

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

RECEIVED

AUG - 2 2013

S.C. Supreme Court

RASHAD ALLEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000900

APPENDIX

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

SUZANNE H. WHITE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i

GUILTY PLEA HEARING TRANSCRIPT (JUNE 6, 2012).....1

APPLICATION FOR POST-CONVICTION RELIEF.....35

RETURN42

POST-CONVICTION RELIEF HEARING TRANSCRIPT (JANUARY 8, 2013).....47

ORDER OF DISMISSAL62

INDICTMENTS.....69

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,
PLAINTIFF,
VS.
WALTER LEWIS SUBER, JR.,
AND RASHAD TRAMAINÉ ALLEN,
DEFENDANTS

TRANSCRIPT
OF
RECORD

2010-GS-42-6042, 6043, 6045
2010-GS-42-5880 - 5882

June 6th, 2012
Spartanburg, South Carolina

B E F O R E :

THE HONORABLE ROGER L. COUCH, Judge.

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

JENNIFER JORDAN and MANDY GALLIVAN
ASSISTANT SOLICITOR
Attorney for the State

JAMES CHEEK
ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF WITNESSES

WITNESSES

PAGE

(There were no exhibits marked during this hearing.)

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: All right. Are you ready to call the list of those who will be pleading this afternoon?

SOLICITOR JORDAN: I am, Your Honor.

THE COURT: All right. When your name is called, if you're in the box, please stand and remain standing.

If you're out in the gallery and your name is called, come forward to the jury box and remain standing.

You may call the role.

SOLICITOR JORDAN: Rashad Allen.

(Defendant stands.)

SOLICITOR JORDAN: Demetre Correy.

(Defendant stands.)

SOLICITOR JORDAN: Donald, Preston Donald.

(Defendant stands.)

SOLICITOR JORDAN: James Goodwin.

(Defendant stands.)

SOLICITOR JORDAN: Donald Greer.

(Defendant stands.)

SOLICITOR JORDAN: Patrick McDowell.

(Defendant stands.)

SOLICITOR JORDAN: Joshua Smith.

(Defendant stands.)

SOLICITOR JORDAN: walter suber.

1 (Defendant stands.)

2 SOLICITOR JORDAN: Brandi Tabor.

3 (Defendant stands.)

4 SOLICITOR JORDAN: Thomas Sullivan.

5 (Defendant stands.)

6 SOLICITOR JORDAN: Ashota Prioleau.

7 (Defendant stands.)

8 SOLICITOR JORDAN: Andrew Bagwell.

9 (Defendant stands.)

10 SOLICITOR JORDAN: Katina Price.

11 (Defendant stands.)

12 SOLICITOR JORDAN: Donald Hull.

13 (Defendant stands.)

14 SOLICITOR JORDAN: Daniil Kondor.

15 (Defendant stands.)

16 THE COURT: Sir, leave a space between you and the
17 young lady. Thank you.

18 SOLICITOR JORDAN: Your Honor, Lacy Gay.

19 (Pause.)

20 THE COURT: All right. Madam Clerk, if you would,
21 please swear the defendants who are standing.

22 (WHEREUPON, all defendants were placed under oath at
23 this time.)

24 THE COURT: Now, if any of you failed or refused to
25 take the oath that was just administered by the clerk I'd

1 ask that you now stand.

2 (No response.)

3 THE COURT: All right. The record will reflect all
4 defendants whose names were called have been sworn for
5 purposes of my discussion.

6 At this time I'm going to go over matters that would be
7 common to all of your cases should you offer a guilty plea
8 today. I'm not asking for your plea right, right now.
9 Later on your name will be called individually, you'll come
10 in front of the Court, and we'll go over the matters that
11 are particular to your case at that time. At that time I'll
12 be asking for your plea.

13 Now, if you're represented by a lawyer your lawyer is
14 present. You have a right, at anytime during my discussion
15 with you, to consult with your attorney. You have the right
16 to consult with your attorney at anytime during criminal
17 proceedings. So, if you feel that you need to discuss
18 something with your lawyer, let me know. We'll stop and let
19 you have a discussion with your attorney.

20 Now, I haven't seen the paperwork in your case. When
21 you come in front of me, the solicitor, at that time, hands
22 me the paperwork. I do not know whether your indictment has
23 gone to the Grand jury.

24 Now, each of you has a Constitutional right to have a
25 Grand Jury review your case before it comes here to be, for

1 a trial to be held or a plea to be taken.

2 The Grand Jury does not determine your guilt or
3 innocence. They decide whether there's enough evidence in
4 the possession of the state to justify the case coming
5 before this Court for either a trial or a plea. For that
6 reason, neither you nor your lawyer is allowed to be present
7 at those proceedings. I can, can not take up your case
8 unless the Grand Jury has considered your case and decided
9 there's enough evidence to justify it moving forward in
10 which case they would issue what is called a true bill on
11 the indictment.

12 Now, your case is not yet gone to the Grand Jury, and
13 if you want to go forward with a plea today it would be
14 necessary for you to waive or give up that step in the
15 proceeding because if you want it considered by the Grand
16 Jury we'll have to wait until the Grand Jury convenes and
17 submit it to them at that time.

