 272 (1972) – [p. 10]
- 21) STATE V. THOMPSON 122 SC 407 115 SE 2D 326 – [p. 10]
- 22) STATE V. RHINEHART 430 SE 2d 536 (SC App. 1993) – [p. 10]
- 23) STATE V. QUATTLEBAUM 338 SC 441 527 SE 2d 105 SC (2000) – [p. 11]
- 24) STATE V. DURDEN 264 SC 86 212 SE 2d 587 (1975) – [p. 11]
- 25) STATE V. KING 222 SC 208 71 SE 2d 793 (1952) – [p. 11]
- 26) STATE V. BUCKMAN 347 SC 316 555 SE 2d 402 (SC 2001) (Emphasis added) – [p. 12]
- 27) STATE V. HAMMITT (SC App. 2000) 341 SC 638 535 SE 2d 459 (rehearing denied, certiorari granted) – [p. 12]



TABLE OF AUTHORITY

- 1) SC Code Ann. § 14-5-⁷¹⁰~~5~~ - [p. 7, 8, 10, 11, 12, 14, 16, 17]
- 2) SC Code Ann. § 14-9-170 - [p. 7, 8, 9, 11]
- 3) SC Code Ann. § 14-9-210 - [p. 6, 7, 8, 9, 11, 12, 14, 16, 17]
- 4) SC Code Ann. § 14-5-910 - [p. 7, 11, 17]
- 5) SC Code Ann. § 14-5-920 - [p. 7, 11, 16, 17] p. 137
- 6) SC Const. Art. V §1 - [p. 9]
- 7) SC Code Ann. § 16-9-10 - [p. 10, 12, 17]
- 8) SC Code Ann. § ¹⁶~~19~~-17-410 - [16, 17, 10, 12]*
- 9) SC Code Ann. § 16-17-735 - [p. 10, 12]
- 10) SC Const. Art. I § 11 and Art. V § 22
- 11) SC Code Ann. § 17-19-10 (2003)
- 12) SC Code Ann. § 17-9-10 - [p. 11, 12]
- 13) SC Code Ann. § 17-25-10 [p. 17]
- 14) Federal Rules of Civil Procedures 60(b) (3) - [p. 19]
- 15) Section 14-5-310 - [p. 9] Rules of court Rule 106 remainder of or related writings or statements rules
- 16) SC Const. Art. V, Section IV - [p. 9]

CAN THE STATE OF SOUTH CAROLINA MAINTAIN A CONVICTION THAT
RESULTED FROM AN ILLEGAL GRAND JURY, A VOID INDICTMENT AND CRIMINAL
ACTS?

A) Convening Outside of the Statute ^{first}

Here is proof that the STATE knowingly and willfully employed the use of unlawful procedures for the return and publication of its TRUE-BILL INDICTMENTS. The State of SOUTH CAROLINA mainly ^{Spartanburg County} COUNTY employs unlawful tactics on many occasions. They use the impanelment of GRAND JURIES outside the jurisdiction of the COURT of GENERAL SESSION. In doing this they knowingly and willfully cause false and misleading information to be printed in its indictments. This has been documented in newspapers in different parts of the State. (See attachments A & B) Consequently, the unlawful and illegal acts committed by State and counties has caused many citizens of this State to be wrongfully prosecuted. ^{ME as a} The citizens of the State have not been protected by the very Constitution that is ^{by it} suppose to protect them. The Fifth Amendment of the Constitution clearly states "NO persons shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a GRAND JURY..." ^{as a} thus these citizens of this State's indictments should be considered NULL and INVALIDATED.

^{second} B) INVALID PROCEEDINGS ON VOID INDICTMENT

This is not a challenge to the court's grant of authority to hear and determine cases. That authority is rightfully granted by our Constitution. GENTRY V. STATE 636 SC 93, 610 SE 2d 494 (2005) and will not be an issue here. However, the Solicitor's office in ^{Spartanburg County} COUNTY failed to comply with statutory law jurisdictional in nature, specifying the manner and means for lawful return of ^a TRUE-BILL INDICTMENTS.

"The jurisdiction of a court over the subject matter of a proceeding is determined by the constitution, the laws of the State and it's fundamental." STATE V. HEYWARD 564 SE 2d 379 (SC App. 2002) (citing ANDERSON V. ANDERSON 299 SC 110 115 382 SE 2d 897, 900 (1989) (Emphasis added). Subject matter jurisdiction may not be waived even with consent of the parties, and may be raised at any time, BROWN V. STATE 343 SC 342, 540 SE 2d 846 (2001).

No indictment may be TRUE-BILLED by Grand Jury when circuit court lacks jurisdiction, since Grand Jury's jurisdiction is co-extensive with criminal jurisdiction of

Moreover penal statutes must be construed strictly against the State and in favor of defendant. STATE V. BLACKMON 304 SC 270, 403 SE 2d 660 (SC 1991).

According to sections 14-9-170 and 14-9-210 which both require strict compliance with its provisions, and mandated that the Grand Jury must be impaneled under the jurisdiction of The Court of General Sessions before lawful return of a TRUE-BILL INDICTMENT can take place.

The terms of The Court of General Sessions for ^{spartanburg county} COUNTY are fixed by SC Code Ann. § 14-5-710, which DOES NOT offer provisions for a county to be open ^{on} after the first week in the month of ^{may} May 5, 2011. All indictments handed down in ^{spartanburg} COUNTY on May 5, 2011 should be NULL and VOID. There is no way the county could have lawfully returned its indictments "At a term of Court of General Sessions convened on ^{may 5, 2011} May 5, 2011", as they FALSELY alleged in an indictment on ^{may 5, 2011} May 5, 2011. This is true because there is no term of court on ^{may 5, 2011} May 5, 2011 in ^{spartanburg county} COUNTY (See Attachments 1 & 2). It has been established that there was no special term of court ordered for the month of ^{may 5, 2011} May 5, 2011 in ^{spartanburg county} COUNTY (See Attachments 3 & 4). Special terms of court would be ordered under SC Code Ann. § 14-5-910 or § 14-5-920 both of which would come from the SC Supreme Court ordered by HONORABLE CHIEF JUSTICE JEAN H. TOAL.

^{I would like for the court to} Therefore please recognize the jurisdictional requirement set forth in sections 14-9-170, 14-9-210, 14-5-710 mandating the only process allowed for impaneling a lawful Grand Jury. So according to the ^{these} above statutes, along with the documents provided by ^{spartanburg} County's Clerk of Court there is no way the Grand Jury could have been impaneled and returned a legal and binding indictment if first the statutes were not followed. That indictment by a mode of procedure that it had no lawful authority to adopt.

^{The} Legislation enacted limits the manner in which something can be done, the enactment also evinces the intent that it shall not be done another way. Thus, since ^{the} the Court utilized an unlawful mode of procedure not allowed under sections 14-5-710 14-9-170 and 14-9-210. State lacked the jurisdiction to complete return of it TRUE-BILL INDICTMENT.