18 Now, when I see your indictment we'll go over the
19 status of the indictment with you to be sure that you
20 understand that. Also, when you're in front of me, I will
21 go over your representation by your lawyer to be sure that
22 you're satisfied with your representation thus far.

23 Now, I'm going to ask you a series of questions again
24 concerning matters that would be common to all of your cases
25 should you decide later on to offer a guilty plea.

1 Now, I'll ask that you stand if you have responses to
2 my questions, and I'll need your name on the record before I
3 discuss it with you.

4 The first question I have, do any of you suffer from
5 any mental, physical, nervous problems, or any other
6 conditions that would, in anyway, affect your ability to
7 handle a plea today or to make good decisions today, if
8 that's true, please stand.

9 (No response.)

10 THE COURT: Now, if any of you have taken or used any
11 drugs or any other substances that would in anyway affect
12 your ability to reason, make good decisions, or to handle
13 your plea today, please stand.

14 (No response.)

15 THE COURT: If anyone has threatened you, coerced you,
16 put pressure on you, tried to intimidate you, or done
17 anything else to you to try to get you or force you to offer
18 a plea, if that's true, please stand.

19 (No response.)

20 THE COURT: If you decide to offer a guilty plea you
21 must do so freely and voluntarily. That means it's
22 something that you've considered and you've decide it's the
23 best way to proceed in your case.

24 Now, if any of you feel that you, if you were brought
25 in front of me to offer a plea today, that somehow that

1 would be done involuntary or something that you didn't want
2 to do, please stand.

3 (No response.)

4 THE COURT: If any of you feel that you've not had
5 enough time in which to consider your case or prepare a
6 defense, please stand.

7 (No response.)

8 THE COURT: If anyone has made any promises,
9 guarantees, or assurances to you about any matters
10 whatsoever including but not limited to such things as
11 pardon, parole, probation, early release, or length of
12 sentence in an effort, effort to get you to offer a plea,
13 please stand.

14 (No response.)

15 THE COURT: Now, should you decide to plead guilty and
16 I decide to accept the plea, you will be giving up our
17 waiving most of your Constitutional rights as they relate to
18 whatever charges are in front of this Court. I'm going to
19 go over those rights with you because I have to make a
20 determination that you have, are knowingly and intelligently
21 giving up those rights. In other words, you know what the
22 rights are and you've made an intelligent decision to give
23 them up in connection with a plea.

24 So, when I finish offering this explanation, if you
25 have any questions whatsoever about your Constitutional

1 rights, please let me know. I'll give you further
2 explanation.

3 I've explained you have a right under the Constitution
4 to have your case considered by a Grand Jury. We'll discuss
5 that when I see your indictments.

6 You have a right to your lawyer and I've already
7 explained to you your lawyer is available to you at all
8 times in this proceeding if you are represented.

9 You have a right to request or demand a trial by jury.
10 At that jury trial you would be presumed to be innocent
11 until the State proved your guilt beyond a reasonable doubt.
12 You see the State has the only burden of proof in criminal
13 cases. A defendant has no burden of proof. You're presumed
14 to be innocent.

15 At the trial and under the constitution you could do
16 several things during the trial. First of all, you could
17 have subpoenas issued to require witnesses to attend the
18 case, the trial of the case. You would have the right to
19 question or cross-examine anyone who testifies in the trial.
20 You would have the right, at the trial, to present all the
21 defenses that you have to the charges, and you'd be given
22 the opportunity to try to suppress any and all evidence the
23 State may have against you including statements that you
24 might have given prior to the time of trial.

25 You, at all times, have the right to remain silent and,

1 at a trial, if you chose to remain silent, the judge would
2 instruct the jury that your silence could not be used
3 against you.

4 Now, those are your rights under the Constitution. If
5 you have any questions about any of those rights, please
6 stand.

7 (No response.)

8 THE COURT: If you want me to offer any additional
9 explanation, please stand.

10 (No response.)

11 THE COURT: Now, if you decide to plead guilty and then
12 I decide to accept the plea, you will be giving up or
13 waiving all of those rights as they relate to the charges
14 that are before the Court with the exception of the right of
15 having your lawyer represent you throughout your plea.

16 Now, if there's any of the rights that you would be
17 giving up in connection with a plea today that you do not
18 wish to give up in connection with a plea, please stand.

19 (No response.)

20 THE COURT: Now, I will advise each of you that you
21 have ten days in which to file an appeal of a plea from the
22 date that you receive your sentence.

23 At this time I'll declare that these defendants are
24 qualified to proceed with a plea if they choose to do so.

25 (WHEREUPON, other guilty pleas were completed at this

1 time.)

2 THE COURT: Yes, ma'am.

3 SOLICITOR GALLIVAN: Your Honor, Walter Lewis Suber is
4 before you on three indictments. 2010-GS-42-6042. He's
5 pleading to kidnapping with a recommendation by the State of
6 a cap of 15 years.

7 He is also pleading to 2010-6045, which was originally
8 true bill indicted as burglary in the first degree.
9 However, he's pleading to the lesser included offense of
10 burglary in the second degree violent.

11 He's also before you on 2010-6043, pleading to common
12 law robbery.

13 Rashad Tramaine Allen is before you on the same similar
14 charges.

15 2010-GS-42-5880 pleading to burglary in the second
16 degree violent.

17 2010-5882, kidnapping.

18 2010-5881, pleading to common law robbery.

19 I'm also passing up signed orders of restitution.

20 THE COURT: Thank you, ma'am.

21 All right. Who's Mr. Allen?

22 (Defendant raises hand.)

23 THE COURT: Is that you, sir?

24 DEFENDANT ALLEN: Yes, sir.

25 THE COURT: And that means you're Mr. Suber?

1 DEFENDANT SUBER: Yes, sir.

2 THE COURT: Okay. You are Rashad Tramaine Allen?

3 DEFENDANT ALLEN: Yes, sir.

4 THE COURT: Mr. Allen, you're still under oath.

5 Are you aware of that?

6 DEFENDANT ALLEN: Yes, sir.

7 THE COURT: And you are Walter Lewis Suber, Junior?

8 DEFENDANT SUBER: Yes, sir.

9 THE COURT: You're still under oath.

10 Are you aware of that, sir?

11 DEFENDANT SUBER: Yes, sir.

12 THE COURT: Now, I would assume that both of you are
13 represented by Mr. Cheek.

14 Mr. Allen, is that true?

15 DEFENDANT ALLEN: Yes, sir.

16 THE COURT: And, Mr. Suber, is that true?

17 DEFENDANT SUBER: Yes, sir.

18 THE COURT: Now, Mr. Allen, are you satisfied with his
19 services?

20 DEFENDANT ALLEN: Yes, sir.

21 THE COURT: Mr. Suber, are you satisfied?

22 DEFENDANT SUBER: Yes, sir.

23 THE COURT: Mr. Allen, is there anything else you feel
24 he ought to do for you at this time?

25 DEFENDANT ALLEN: No, sir.

1 THE COURT: Is there any other questions you want to
2 ask of him?

3 DEFENDANT ALLEN: No, sir.

4 THE COURT: Sir?

5 If you want to ask him a question, now is the time to
6 do it.

7 DEFENDANT ALLEN: One second.

8 THE COURT: Step right around there and talk to him.
9 (Defendant complies.)

10 THE COURT: Now, Mr. Allen, have you had a chance to
11 talk to Mr. Cheek?

12 DEFENDANT ALLEN: Yes, sir.

13 THE COURT: Is there anything else you need to discuss
14 with him?

15 DEFENDANT ALLEN: No, sir.

16 THE COURT: Now, Mr. Suber, has Mr. Cheek done what
17 he's suppose to do for you?

18 DEFENDANT SUBER: Yes, sir.

19 THE COURT: Is there anything else you need to consult
20 with him about?

21 DEFENDANT SUBER: No, sir.

22 THE COURT: All right. Mr. Allen, I'm going to go
23 through your charges, and I think they may be the same for
24 both of you.

25 So, Mr. Suber, if you'll listen. I'll confirm that you

1 understand what I've discussed with Mr. Allen.

2 Mr. Allen, I have you down for, on case 2010-5880,
3 burglary second degree. It's classified as a violent and
4 serious offense. That carries up to 15 years in prison.

5 Now, the designation as a violent and serious offense
6 means that this particular plea, if you plead to it, would
7 constitute what is commonly known as one of your strikes.
8 In the future, if you plead guilty to or are found guilty of
9 other crimes that also are similarly classified and they
10 qualify, qualify for a strike, your plea in this case could
11 be used in connection with that future conviction to make
12 the sentences much more severe. It could result in your
13 being sentenced to life imprisonment without the possibility
14 of ever being paroled. That means you would go to prison,
15 you'd be there until the day that you die.

16 Do you understand that, sir?

17 DEFENDANT ALLEN: Yes, sir.

18 THE COURT: Now, the second charge you have is
19 kidnapping. That carries up to 30 years in prison. It also
20 is classified as a violent and most serious offense. Same
21 situation for this one. It could result in life
22 imprisonment without the possibility of parole if you are
23 found guilty of or plead guilty to future similarly
24 classified cases.

25 Do you understand that, sir?

1 DEFENDANT ALLEN: Yes, sir.

2 THE COURT: Finally is a common law robbery. That
3 carries 15 years in prison.

4 Now, sir, do you understand those charges?

5 DEFENDANT ALLEN: Yes, sir.

6 THE COURT: I will tell you that the common law robbery
7 was originally indicted as an armed robbery. The State is
8 willing to accept your plea to the lesser included offense
9 of common law robbery.

10 Do you understand what that means?

11 DEFENDANT ALLEN: Yes, sir.

12 THE COURT: You've discussed that with Mr. Cheek?

13 DEFENDANT ALLEN: Oh, yes, sir.

14 THE COURT: Okay. Now, on these charges you're facing
15 a potential sentence of, let's see, about 60 years in
16 prison.

17 Do you understand that, sir?

18 DEFENDANT ALLEN: Yes, sir.

19 THE COURT: And I will tell you that the, for these
20 charges that are considered to be violent and serious, the
21 possibility of your receiving a parole later on is greatly
22 reduced and you must serve a greater length of the time you
23 receive on that than you would on normal cases.