⁷¹⁰ As established above, sections 14-5-14-9-170 and 14-9-210 are clearly a jurisdictional statute, and states forth mandatory procedures to be utilized by County for lawful return of a TRUE-BILLED INDICTMENT. A substantial body of South Carolina Law holds that a failure to comply with statutory law jurisdictional in nature deprives the

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issue of whether or not the local rule, order, policy or procedure was utilized for the 165
process and return of the indictment on ^{may 5, 2011} is relevant because by State
Law it would still have to be in agreement with provisions within section 14-5- ⁷¹⁰ 14-9-
170 and 14-9-210 for it to be constitutional.

D) Constitutional Right Being Violated

Article V Section IV of our constitution provides in pertinent part: "The Supreme Court shall make rules governing the ~~administration of all the courts of the State.~~ ^{practice and procedures} in all such Courts".

(Emphasis added) and, SC Code Ann. § 14-5-310 RULES of COURT: "The circuit court may make and establish all necessary rules for the orderly conducting of business in said court, provided such rules are not repugnant to the laws of the State or the rules prescribed by the justices of the Supreme Court and circuit judges". (Emphasis added)

Thus, under these requirements NO RULE can be made or established for process and return of indictment unless it comports with sections 14-9-170 and 14-9-210. Otherwise it would be unconstitutional and NULL being without binding legal effect.

Additionally it should be noted that The Court of Common Pleas is vested with NO authority to take any action on matters pertaining to return of TRUE-BILL criminal indictments. "The Court is made up of The Court of Common Pleas which hears CIVIL cases... and General Sessions Court which hears criminal cases. See DOVE V. GOLD KIST INC. 314 SC 235, 44 SE 2d 598, 600 (SC 1994) also See.. SC Constitution Art. V, §1. Thus, there is no grant of concurrent jurisdiction, and therefore NO TRUE-BILL criminal indictment can be lawfully issued through Grand Jury proceedings held before a Court of Common Pleas.

Lastly, it should be noted that a Circuit Court Judge retains NO authority on his own standing to conduct and oversee Grand Jury proceedings outside the bounds of lawfully convened Court of General Sessions.

Under our judicial system the presiding judge in the circuit court loses jurisdiction with the adjournment of the term....See STATE V. BEST 257 SC 361, 186 SE 2d 272 (1972) (citing STATE V. THOMPSON 122 SC 407, 115 SE 2d 326. Also See STATE V. RINHEART 430 SE 2d 536 (SC App. 1993). Therefore, if raised by the STATE there would be no merits to the contention that a judge on his own standing retains authority to impanel a GRAND JURY after the close of term of court. The SC Code Ann. §14-5- ⁷¹⁰ clearly shows close of a term of court. The SC Code Ann. §14-5-

document required by State Constitution and Statute... See STATE CONSTITUTION ART. I §11 (footnote omitted) SC Code Ann. §17-9-10 (2003) ("No person shall be held to answer in any court for an alleged crime or offense unless upon indictment by a constitutional formed Grand Jury") This as established prior must be a Grand Jury convened within the Statutes §14-5-⁷¹⁰; §14-9-170, §14-9-210, §14-5-910 and §14-5-920 outside of this there was an unconstitutional convened Grand Jury in which the indictment would be NULL and VOID.

Most importantly it must be emphasized for purpose of blame that a /an Solicitor/Assistant Solicitor holds full knowledge an understanding of the laws of this State. It is a requirement of the high office of a prosecutor. The prosecutor occupies a quasi-judicial position and must see that justice is done that no conviction takes place except in strict conformity within the law. See.. e.g. STATE V. QUATTLEBAUM 338 SC 527 SE 2d 105 (SC 2000), STATE V. DURDEN 264 SC 86 212 SE 2d 587 (1975); STATE V. KING 22 SC 108 71 SE 2d 793 (1952). Hence the Solicitor's office is required to not only know the law but to obey the legal mandate of SC Code Ann. §14-9-210 and lawfully empanelment Grand Jury accordingly.

According to statutes stated ~~above~~ instead of discharging his responsibilities in conformity with law the Solicitor/Assistant Solicitor broke his/her OATH OF OFFICE. The Solicitor/Assistant Solicitor intentionally violated the provisions of the SC Code Ann. §14-9-210 by unlawfully processing indictments outside the jurisdiction of The Court of General Sessions and then by willfully printing false, misleading information in the indictments incorrectly stating that it had been returned ^{May 5, 2011} "At a Term of Court of General Session", thus committing the act of perjury and must be punished accordingly.

The Solicitor/Assistant Solicitor is now subject to the governing authority.

(CONSPIRACY AGAINST PUBLIC)

SC Code Ann. §16-17-410 provides in pertinent parts; the common-law crime known as "CONSPIRACY" is defined as a combination between two or more person for the purpose of accomplishing an unlawful objective coupled with an intent to achieve the agreements objective. Also see "CHAIN OF CONSPIRACY" a single conspiracy in which each person is responsible for a distinct act within the overall plan.. See ~~re~~ BLUMENTHAL V.U.S. (1947) also "CIVIL CONSPIRACY" an agreement between two or more people to commit an unlawful act that causes damage to a person or property. A

Jury Foreman. In this case the actual type of unlawful process utilized by the State to complete the so called TRUE-BILL indictment on ^{may 5, 2011} is not important or determinative of the criminal conspiracy issued presented here. However, what is determinative is the fact the Grand Jury proceedings were conducted outside jurisdiction of The Court of General Sessions making the returns unconstitutional, thus illegally TRUE-BILLED. 167

The only way to accomplish this feat is if the Solicitor/Assistant Solicitor committed an offense of perjury to keep secret the unlawful process. There is no evidence of any special sessions ordered by the SC Supreme Court, thus leaving no way other than an act of perjury on their part. The act took a cooperative effort of other parties to complete this secret and illegal act of criminal conspiracy. The act of conspiracy is very evident in this matter unless the Solicitor/Assistant Solicitor submits that he/she forged the ^{may 5, 2011} indictment otherwise and realizing that it would have been impossible for the Solicitor/Assistant Solicitor to fully complete the return of the TRUE-BILL indictments on his own. The cooperation from the following judicial officials would have been necessary. The Circuit Court administrative judge of Seventh Circuit who was in office at the time relevant to the indictment returned ^{may 5, 2011} That would be the State Judicial officer directly responsible for the scheduling and ordering a Grand Jury empanelment outside the bounds of The Court of General Sessions. The judge would have been in possession of knowledge concerning the mandatory provision of sections 14-9-210 and 14-5 ^{Ho} and still chose to impanel an unlawful Grand Jury and assist in printing and publishing false, misleading information contained in alleged TRUE-BILL indictments.