24 Do you understand that?

25 DEFENDANT ALLEN: Yes, sir.

1 THE COURT: And have you discussed that as well with
2 Mr. Cheek?

3 DEFENDANT ALLEN: Yes, sir.

4 THE COURT: Okay, sir. Now, Mr. Suber, you are charged
5 with the same offenses.

6 Did you hear what I went over with Mr. Allen?

7 DEFENDANT SUBER: Yes, sir.

8 THE COURT: Did you understand it?

9 DEFENDANT SUBER: Yes, sir.

10 THE COURT: Do you understand that it applies to you
11 just like it applied to him?

12 DEFENDANT SUBER: Yes, sir.

13 THE COURT: And any questions that you have of the
14 Court about these charges?

15 DEFENDANT SUBER: No, sir.

16 THE COURT: So, you understand them fully?

17 DEFENDANT SUBER: Yes, sir.

18 THE COURT: Now, Mr. Allen, you have the right to plead
19 either guilty or not guilty to these charges.

20 How do you plead?

21 DEFENDANT ALLEN: Guilty.

22 THE COURT: To all three?

23 DEFENDANT ALLEN: Yes, sir.

24 THE COURT: And, Mr. Suber, you have the right to plead
25 either guilty or not guilty.

1 How do you plead?

2 DEFENDANT SUBER: Guilty.

3 THE COURT: To all three?

4 DEFENDANT SUBER: Yes, sir.

5 THE COURT: Mr. Cheek, have you discussed these charges
6 with your client?

7 MR. CHEEK: I have, Your Honor.

8 THE COURT: I would imagine, among the many things you
9 would of discussed with them, you would of discussed the
10 nature of the charges, the elements of the crimes, the
11 potential penalties that could be involved, any defenses
12 that they might have to these charges, the possibility of
13 probation or parole on these charges, as well as their
14 rights under the Constitution.

15 Did I cover some of the things you talked about?

16 MR. CHEEK: Yes, sir, both for these charges as well as
17 what they were originally charged with, Your Honor.

18 THE COURT: All right. And are you satisfied that
19 Mr. Allen and Mr. Suber understood what you told them?

20 MR. CHEEK: Yes, sir, Your Honor.

21 THE COURT: Have they both had the ability to assist
22 you in their defense?

23 MR. CHEEK: They have, Your Honor. I will note that
24 both of these young men have attended Charles Lea Center.
25 While there are some limitations, I am convinced they fully

1 understand and comprehend everything that is transpiring
2 here today as well as what will transpire in the future at a
3 trial or in our discussions in preparation for today's
4 presentation, Your Honor.

5 THE COURT: Mr. Allen, do you agree that Mr. Cheek has
6 gone over those things I just went over with him---

7 DEFENDANT ALLEN: Yes, sir.

8 THE COURT: ---with you?

9 That's the advice you're satisfied with, is that
10 correct?

11 DEFENDANT ALLEN: Yes, sir.

12 THE COURT: And, Mr. Suber, do you agree that Mr. Cheek
13 has discussed those things with you?

14 DEFENDANT SUBER: Yes, sir.

15 THE COURT: And is that the advice that you're
16 satisfied with?

17 DEFENDANT SUBER: Yes, sir.

18 THE COURT: All right. Tell me the facts please.

19 SOLICITOR GALLIVAN: Your Honor, this occurred on
20 September 16th of 2010. Officers responded to a call at
21 in Spartanburg. The victim,
22 Mrs. Doris Lutman, reported that when she went to answer her
23 door she cracked it open. These two suspects pushed their
24 way into her home. She stated that the shorter of the two
25 pointed a gun at her while they forced her to go upstairs to

1 get her purse. The other defendant then grabbed her purse,
2 and they both ran out the door.

3 The subjects ran across the street in-between the set
4 of apartments. The victim's granddaughter was at a friend's
5 apartment and was able to identify one of the suspects, and
6 another witness was able to identify the codefendant. Both
7 suspects were identified as Walter Suber and Rashad Allen.

8 THE COURT: Mr. Allen, did you hear what the solicitor
9 just told me?

10 DEFENDANT ALLEN: Yes, sir.

11 THE COURT: Is that information true?

12 DEFENDANT ALLEN: In my, my motion that I got over
13 there, it, it says she -- it says that she did, but then in
14 the detective report she turned around and say that she
15 thought she recognized me. Then---

16 THE COURT: You're not answering my question.

17 DEFENDANT ALLEN: Yes, sir.

18 THE COURT: I asked you if the information that you
19 just heard her tell me, do you agree that that is true?

20 DEFENDANT ALLEN: Yes, sir, I mean kind of.

21 THE COURT: Well, what you're saying is that one of
22 them didn't positively identify you?

23 DEFENDANT ALLEN: Yeah, I mean in my motion it says---

24 THE COURT: I don't know what you mean by motion cause
25 you're in front of me on a guilty plea. I'm not hearing a

1 motion.

2 DEFENDANT ALLEN: Okay. Yes, sir.

3 THE COURT: Well, I'm not trying to make you be quiet.
4 What I'm trying to get you to point out to you is there's no
5 motion in front of me today. Now, I don't know what you're
6 referring to.

7 Mr. Cheek, do you know what he's talking about?

8 MR. CHEEK: He's talking about his discovery, Your
9 Honor.

10 THE COURT: Oh, discovery.

11 MR. CHEEK: Many times they'll, they don't understand
12 that discovery is discovery. The motion which is filed to
13 get the discovery.