It should be noted that the Code of Judicial Conduct Cannon 2(A) states "A judge shall request and comply with the law, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judicial". Subsection A of this memorandum establishes that the Solicitor/Assistant Solicitor violated his/her oath of office and committed perjury by willfully printing false, misleading information in indictments that were TRUE-BILLED outside the statues §14-5-^{Ho}, §14-9-210. Thus the Solicitor/Assistant Solicitor is a "Central Figure" in the criminal conspiracy. It should also be noted that the Attorney General/ or Head Solicitor as Chief Prosecuting Officer for the State and county directs and supervises the activities of the Solicitor/Assistant Solicitor under his/her authority. ^{VCU} Thus it would be the Attorney General/Head Solicitor who is ultimately responsible for the criminal acts committed by the Solicitor/Assistant Solicitor in this matter. Moreover, the possibility exists that other than just the Solicitors are involved in the same unlawful and illegal indictment activities. Therefore,

The purpose of a TRUE-BILL indictment is to put the defendant on notice of what he/she is called upon to answer. Apprising him/her of the elements of the offense and to allow him/her to decide whether to plead guilty or stand trial. Also enables the circuit court to know what judgement to pronounce if defendant is convicted..See EVANS V. STATE 363 SC 495, 508-13 611 SE 2d 510, 517-19 (SC 2005) (citing GENTRY 363 at 102-03 610 SE 2d at 500.

Furthermore, lawfully obtained indictment prevents later retrial for the same offense in contravention of the Constitution prohibition against double jeopardy and prevents the prosecutor from usurping the power of the Grand Jury by ensuring a defendant is tried for the crime which he/she was indicted... See STATE V. TABORY 262 SC 136, 139 202 SE 2d 852-53 (1974); STATE V. GUTHIRE 352 SC 103, 108 572 SE 2d 309, 312 (Ct. App 2002) override on other grounds. GENTRY 363 SC 93 610 SE 2d 494. PEOPLE V. GREGA 531 NE 2d 279, 382 (NY 1988); STATE V. LEWIS 36 SW 3d 88 97 (Tenn. Crim. App 2000). This notice is the component of the due process that is afforded every criminal defendant..(See U.S. Constitution Amendment V, South Carolina Constitution Article I §3.

A criminal defendant has a constitutional and statutory right to have the indictment issued by a legally constituted Grand Jury..See e.g., STATE V. MEANS Op. No. 26105 (SC Supreme Ct. filed February 6, 2006); (See EVANS V. STATE 393 SC 2d 510 (2005); STATE V. WILLIAMS 263 SC 2d 298 (1974). Also See South Carolina Constitution Article I §11 and Article V §22 SC Code Ann. §14-9-210, §14-5-⁷¹⁰ §14-5-920.

A conviction and sentence based on the fruits of criminal act cannot be allowed to stand under any circumstance. If an indictment was handed down on ^{May 5, 2011} in the ^{seventh} Circuit it would clearly violate all statutory laws set forth in this State. To find proof of this statement just refer to SC Code Ann. §14-5-⁷¹⁰ and §14-9-210 and it will become evident that to obtain an indictment during this time would take an illegal act of perjury on the part of the judicial officials in order to secure its conviction. (See Subsection A&C).

MURRAY V. CARRIER 106 S Ct. 2639, 2645 (1986), the U.S. Supreme Court held that the existence of cause for procedural default, must ordinarily turn on whether the person can show the same objective factor external to the defense impaneled counsel's efforts to comply with the State procedural rule. Factual or legal basis for a claim was not reasonable available to counsel... See REED V. ROSS 406 U.S. at 16 104 S. Ct. at 2910. Some interference by officials BROWN V. ALLEN 334 U.S. 443 486 73 s. Ct. 397, 442 97 L.ed 469 (1953) and compliance impracticable would constitute cause under this standard Id 106 U.S. at 2645. In the instance of the ^{May 5, 2011} indictment the Solicitor/Assistant Solicitor willfully printed false

A plain reading of SC Code Ann. §17-25-10 requires that a criminal defendant cannot be punished (sentenced) for an offense until after State has duly and legally convicted the individual. As established in Subsection (A) State knowingly violated the provisions of SC Code Ann. §14-9-210, §14-5-⁷⁴⁰ §14-5-910 and §14-5-920 (1) unlawfully impaneling its Grand Jury outside the jurisdiction of The Court of General Sessions. (2) utilizing and unlawful process for the return of TRUE-BILL indictments and (3) causing false information to be printed and published in ^{may 5, 2011} indictment consequently the Grand Jury was illegal and its indictment NULL.

As established in Subsection (C) the Solicitor/Assistant Solicitor knowingly committed an offense of perjury in violation of SC Code Ann. §16-9-10 by willingly printing false and misleading information on the ^{may 5, 2011} county indictment. Several judicial personnel joined into a criminal conspiracy in violation of SC Code Ann. §16-17-410 for purpose of completing return and publication of county illegal and void indictment.

Further proof of this conspiracy and gross violation of my Constitution Rights lies within Statutes § 14-7-1570, § 19-9-10 through 19-9-30 and Rule 45 (A3)(B3).

Section 14-7-1570 says in pertinent part: "The Foreman of the Grand Jury or Acting Foreman in the Circuit Courts of any County of the State may swear the witnesses whose name(s) shall appear on the Bill of Indictment in the Grand Jury room. No witnesses shall be sworn except those who have been bound over or subpoenaed in the manner provided by LAW. In order to obtain attendance of any witness the GRAND JURY may proceed as provided by SC Rule Civil Procedures and Sections 19-9-10 through 19-9-30.

Rule 45 (A3)(B-3) of SC Role Rule Civil Procedures in pertinent part: (A-3) The clerk shall issue a subpoena signed but otherwise in Blank to a party requesting them, who shall complete it before service. An Attorney as Officer of the Court may also issue and sign a subpoena on behalf of a court in which the Attorney is authorized to practice. (B-3) Proof of Service when necessary shall be made by filing with the Clerk of the Court by which the subpoena is issued a statement of the date and manner of service and of the name(s) of the person(s) served, certified by the person who made the service.

These Statutes and Rule, one being presented because they are vital to the indictment process. There are steps that must be completed in order to return a constitutionally Legal Indictment. However, in my case as proven by the exhibits presented to you steps were omitted to lawfully return a TRUE-BILL Indictment.

CONCLUSION

The holding in EVANS should not stand for the proposition that a conviction and sentence gained through judicial acts of perjury and criminal conspiracy can be declared lawful. Judicial integrity will have been lost if the State is not constrained by its own statutory criminal laws. Basic U.S. Constitutional DUE PROCESS LAW dictates with authority that under no circumstances can a State commit a criminal act against its citizens in the name of judicial economy.

The statements made in this memorandum will clearly point out the criminal acts committed by the State and clearly establish the essential elements of fraud on the court. In addressing any case involving fraud on the court the U.S. Supreme Court explained that to be granted relief under the provisions of RULE 60 (b) (3) Fed. R. CIVIL Proc., the issue turns to whether the alleged misconduct "HARMS" the integrity of the judicial system.

"Tampering with the administration of justice in the manner undisputedly shown here involves far more than injury to a single litigate. It is wrong against the institution set up to protect and safeguard the public institution in which fraud cannot complacently be tolerated consistently with good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so important they must always be mute and helpless of deception and fraud: HAZEL-ATLAS GLASS CO. V. HARTFORD EMPIRE CO. 322 U.S. 238 246 64 S Ct. 997 1001, BB L.ed 1250 (1994). Fraud on the court is misconduct by an officer of the court that is directed at the judicial machinery itself. Thus, fraud on the court is very evident here. The evidence provided shows that the Solicitor/Assistant Solicitor committed a "SHAM LEGAL PROCESS" which is a direct violation of the law of South Carolina's Constitutional and statutory laws of the jurisdictional nature.