14 THE COURT: Yes, sir.

15 MR. CHEEK: But he's referring to his discovery, Your
16 Honor.

17 THE COURT: Yes, sir.

18 MR. CHEEK: And I don't think that Mr. Allen is being
19 focused on this because you're asking him about the facts
20 that have been read to the Court just now---

21 DEFENDANT ALLEN: Oh.

22 MR. CHEEK: ---which are responsive to that. Then you
23 get a chance later to explain about anything that was found
24 in your discovery.

25 DEFENDANT ALLEN: Oh, okay. Yes, sir, I understand.

1 THE COURT: Again, I want to know if what she told me
2 is the truth or not.

3 Read it again. Listen carefully to what she's saying
4 now.

5 okay, sir?

6 (Defendant Allen nods affirmatively.)

7 SOLICITOR GALLIVAN: The -- on September 16th of 2010
8 officers responded to in
9 Spartanburg. The victim, Mrs. Doris Lutman, reported that
10 when she answered her door that two black males pushed their
11 way into, inside. She stated that the shorter of the two
12 males pointed a gun at her while they forced her to go
13 upstairs to get her purse. They grabbed her purse, then ran
14 out the door.

15 The subjects, subjects then ran across the street
16 in-between two other apartments where they were identified
17 by witnesses as Walter Suber and Rashad Allen.

18 THE COURT: Now, sir, did you hear what she just read
19 to me?

20 DEFENDANT ALLEN: Yes, sir.

21 THE COURT: Is that information true?

22 DEFENDANT ALLEN: Yes, sir.

23 THE COURT: Sir?

24 DEFENDANT ALLEN: Yes, sir.

25 THE COURT: Now, Mr. Suber, did you hear what she just

1 read to me?

2 DEFENDANT SUBER: Yes, sir.

3 THE COURT: Is that the truth?

4 DEFENDANT SUBER: Yes, sir.

5 THE COURT: Now, Mr. Allen, have you told me the truth
6 today?

7 DEFENDANT ALLEN: Yes, sir.

8 THE COURT: Did anyone tell you how to answer my
9 questions?

10 DEFENDANT ALLEN: No, sir.

11 THE COURT: So, all the answers you've given me, those
12 were your answers?

13 DEFENDANT ALLEN: Yes, sir.

14 THE COURT: Is there any portion of what you've gone
15 over with me today that you'd like to go back and change
16 anything you've told me?

17 DEFENDANT ALLEN: No, sir.

18 THE COURT: So, when you were over in the box, if I
19 were to ask you all the questions I asked earlier, would I
20 get the same answers I got before verbally now?

21 DEFENDANT ALLEN: Yes, sir.

22 THE COURT: And are you offering a guilty plea, Mr.
23 Allen, because you are guilty?

24 DEFENDANT ALLEN: Yes, sir.

25 THE COURT: And, Mr. Suber, have you told me the truth.

1 today?

2 DEFENDANT SUBER: Yes, sir.

3 THE COURT: Has anyone told you how to answer any of my
4 questions?

5 DEFENDANT SUBER: No, sir.

6 THE COURT: So, the answers you've given me, they were
7 your answers?

8 DEFENDANT SUBER: Yes, sir.

9 THE COURT: Is there any part of what we've discussed
10 that you'd like to reconsider or to go back over?

11 DEFENDANT SUBER: No, sir.

12 THE COURT: So, if I asked all the same questions I
13 asked earlier, would I get the same answers now verbally?

14 DEFENDANT SUBER: Yes, sir.

15 THE COURT: And are you pleading guilty, sir, because
16 you are guilty?

17 DEFENDANT SUBER: Yes, sir.

18 THE COURT: I'm gonna accept the pleas as freely and
19 voluntarily given. The defendants are aware of the charges,
20 the penalties, had the advice of an attorney. They're
21 satisfied with the legal advice they've received. There's a
22 factual basis for the plea.

23 Mr. Suber, and, Mr. Allen, I have received a, an order
24 of restitution. It appears that both of you have signed
25 that.

1 Is that correct, Mr. Allen?

2 DEFENDANT ALLEN: Yes, sir.

3 THE COURT: And Mr. Suber?

4 DEFENDANT SUBER: Yes, sir.

5 THE COURT: Thank you.

6 Mr. Cheek, it's your opportunity to speak for your
7 clients.

8 MR. CHEEK: Your Honor, may it please the Court?

9 THE COURT: Yes, sir.

10 MR. CHEEK: Mr. Suber has been incarcerated 311 days
11 and Mr. Allen has been incarcerated 307 days on these
12 charges, Your Honor.

13 THE COURT: Yes, sir.

14 MR. CHEEK: Your Honor, the Court has been made aware
15 they've been allowed to plead to the lesser included
16 offenses.

17 THE COURT: Yes, sir.

18 MR. CHEEK: I've explained to both of them that these
19 charges are very serious. This whole incident was very
20 serious. And, Your Honor, because of their age and because
21 of some limitations as well as because of the mercy that
22 Ms. Lutman wanted to show to them, because she knew they're
23 young, she knew something about their background, and, Your
24 Honor, she told me last week -- she was in court with her
25 own son, Keith, last week.