The documents submitted at this time along with this brief will cement the conspiracy committed. All on the ^{Spartanburg} County Clerk of Court letterhead show that there was a clear and deliberate disregard of for the State Statutes. These statutes are §14-5-⁷¹⁰, §14-9-210 and §16-17-410. From the Attorney General's office to the Grand Jury foreman, this secret has been kept. Now that the Clerk of Court has exposed the fact that there was no General Sessions Court on ^{may 5 2011} and if there was no General Sessions Court there was no presiding judge. So the only TRUE-Bill Indictment that could have been passed down on that day would be outside

the Statutes. Thus my ^{May 5, 2011} Indictment was unlawfully obtained which violates my Constitutional Rights to be put on notice. This ongoing violation of my rights carried over to my trial when the Assistant Solicitor ^{Abie Orlando Gray} read the charges that were performed on the unlawfully obtained indictment. With all these willful violations of my rights my conviction should be ^{vacated} ~~overturned~~ and I should be set free. There is no reason for my conviction to be upheld.

It is only through the Criminal Act of Conspiracy that my case even came before a judge. Failure to protect my Constitutional Rights, the very rights the Judicial System was setup to protect.

Officer ^{T. K. Twetson} is the witness named on my Indictment. I wrote the Clerk of Court in ^{Spartanburg County} County asking for a copy of the court order and subpoena bounding him over to be a witness to the GRAND JURY on ^{May 5, 2011} May 30, 2012 (See Attachment 6). "There are no subpoenas of file in this office regarding Grand Jury testimony. Anything that would fall under Discovery would have been in the Solicitor's file. I wrote the Solicitor's office – no response to date. This information was not included within the Discovery given to my Attorney before my trial. To my knowledge, my Attorney never requested this information."

I also wrote the ^{Spartanburg} Police Department where Officer ^{T. K. Twetson} works for the ^{Spartanburg County Sheriff's Office} ^{May 5, 2011} I asked for proof of ^{T. K. Twetson} whereabouts on ^{7th} I also asked if he was at work that day or off that day – NO RESPONSE. The picture is becoming clearer. The conspiracy runs deep into the very heart of the Judicial System within the Circuit. If one person admits to the truth that will be the card that makes the House of Cards fall. If no one responds the system stays intact, and they can continue to railroad the citizens of this State.

may 5, 2011
information in the indictments. (See Subsection A) and then joined into 173
criminal conspiracy to keep secret the illegal Grand Jury process (See Subsection C) surely those
act by the State constitute and external factor sufficient to show cause for failure to make time
objections.

Robert Hall
EVANS V. SMALL citing STATE GRIFFIN 277 SC 193 285 SE 2d 634 (1981); STATE
V. THOMPSON 305 SC 496, 409 SE 2d 420 (Ct. App. 1991) hold that the regularity of Grand
Jury proceedings is presumed absent clear evidence to the contrary. The State has been utilizing
the presumption of correctness to assist in keeping its criminal act secret and to make effective
and unlawful taking of one's rights to make contemporaneous objections the State uses to its
benefit the fact that no attorney will challenge the Grand Jury process. However, the attorney
knew the truth and willfully violated their oath to keep the conspiracy going.

It should be noted that in STATE V. ARTHUR 296 SC 495 374 SE 2d 291 (1988) the
court held that a waiver of a constitutional and statutory right requiring a showing on the record
that a defendant made the waiver knowingly and intelligently citing PATTON V. UNITED
STATES 281 U.S. 276 50 S Ct. 253, 74 L.ed 854 (1930) as the landmark case. The same
standard should apply here because under no circumstances can State be allowed to use criminal
means to effect a forfeiture of one's rights to make objections.

If one is convicted and sentences pursuant to a NULL and VOID indictment by an
unconstitutional convened and illegal Grand Jury, made effective by criminal acts committed by
State in order to keep secret its unlawful procedure. A NULL and VOID indictment by its very
nature does not protect one against double jeopardy and is insufficient to enable the court to
pronounce judgement...See §17-25-10. In all the indictment violated nearly
every component of the DUE PROCESS notice requirement that is owed to the individual.

F) SC CODE ANN. §17-25-10

According to §17-25-10 provides that: "No person shall be punished for an offense unless
duly and legally convicted thereof in court having complete jurisdiction of the cause and person.
"If indictment was TRUE-BILLED by a Grand Jury that was not impaneled by a legally
constituted Grand Jury then there is no indictment". South Carolina holds that words of a statute
must be given their plain and ordinary meaning without resort to subtle or forced construction...
See STATE V. MULBROW 348 SC 264 559 SE 2d 847 (2003). Any statutory prescriptions
couched in language such as "shall and must" are mandatory in application and effect...See
SOUTH CAROLINA POLICE OFFICER RET. SYS V. CITY OF SPARTANBURG 301 SC
188, 191 391 SE 2d 239 241 (1190); STARNES V. SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY 342 SC 216 221 535 SE 2d 665, 667 (Ct. App. 2000).

the activities of the Solicitor's office along with all the judicial officers within ^{the Seventh} Circuit should be investigated by the appropriate authorities.

The Grand Jury Foreman is the individual responsible for signing the TRUE-BILL Stamped affixed to May 5, 2011 indictments completing and giving unwarranted validity to an unlawful Grand Jury process. Just by signing his/her name to a document containing false and incorrect information on a illegally obtained TRUE-BILLED STAMPED indictment, the Grand Jury foreman by his/her own actions committed an offense of perjury as well as assisted the other conspirators.

The Clerk of Court pursuant to §14-9-210 reported the May 5, 2011 county indictments with their false information to the presiding judge at the court next term. Moreover, the indictment containing the shown false information would have been filed in the court's public record. The presiding judge at the next term allowed the illegal indictment to enter into the official court record unchallenged even though he would have known that no county Grand Juries were being impaneled under the jurisdiction of The Court of General Sessions. Also should be noted that the Code of Judicial Conduct Cannon (2)(a) requires a judge in this State to comply with the law and promote public confidence in the integrity of the judiciary system.

Unless the Solicitor/Assistant Solicitor is willing to admit that acting alone he knowingly and completely forged the May 5, 2011 indictment. This would confirm a criminal conspiracy. Barring the existence of an outright forged indictment it would have taken the combined efforts of the above listed judicial officials all working in concert to establish scheduling, to and impanel the Grand Jury during a time when NO term of General Sessions was convened to meet and execute the return of the illegally TRUE-BILL to report and publish May 5, 2011 indictments, then file the illegal indictments into the court record.

Conspiracy need not be proven by district evidence of unlawful agreement. A conspiracy may be shown by circumstantial evidence including the parties consent. See.. STATE V. OLIVER spurs the substantial crime or crimes committed in furtherance of the conspiracy constitutes circumstantial evidence of the existence of conspiracy its objective and scope.. See STATE V. ANDERSON 428 SE 2d 871 (SC Supreme Court 1993). As stated and shown that it takes various parties performing different functions in order to carry out and make complete, by an act of perjury a county indictment process done by unlawful means. Statute §16-17-410 provides in pertinent part; "conspiracy is defined as a combination between two or more persons for the purpose of accomplishing...(unlawful objective return of TRUE-BILL indictment) by means of an illegally unconstitutional convened Grand Jury is an act of perjury.

person who commits the crime of "Conspiracy" is guilty of a felony and upon conviction must be fined not more than five thousand dollars or imprisoned not more than five years. From the evidence show above and in subsection (A) of this memorandum it has determined that the Solicitor/Assistant Solicitor committing these offenses of perjury against public justice by willfully printing false, misleading information in indictments is guilty of violating §16-9-10, §14-9-210, §14-5-^{7/a}, §16-17-410, §16-17-735 and §17-9-10. This memorandum will establish that the Solicitor/Assistant Solicitor also conspired with several other State Judicial personnel in order to impanel a Grand Jury outside the authority of The Court of General Sessions to complete the return of an illegal TRUE-BILL and to print and publish false indictment information. Hence there is sufficient evidence presented here to establish the existence of criminal conspiracy.

"Conspiracy" is a combination or agreement between two or more persons for the purpose of accomplishing a criminal or unlawful objective. See STATE V. BUCKMAN 347 SC 316, 555 SE 2d 402 (SC 2001) (Emphasis added). The grave man of conspiracy is the agreement or mutual understanding. See STATE V. HAMMITT (SC App. 2000) 341 SC 638 535 SE 2d 459 rehearing denied certiorari granted. If there is one overall agreement among the various parties to perform different functions in order to carry out the objective of the conspiracy, the agreement among all parties constitutes a single conspiracy. See STATE V. DASHER 298 SE 2d 217 (SC 1986) (citing 16 AM JUR.2d conspiracy §11 (1979). Conspiracy may be shown by circumstantial evidence including the parties consent STATE V. OLIVER 275 SC 79 267 SE 2d 529 (1980) and under SC Law does not require an overt act, See STATE V. FERGUSON 221 SC 300 70 SE 2d 344 cert. denied 344 U.S. 830 73 S Ct. 35.97 L.ed 646 (1952).

PRELIMINARY STATEMENT

Meanwhile, it has been an open secret in this State's Judicial Circle that many of its TRUE-BILLED indictments are being processed and returned without being in compliance with statutory law, and that some unlawful process is being utilized. In fact, several prominent newspapers have commented on the irregularities in both the State and County indictment process, the impossibility of lawful returning TRUE-BILL indictments at the excessive rate reported (See Attachment), the Grand Jury proceedings were most likely held in a back office conference room with the Solicitor/Assistant Solicitor overseeing the process. Also, present would have been a court administrative assistant, the Clerk of Court, court reporter and Grand

clearly shows that NO TERM of General Sessions court can be held in the
 Circuit on ^{may 5, 2011} this is according to the legislative law set in this State. As
 established before, a judge no longer has jurisdiction with the adjournment of court thus
 NO TERM of court NO LAWFUL judicial authority.

Accordingly, NO COURT RULES ORDER or other practices of law invoked or
 cited by State or County to save its unlawful GRAND JURY process, and resulting
 NULL and VOID INDICTMENTS. Therefore, in this matter executing justice and
 righteousness should not be a problem.

E) CRIMINAL VIOLATIONS

Also brought to judgement are violations of SC Code Ann. §16-9-10
 "OFFENSE AGAINST PUBLIC" and SC code Ann. §16-17-410 and §16-17-735. We
 know that the law is good if one uses it in a lawful manner.

(OFFENSE AGAINST JUSTICE)

SC Code Ann. §16-9-10 "per jury and subornation of per jury" State in pertinent
 parts (A)(2), it is unlawful for a person to willfully give false, misleading or incomplete
 information on a document, record or report on forms required by the laws of this
 State. (B)(2) A person who violates the provision of subsection (A)(2) is guilty of a
 misdemeanor and upon conviction must be imprisoned not more than six months, or fined
 not less than one hundred dollars or both. (C) A person may be convicted under this
 section if he/she commits perjury by his/her own act consent or agreement. As shown in
 subsection (A) INVALID PROCEEDINGS AND VOID INDICTMENTS SC Code Ann.
 §14-9-210 mandate that the County Solicitor shall prepare and process bill of indictment
 through the jurisdiction of The Court of General Sessions. Also, established in
 subsection (A) was the fact that the indictments TRUE-BILLED STAMPED on
^{may 5, 2011}

were sealed and signed by the Solicitor/Assistant Solicitor and
 contained false information incorrectly printing that it had been processed "At a Court of
 General Sessions convened ^{may 5, 2011}

§14-5- ⁷¹⁰ there is no term of General Sessions Court in the ^{Seventh} Circuit on
^{may 5, 2011}

Thus, the TRUE-BILL INDICTMENTS that are both sealed and
 signed by the Solicitor/Assistant Solicitor had to be TRUE-BILLED outside of the statute
 thus deeming them unconstitutional in their origin.

It should be noted that a criminal indictment is a document required by law of this
 State. In GENTRY our Supreme Court determines that an indictment is a notice

court. STATE V. LEE 564 SE 2d 372 (SC App. 2002); STATE V. BROWN 570 SE 2D 599 (Ct. App. 2002); STATE V. FELDER 437 SE 2D 43 (SC 1993); STATE V. RICHBURG 304 SC 162 403 SE 2d 315 (1991); STATE V. LOFTIN 275 SE 2D 575 (SC 1981); GRAY V. STATE 276 SC 634, 281 SE 2d 226 (SC 1981); STATE V. BRUNSON 274 SC 220, 262 SE 2d 44 (1980); STATE V. CASTLEMAN 64 SE 2d 250 (1951) and many more.

Keeping with the mandatory provisions of the above mentioned statute the County has no jurisdiction to issue return of TRUE-BILL INDICTMENT except during a time when The Court of General Sessions is lawfully convened to oversee the Grand Jury process. Any acts of the court taken outside those statutory restrictions would by necessity be NULL and VOID. In fact our Supreme Court has already determined that NO INDICTMENT may be TRUE-BILLED by a Grand Jury when The Court lacks jurisdiction. The Grand Jury must be impaneled under the jurisdiction of The Court of General Sessions before lawful return of indictment can take place. See STATE V. McCLURE, STATE V. FUNDERBURK and STATE V. WHEELER.

Therefore since NO Court of General Sessions was to convene during the month of ^{May 5, 2011} the date of the alleged TRUE-BILL the Grand Jury proceedings would therefore by necessity be held INVALID and its ILLEGALLY issued indictment NULL and without binding legal effect.