1 As reviewing and saying a lot of things, she just said
2 that she wanted to try to resolve this, give these young men
3 an opportunity to have some quality of life in the future.
4 She was upset about what happened, but she wanted them to
5 not be facing the burglary first degree and the maximum on
6 the kidnapping, and it being an armed robbery and all of
7 that.

8 So, she, she's come forward, Your Honor, and we're very
9 appreciative of that and we want to put that on the record
10 for Ms. Lutman. I've explained to both these young men that
11 I don't see a conflict. I think the fact that I know Ms.
12 Lutman and known her all of her life that, that also played
13 into the spirit of generosity she's shown to these two young
14 men before the Court.

15 Your Honor, this all happened over in Collins Park,
16 which was formerly called Phyllis Goins Courts. It's
17 publically subsidized housing.

18 THE COURT: They rebuilt that place.

19 MR. CHEEK: To try to make it better, Your Honor.

20 THE COURT: It's been improved. It's a big
21 improvement.

22 MR. CHEEK: Yes, sir. And, Your Honor, Ms. Lutman is
23 not a person of great means. She's worked in her lifetime.
24 And, so, she's been able to identify with a lot of the
25 struggles these young men have gone through.

1 Your Honor, Mr. Suber was born -- when he was born,
2 he's, he was addicted to drugs because his mother had him
3 while she was on drugs, and then my understanding that after
4 about the age of nine months his family took possession of
5 him and raised him, his grandmother.

6 Present in the courtroom for him today is his aunt
7 who's seated here, and, Your Honor, she does not wish to
8 necessarily address the Court, but Mrs. Denton wanted the
9 Court to know that, that she took him -- the grandmother
10 took and raised him. Put him in a lot of those things. He
11 went to Charles Lea Center. He got certification over
12 there. They were all very proud of the progress he was
13 making.

14 When the grandmother died, Mrs. Denton took over
15 raising him, and was very proud. He worked, did a lot of
16 things he was suppose to do, and then he fell in love with a
17 young woman living in another subsidized housing project
18 over here in Spartanburg, moved out with her, and then
19 things started going downhill real fast for him, and this
20 incident occurred, Your Honor.

21 Very similarly, Rashad Allen's mother is present before
22 the Court. She would like to address the Court at the
23 appropriate time, Your Honor. They have significant number
24 of family and friends here to support them, an aunt,
25 sisters, cousins, other relatives, friends of the family's.

1 They're all here on, on their behalf, Your Honor.

2 We just ask the Court to understand that they had a lot
3 of tragedies touch their families. These both young men
4 both attended Charles Lea Center. We just ask the Court to
5 take all that in consideration.

6 As I said earlier, Your Honor, while there are some
7 limitations, they do have the ability to, to make some
8 progress in life. We're just asking you to take that into
9 consideration when the Court sentences and give them an
10 opportunity to see daylight at a point where they still are
11 able to go into the programs, training, whatever they need
12 to do in order to put this behind them, and learn from this
13 experience, Your Honor.

14 So, we ask the Court to fashion a sentence that would
15 impact on them, but they learn from this experience, but ask
16 the Court to be merciful in sentencing on them, Your Honor,
17 for a number of reasons tangential to the things I've said
18 today, Your Honor.

19 THE COURT: You're Mr. Allen's mother, is that right?

20 MRS. ALLEN: Yes, sir.

21 THE COURT: Your name?

22 MRS. ALLEN: Donna Allen.

23 THE COURT: Yes, ma'am, I'll hear from you.

24 MRS. ALLEN: Okay.

25 THE COURT: If you want to talk to the Court.

1 MRS. ALLEN: Okay. Rashad, he's, he's not a bad bad
2 child. He just gets involved with things that he don't make
3 up his own mind a lot of times, and I'm just asking y'all
4 just don't let him have all that time because he's young,
5 and I know that he can change his life and do the thing
6 right, things in life. Finish the 12th grade, get a job, do
7 what he got to in life. But he just need, need that chance.

8 He, he think he can't do the right thing in life, but
9 he can. He's making the wrong decisions with the people
10 himself. Like I use to tell him, if you see somebody that's
11 getting ready to show out and whatever, run. Let them say
12 that you was a scaredy cat or whatever they want to call.
13 You. You run from it because they ain't nobody gonna be
14 there for you but your mama. You got to make that time, and
15 just like you said to that other child that was here,
16 where's your friends at now.

17 Where your friends at now?

18 You don't have no friends standing behind you. You
19 just got your family, and I just, I just want him to do
20 better in life and make the right decisions in life. And if
21 you give him another chance, I'll try my best to try to keep
22 him out there busy---

23 THE COURT: Thank you ma'am.

24 MRS. ALLEN: ---doing more than he doing in life.

25 THE COURT: Thank you, ma'am.

1 MRS. ALLEN: All right. Thank you.

2 MR. CHEEK: Thank you, Your Honor.

3 THE COURT: All right. Mr. Suber, you have the right
4 to speak on your own behalf if you'd like to.

5 Anything you'd like to say?

6 DEFENDANT SUBER: First I want to say, I, I want to let
7 the victim know I'm so sorry that it happened. I was wrong
8 and I hope she forgive me.