C) COURT RULES, ORDER OR OTHER PROCESS

It should be noted that section 14-9-170 and 14-9-210 are not a local rule or statute but a general provision applicable to the courts in every county, and as shown mandates that the Grand Jury must be impaneled under the jurisdiction of The Court of General Sessions before lawful return of a TRUE-BILL INDICTMENT can take place. Thus these sections clearly are jurisdictional statutes and set forth the only process allowed for a lawful return of indictment.

No local rule of court, administrative order, policy or other procedure can take precedent over statutory law which is always controlling. See SC Const. Art §1, 4 and STATE V. COTTINGHAM 77 SE 2d 897 (1953) (statute override rules of court if in conflict); STATE V. DUNCAN 264 SE 2d 421 (SC 1980) (Circuit Court rule promulgated by individual judicial circuit was unconstitutional and void). However, the

the court in which it is impaneled and for which it is to make inquiry.... STATE V. McCLURE 277 SC 432, 289 SE 2d 158 (SC 1982) and STATE V. FUNDERBURK 259 SC 256, 191 SE 2d 520 (1972); STATE V. WHEELER 259 SC 571, 193 SE 2d 515 (1972).

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The primary question is whether SC Code Ann. § 14-9-210 is jurisdictional in nature and whether it requires that all Criminal Indictments must be issued through a Grand Jury impaneled before The Court of General Sessions, and whether State's noncompliance with mandatory indictment procedures, and willful acts of perjury have rendered all judicial proceeding INVALID and its indictment NULL.

The statutory provisions at issue are contained in section 14-9-210 and provide in pertinent parts that: "The County Solicitor shall prepare and through the presiding judge of The General Sessions must submit to the Grand Jury while in attendance upon The Court of General Sessions bill of indictments in all cases pending in the county court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the Grand Jury. The Grand Jury shall act thereon and shall report its action to the presiding judge of the Court of General Sessions and said judge shall direct the Clerk of Court of General Sessions to report the same to the presiding judge of the county at its next ensuing term...."

The statutory terms above are clear, unambiguous and require the County Solicitor to prepare and submit bills of indictment through the presiding judge of The Court of General Session to a Grand Jury impaneled under the authority of the Court of General Sessions. This is with NO EXCEPTIONS.

It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the legislature. HODGE V. RAINEY 341 SC 79, 85 533 SE 2d 578, 581 (2000), STATE V. MARTIN 293 SC 46 358 SE 2d 679 (1987). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. CAROLINA POWER & LIGHT CO. V. CITY OF BENNETTSVILLE 314 SC 137, 139 442 SE 2d 177, 179 (1994) Words must be given their plain and ordinary meaning without resort to subtle or force construction to limits or expand the statutes operation. BRYANT V. CITY OF CHARLESTON 295 SC 408, 368 SE 2d 899 (1998).

STATEMENT OF FACTS

- 1) 7 Can the State of South Carolina maintain a conviction that resulted from an illegal Grand Jury, void indictment and criminal acts?
- A) Convening Outside of the Statute
 - 7 B) Invalid Procedures on Void Indictment
 - C) Court Rules, Orders or Other Process
 - D) Constitutional Right being violated
 - E) Criminal Violations
 - 7 F) SC Code Ann. §17-25-10

- 28) STATE V. DASHER 298 SE 2d 215, 217 (SC 1986) (citing 16 AM, JUR. 2d conspiracy § 11 1979) – [p. 12]
- 29) STATE V. OLIVER 275 SC 79 267 SE 2d 529 (1980) – [p. 13, 15]
- 30) STATE V. FERGUSON 221 SC 300, 70 SE 2d 344 cert. denied U.S. 830 73 S. Ct. 35, 97 L.ed 646 (1952) – [p. 14]
- 31) EVANS V. STATE 363 SC 495 508-13 611 SE 2d 510, 517-19 (SC 2005) (citing GENTRY 363 at 102-03, 610 SE 2d 500)) – [p. 15]
- 32) STATE V. TABORY 262 SC 136 139, 202 SE 2d 852 – [p. 15]
- 33) STATE V. GUTHRIE 352 SC 103 108 572 SE 2d 309 312 (Ct. App. 2002) – [p. 15]
- 34) PEOPLE V. GREGA 531 NE 2d 279, 282 (NY 1988) – [p. 15]
- 35) STATE V. LEWIS 36 SW 3d 88 97 (Tenn. Crim. App. 2000) – [p. 15]
- 36) STATE V. MEANS Op. No. 26105 (SC Supreme Ct. Filed FEBRUARY 6, 2006) – [p. 16]
- 37) STATE V. WILLIAMS 263 SC 290, 210 SE 2d 298 (1974) – [p. 15]
- 38) DOVE V. GOLD KIST, INC. 314 SC 235, 442 SE 2d 598, 600 (SC 1994) – [p. 9]
- 39) STATE V. MULDROW 348, SC 264 559 SE 2d 847 (2003) – [p. 17]
- 40) SOUTH CAROLINA POLICE OFFICERS RET. SYS. V CITY OF SPARTANBURG 301 SC 188, 191 391 SE 2d 239, 241 (1990) – [p. 17]
- 41) STARNES V. SOUTH CAROLINA DEPT. OF PUBLIC SAFETY 342 SC 216 221 535 SE 2d 665, 667 (Ct. App. 2000) – [p. 17]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
Jerod Harris, #255423,	)	Case No.: 2012-CP-42-4617
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
Respondent.	)	

CLERK OF COURT
SPARTANBURG COUNTY
JUL 17, 2019

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This matter comes before this Court by way of Applicant Jerod Harris's post-conviction relief application¹ upon remand from the South Carolina Supreme Court. Pursuant to this remand, an evidentiary hearing was convened November 12, 2019, before this Court. Applicant was present alongside counsel Susannah C. Ross, Esquire. Assistant Attorney General Jacob A. Isenberg of the South Carolina Attorney General's Office represented Respondent. Applicant and plea counsel Robert Hall both testified.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismissed this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

Procedural History

The records before this Court establish that Applicant is presently confined in the South Carolina Department of Corrections. In May 2011, the Spartanburg County Grand Jury indicted

¹ Applicant filed this post-conviction relief action on November 5, 2012. Respondent originally served its return to this application on February 25, 2014. The matter proceeded to an evidentiary hearing in 2014 and relief was denied. Following disposition of this case, the South Carolina Supreme Court remanded the matter back to the Spartanburg County Court of Common Pleas for a new PCR hearing. Applicant then filed amended applications and Respondent made an amended return to the application in light of the remand.

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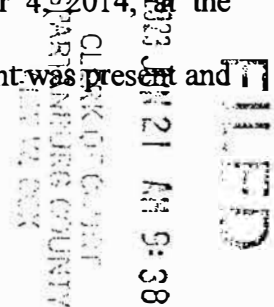
Applicant for attempted murder (2011-GS-42-2429). Assistant Public Defender Robert Hall of Spartanburg County Public Defender's Office represented Applicant. Assistant Solicitor Abel Gray of the Seventh Circuit Solicitor's Office prosecuted the case. On May 31, 2012, Applicant appeared before the Honorable J. Mark Hayes, II where he pled guilty as indicted. Pursuant to negotiations entered into between Applicant and the State, Judge Hayes sentenced Applicant to fifteen-years imprisonment. Applicant did not appeal his conviction or sentence.