9 THE COURT: Anything you want to say, Mr. Allen?

10 DEFENDANT ALLEN: Yes, sir. Your Honor, I like to, you
11 know, say that I apologize to the community, you know, that
12 the, the stuff, the danger that I caused. I could of --
13 anything could of happened that day. And like my mama said,
14 if I had such -- like you was saying to that young man, if
15 you had such -- basically what you was saying, if I had such
16 friends, where's my real friends at. They ain't put a penny
17 on my books. They ain't even think about writing me.

18 I been to the Department of Corrections. I been at Lee
19 County. Level Three is the most -- you know, it's a known
20 yard prison. You know, I actually seen a lot and been
21 through a lot and learned a lot, and, you know, I just ask
22 you to just be able to send me home on probation and also
23 forgive Mr. Suber, and also forgive me cause, you know, we
24 only humans and we make mistakes.

25 I just ask you to show mercy upon us cause I got a

1 single, single mama out there that needs me, and it's like
2 she just got half her heart, and I feel, you know, if you
3 put me out there on the streets today, that I could put that
4 other piece of my mama heart back together and she'll be
5 whole again. Also my whole -- my family, which is back
6 there, and, you know, they want me, want me to be able to be
7 home. Be able to do what I got to do.

8 And I ask you to let me out today on probation that I
9 can be able to go back to school and finish my 12th grade
10 year in high school, and I promise you won't regret it.
11 And, you know, I made a mistake. I was just a hot head like
12 my mama say.

13 I did make my own decision that day. I should of made,
14 I should of made up and made my own decision like I'm a man
15 up right now being, being honest, you know. I shouldn't, I
16 shouldn't did it. But, you know, I'm so easily to be, you
17 know, convinced of doing something else. I don't want to be
18 easily convinced now, now I been through, been down there,
19 down so far this long period of time.

20 I know I'm my own man. Nobody not gonna take the blame
21 for what, what they done did. Nobody ain't own up. You got
22 to own up by yourself. You got to be a man. I mean I came
23 so far, and, you know, temper, I'm on -- like a changed man
24 period.

25 I mean dudes came off the street in the county jail, in

1 the county jail and tell me that I'm a changed man. And
2 half the stuff I use to do, and things I think about I don't
3 think about it no more because I feel as if I let go and let
4 God deal with it that I be all right.

5 And I ask you just show mercy upon us right now, and
6 just, you know, give us a chance today to send us home on
7 probation.

8 THE COURT: Thank you, Mr. Allen.

9 SOLICITOR GALLIVAN: Your Honor, I would---

10 THE COURT: Prior record.

11 SOLICITOR GALLIVAN: For the prior record, Mr. Allen,
12 has a 2010 burglary second degree nonviolent two counts,
13 petty larceny, grand larceny.

14 Mr. Suber has no prior record.

15 I would ask for no contact on behalf of the victim,
16 Doris Lutman, or her family as well. She is very afraid and
17 still very shaken up from this incident. Every conversation
18 I've had with her ended in tears or, you know, her being
19 very emotional, and she didn't want to be present today.
20 However, she, as Mr. Cheek indicates to the Court, does wish
21 to show some mercy based on the age of these defendants.

22 MR. CHEEK: The reference to Lee County by Mr. Allen,
23 Your Honor, was in the interim while arrested on this
24 charge, and because of his supervision in the community he
25 had to go to Lee County, and that's had a great impact on

1 him in that interim, Your Honor. It's not something that
2 happened separately.

3 THE COURT: I understand.

4 Mr. Allen's prior record?

5 SOLICITOR GALLIVAN: Two counts of burglary second
6 degree nonviolent, and petty larceny, and grand larceny.

7 THE COURT: Thank you.

8 I've signed both restitution orders.

9 I've treated these cases a little bit differently
10 simply because, Mr. Allen, you have a prior record.

11 Mr. Suber doesn't.

12 But, nevertheless, home invasions, invading people's
13 homes armed with weapons is not gonna be tolerated by this
14 Court. It's serious offenses. People need to be secure in
15 their own homes at night. People breaking down the doors
16 with weapons, that just can't be allowed period.

17 In the case of Mr. Suber, the Sentence on the, on all
18 charges is 15 years suspended to 12 with probation for
19 three. I've ordered the restitution. I've ordered alcohol
20 and drug testing, payment of Public Defender's fees during
21 probation.

22 Mr. Allen, the Sentence on common law robbery and
23 burglary violent second degree is 15 years run concurrently.
24 On kidnapping it's 20 years suspended to 15 with probation
25 for three. Restitution is ordered. Drug testing during

1 probation is also ordered.

2 Good luck to you, gentleman.

3 MR. CHEEK: Thank you, Your Honor.

4 SOLICITOR GALLIVAN: Thank you, Your Honor.

5

6 * * *END OF REQUESTED TRANSCRIPT OR RECORD* * *

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

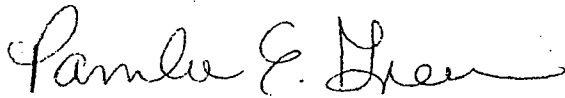
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Pamela E. Green, 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 the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 6th day of June, 2011.

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

May 20th, 2012



PAMELA E. GREEN, Court Reporter

2011-CP-42-565

FORM 5

STATE OF SOUTH CAROLINA)
County of SPARTANBURG)
RASHAD T. ALLEN # 344004)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 DEC 20 PM 3:29
M. HOPE BLYTHE

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 indicate to which question any such continued answer refers.