Thereafter, on November 5, 2012, Applicant filed a timely application for post-conviction relief, alleging he was being held in custody unlawfully based upon ineffective assistance of counsel for failure to investigate and adequately prepare for trial, giving erroneous advice, and denial of his Sixth Amendment constitutional right. Respondent made its Return on February 25, 2014, requesting an evidentiary hearing be held.

A hearing was convened on April 7, 2014, at the Spartanburg County Courthouse before the Honorable J. Durham Cole. Applicant was present and represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, formerly of the South Carolina Attorney General's Office, represented Respondent. At the start of the hearing, Applicant requested to relieve counsel and that a continuance be granted for the evidentiary hearing so that he could retain private counsel. Respondent took no position on the matter. From the bench, Judge Cole granted Applicant's motion and relieved Mr. Rucker as counsel for Applicant. Thereafter, Judge Cole issued a written order dated July 18, 2014, continuing the matter and formally relieving Mr. Rucker as post-conviction relief counsel. Judge Cole further instructed Applicant that the Court would not appoint further counsel if he was unable to retain an attorney.

An evidentiary hearing into the matter was convened on November 4, 2014, at the Spartanburg County Courthouse before the Honorable R. Keith Kelly. Applicant was present and

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proceeded *pro se*. Suzanne H. White, Esquire, again represented Respondent. Applicant and Plea Counsel testified during the evidentiary hearing. By written order signed November 26, 2014, and filed December 2, 2014, Judge Kelly denied and dismissed the matter with prejudice.

Applicant filed a notice of appeal on December 5, 2014. On October 13, 2015, a petition for a writ of certiorari was filed on Applicant's behalf by John H. Strom, Esquire, formerly of the South Carolina Commission of Indigent Defense-Office of Appellate Defense. On certiorari, Applicant argued the PCR court erred in finding that Applicant knowingly, voluntarily, and intelligently waived his right to PCR counsel. Respondent made its Return on March 2, 2016. On February 10, 2017, the South Carolina Supreme Court granted Applicant's petition for a writ certiorari and dispensed with further briefing. Applicant filed his brief of petitioner on March 7, 2017, and Respondent filed its brief of respondent on May 19, 2017. Following submission of briefs, the Supreme Court reversed the PCR court's denial of relief and remanded the matter back to the Spartanburg County Court of Common Pleas for a new evidentiary hearing after the appointment of counsel, finding the PCR court erred by failing to ensure Applicant understood the dangers and disadvantages of self-representation before granting the motion to relieve his appointed attorney. The remittitur was issued on March 16, 2018.

On March 27, 2017, the Spartanburg County Clerk of Court appointed Susannah Ross to represent Applicant. On September 4, 2018, Applicant amended his original application to include the allegations of failure to advise of self-defense claims, erroneously advising to plea in the presence of self-defense case, failure to investigate and use in mitigation history of mental health issues, failure to challenge the indictment, and failure to assure credit given for time served. On September 18, 2019, Applicant again amended his application to include the new allegation of the court lacking subject matter jurisdiction due to invalid indictment procedure.

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SPARTANBURG COUNTY
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A second evidentiary hearing pursuant to this remand from the Supreme Court was convened on November 12, 2019, at the Spartanburg County Courthouse before this Court.

Current Action Before this Court

In his original application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. failure to investigate and adequately prepare for trial.
 - b. giving erroneous advice.
 - c. denial of sixth amendment constitutional right.
 - d. failure to advise applicant of his self-defense claims.
 - e. advising to plea when he had a strong defense case.
 - f. failure to investigate and use in mitigation history of mental health issues.
 - g. failure to challenge the indictment.
 - h. failure to assure credit for time served.
2. Lack of subject matter jurisdiction due to invalid indictment procedure.

On August 18, 2019, Applicant, through counsel, served an amended application with the following claims:

1. Ineffective assistance of trial counsel for:
 - (a) failing to advise the Applicant of his self-defense claims;
 - (b) advising him to plea when he had a strong self-defense case;
 - (c) failing to investigate and use in mitigation history of mental health issues;
 - (d) failing to challenge the indictment; and
 - (e) failure to assure credit given for time served.
2. Lack of subject matter jurisdiction due to invalid indictment procedure.

At the PCR hearing, Applicant proceeded forward on the allegation of ineffective assistance of counsel for failure to investigate flaws in the indictment.

Summary of Testimony Presented at Evidentiary Hearing

Applicant's Testimony

Applicant testified that the Grand Jury met and indicted him during a week in May that

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was not during a term of general sessions court. (PCR Tr. 8). Applicant stated therefore, his entire indictment was “no good”. (PCR Tr. 10). Applicant stated “once [Grand Jury] took the oath and didn’t tell the truth period. They killed the whole body of the indictment...and make the indictment null and void”. (PCR Tr. 10). Applicant stated his other allegation against Counsel for ineffective assistance was “he could’ve went ahead and properly investigated the whole case properly because the indictment is the seed of the case”. (PCR Tr. 10).

Applicant stated he mailed two documents to his PCR Counsel, one referencing Grand Jury reporting dates obtained from a fellow inmate, and one referencing void indictments and perjury obtained from a former attorney of his. (PCR Tr. 9). On cross-examination, Applicant stated the indictment is the reason he should not be in jail, but he accepts responsibility for shooting someone four times. (PCR Tr. 12). Applicant testified he pled guilty because he accepts responsibility for his actions and wanted to “go ahead and go about my business and get this over with”. (PCR Tr. 13). Applicant testified he “~~he~~ knew he was guilty of attempted murder”. (PCR Tr. 13).

Counsel’s Testimony

Counsel testified he has been practicing criminal law since 1987 and could not count how many criminal matters he had handled. (PCR Tr. 15). Counsel testified he has been involved in criminal law as a solicitor, judge, and part of the defense bar. (PCR Tr. 16). Counsel stated, “at any given time we have between one hundred and fifty to two hundred clients which would probably be close to six hundred indictments in this circuit”. (PCR Tr. 16). Counsel stated with his current clients he has reviewed almost six hundred indictments and many more as his time as a solicitor. (PCR Tr. 16).

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Counsel testified he began representing Applicant in April 2011. (PCR Tr. 17). Counsel recalled there was not an indictment until shortly before Applicant was coming up on the trial docket. (PCR Tr. 17). Counsel stated that the State offered a plea sentence of twenty years, and he negotiated that down to a fifteen-year offer for Applicant. (PCR Tr. 17). Counsel stated he went over the charge of attempted murder and discovery with Applicant during their first meeting, prior to a preliminary hearing. (PCR Tr. 17). Counsel stated it was his belief Applicant absolutely understood he would be charged with attempted murder. (PCR Tr. 18).

Counsel stated “after the time for offers or just before that, they present cases to the grand jury. Sometimes they do it sooner.” (PCR Tr. 18). Counsel continued, “Mr. Gray tended to wait four or five months, then indict a case. They all do it differently”. (PCR Tr. 18). Counsel stated he brought Applicant the first plea offer of twenty years and Applicant’s concern at that time was “why does Mr. Gray always prosecute [Applicant]”. (PCR Tr. 18). Counsel stated his notes reflected he received the fifteen-year offer, presented it to Applicant and two days later they were in court with the negotiated fifteen-year plea offer Applicant accepted. (PCR Tr. 19). Counsel testified he reviewed the indictment and did not see any issues. (PCR Tr. 20). Counsel recalled looking for specific issues in this indictment, including malice aforethought, which he remembered was a specific issue in an attempted murder indictment that had created a problem for a colleague of his during his experience in the Solicitor’s office. (PCR Tr. 20).

Counsel testified it was his custom to review the elements, the true-bill stamp, the date and signature when reviewing an indictment. (PCR Tr. 20). Counsel stated he “absolutely does this” because he has “actually been getting ready for trial and realized they could not go forward because he has “actually been getting ready for trial and realized they could not go forward because they had some mistakes in [indictment]”. (PCR Tr. 20). Counsel testified he found the indictment to be

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sufficient after review in this case and since reviewed the indictment after the guilty plea and does not see any issues in it now. (PCR Tr. 20-21). Counsel stated the old code pleadings were changed to the current rules as standard practice in 1985 when he graduated from law school and was preparing for the bar, so he has been aware of its applicability since then. (PCR Tr. 21-22). Counsel testified in his legal opinion he gave Applicant, and from the surrounding circumstances, Applicant had notice that he was going to be charged with attempted murder before he pled guilty. (PCR Tr. 22).

Counsel stated he does not know whether the code pleading in the South Carolina Code has been repealed. (PCR Tr.23). In response to whether Rule 3 of the South Carolina Rules of Criminal Procedure has been amended or changed, Counsel stated, "in this Circuit, we operate under a special rule that says that prelims have to be requested by the initial appearance, not the ten days, so several things have changed". (PCR Tr. 23). Counsel outlined "they have a system [of] procedure that discovery, preliminary hearing request by roughly two months after arrest, and then its plea or trial four months after, has to be announced, [and] there has to be an offer made in a timely manner". (PCR Tr. 23). Counsel stated that he could not dispute that Rule 3 of the South Carolina Rules of Criminal Procedure states an indictment should be made within ninety days. (PCR Tr. 24).

Findings of Fact and Conclusions of Law

Applicant alleges ineffective assistance of plea counsel and asserts that as a result of counsel's purported error, he is entitled to have his guilty plea undone and proceed back to the court of general sessions for a new disposition of his case.

This Court has thoroughly reviewed the record in its entirety, including the plea transcript, the appellate records, and the records for this current action. Additionally, this Court heard the

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SOUTH CAROLINA

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testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Based on this comprehensive review, this Court finds Applicant has failed to meet his burden of proof as to any of his allegations and finds this action must be denied and dismissed with prejudice. 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).

Ineffective Assistance of Plea Counsel

Applicant's claim for relief as set forth in his amended application and at the evidentiary hearing pertain to ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantees Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCPP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction.

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Spartanburg County
CIVIL DIVISION

or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance 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. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel's errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the

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the witnesses who have to be called before the grand jury so that doesn't interfere with terms of court and trials”.

PCR Tr. 27-28.

Here, the Grand Jury properly met during the May 2011 term as directed by then-Chief Administrative Judge Roger Couch.

The purpose of an indictment is to inform the accused individual of the charge against him. Sufficiency of indictment is found when the offense is stated with enough specificity that the court knows what judgement to announce, and the defendant knows what he has to answer to and whether he can plead acquittal or conviction upon it and whether it apprises the defendant of offense that is intended to be charged. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (citing State v. Wilkes, 353 S.C. 462, 465, 578 S.E.2d 717, 19 (2003)). Applicant was aware of his attempted murder charge well in advance of pleading guilty. The date of which the Grand Jury convened was not a substantive defect on the indictment, and even if it would be, this would not allow Applicant to proceed forward under ineffective assistance of counsel. Here, counsel performed his duty to make a reasonable investigation as to whether or not the indictment was valid. Counsel communicated a credible overview of the accepted professional norms for the Seventh Circuit in administering indictments. Counsel credibly testified it is always his practice to thoroughly analyze the indictment by reviewing the elements, the true-bill stamp, the date, the signature, as well as any other specific issues related to that crime. Counsel testified that he did so with the indictment in this case and found it to be sufficient. Further, in this case, Applicant agreed with the facts as presented by the State, and freely continues to admit his guilt for attempted murder. Thus, counsel would not be led to change his recommendation to plead under these circumstances, Applicant was not prejudiced by this, the legal outcome would not have been

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different. Therefore, this allegation of failure to investigate flaws in the indictment is denied with prejudice.

Conclusion

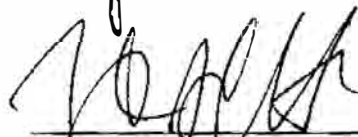
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

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

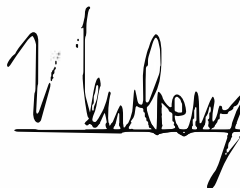
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 8th day of June, 2023.



 EUGENE C. GRIFFITH, JR.
 Presiding Judge
 Seventh Judicial Circuit


 _____, South Carolina.

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 AND WY. COX

per 12/12

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WITNESSES

Spartanburg County Sheriff's Office

1. SENTENCE MADE ☒

2. REPORT ENDED ☒

3. CARD PULLED ☒

4. INDEXED ☒

5. CHECKED WARRANTS ☒

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE ☒

7. ASSESSMENT FINE ☒

M751588 FINE CARD MADE

8. TRAFFIC VIOLATION COPY ☒

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

MAY 5 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

11-GS-42-2429

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

VS.

Jerod Keykendall Harris

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-0029

CDR Code: 3410

Class FEL-A

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

MAY 05 2011

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER

That Jerod Keykendall Harris did in Spartanburg County on or about December 17, 2010, with malice aforethought, intend and attempt to kill the victim, Scott Pender, to wit; by shooting the victim, all in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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


ASSISTANT SOLICITOR

COUNTY OF SPARTANBURG
STATE VS.

Jerod Keykendall Harris

AKA:

Race: BLACK Sex: M Age: 30

DOB: 1981 SS#: [REDACTED]

Address: Parke Rd

City, State, Zip: Enoree, SC 29335-6106

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

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

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

TO: Murder / Attempted Murder (0-30 years) NEGOTIATED 15 YEARS

INDICTMENT/CASE#: 2011GS4202429

A/W#: M751588

Date of Offense: 12/17/2010

S.C. Code §: 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Abel A. Gray 12/16/11 [Signature] 2596
GRAY, ABEL SC Bar# Defendant Attorney for Defendant SC Bar#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 of Corrections. 17 months☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ 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	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)		\$3.90
TOTAL		\$133.90

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,
§ 47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/ Deputy Clerk [Signature]Court Reporter: Hudgins

SCCA/217 (03/2011)

Presiding Judge [Signature]

Judge Code: 2132

Sentence Date: 5.31.12