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

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

1. Place of detention LEE CORRECTIONAL INSTITUTION 990 WISACKY Highway, Bishopville S.C. 29010
2. Name and location of Court which imposed sentence SPARTANBURG COUNTY GENERAL SESSION COURT
3. Name(s) of co-defendant(s) (if any) WALTER LEWIS SUBER, JR.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) M-750180, M-750181, M-750182
 - (b) Burglary, Arm Robbery, Kidnapping

10
in m a l e r a n K i r k

J

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) JUNE 06, 2011 - 15 yrs SENTENCE
 - (b) 12
 - (c) 11

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

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

- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. NOT applicable
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. NOT applicable
 - iii. _____
- (c) the date of each such result:
 - i. NOT applicable
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. NOT applicable
 - ii. _____
 - iii. _____

FILED COURT
 CLERK OF COURT
 SPARTANBURG COUNTY
 2011 DEC 20 PM 3:59
 M. HOPE BLACKLEY

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) COUNSEL CHECK did NOT explain that Defendant has the right to appeal his guilty pleas if he ~~do~~ wish to appeal his guilty pleas... so Defendant did not do that if he wish to appeal he had to do so
 - (b) _____

[Handwritten mark]

(c) the disposition thereof:

- i. _____
- ii. NOT APPLICABLE
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. NOT APPLICABLE
- iv. _____

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

- i. _____
- ii. NOT APPLICABLE
- 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?

- NOT APPLICABLE

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

(a) which grounds have been presented:

- i. _____
- ii. NOT APPLICABLE
- iii. _____

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

- i. _____
- ii. NOT APPLICABLE
- iii. _____

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2011 DEC 20 PM 4:00
 M. HOPE BLACKLEY

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) NOT APPLICABLE
- (c) _____

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

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

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

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

- i. JAMES CREEK
Spartanburg Public Defender off.
- ii. "
- iii. "

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

- i. PLEA / SENTENCING
JAMES CREEK
- ii. SPARTANBURG Public Defender off.
"
- iii. "
"

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2011 DEC 20 PM 4:00
 MADRE BLACKLEY

18

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

VACATED (SENTENCE) - (CONVICTION)

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

NO

STATE OF SOUTH CAROLINA)
County of SPARTANBURG)

VERIFICATION

I, _____, 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.

Rashad Allen

SWORN to and subscribed before me this 14 day of December, 2011.

Debra Jones (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 DEC 20 PM 4:00
M. HOPE BLACKLEY

180

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

I, _____, 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.

Rashad Allen
Applicant

SWORN or affirmed to and subscribed before me this

14 day of December, 2011.

Debra Jones
Notary Public

My Commission Expires: 11-4-2013

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 DEC 20 PM 4:00
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE SEVENTH CIRCUIT
COUNTY OF SPARTANBURG)	
)	2011-CP-42-5652
Rashad T. Allen, #344004,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

In response to the post-conviction relief application filed on December 20, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the October 2010 term of General Sessions for burglary, first degree (10-GS-42-5880), armed robbery (10-GS-42-5881), and kidnapping (10-GS-42-5882). The Applicant was represented by James A. Cheek, Esquire. The Applicant pled guilty to the lesser included offenses of burglary, second degree, and strong arm robbery. He pled guilty as indicted to kidnapping. On June 6, 2011, the Honorable Roger L. Couch sentenced the Applicant, to confinement for a period of twenty (20) years suspended upon the service of fifteen (15) years to three (3) years probation for kidnapping, and fifteen (15) years each for the other two charges, sentences to run concurrent. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the Spartanburg County Clerk of Court records, the South Carolina Department of Corrections' records, and the guilty plea transcript. The

Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post conviction relief 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 the case,
2. Excessive sentence; in that,
 - b. Sentence imposed is excessive in violation of State and Federal law, and
3. Malicious Prosecution, Prosecutorial misconduct.

III.

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

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, Id. 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). Further, Respondent submits that "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998).

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.

Respondent submits that the Applicant's allegation that the sentence is excessive is without merit. The court has broad discretion in imposing criminal sentences. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976). Absent a showing of partiality, prejudice, oppression, or corrupt motive by the sentencing court, or absent a showing that the statutory punishment in and of itself constitutes cruel and unusual punishment, the post-conviction relief court has no authority or jurisdiction to review or change a sentence falling within statutory limits. State v. Cogdell, 273 S.C. 563, 257

S.E.2d 748 (1979).

Furthermore, the Applicant did not object to the sentence handed down by the trial court. The Applicant's failure to object has waived any allegation that his sentence was excessive or otherwise improper. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). Respondent submits that the court should summarily dismiss this ground for relief.

V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

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

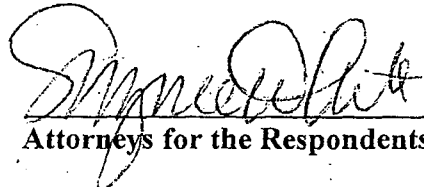
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE WHITE
Assistant Attorney General

By: 
Attorneys for the Respondents

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

September 11, 2012

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

Rashad T. Allen,)
Applicant,)

-vs-)
The State.)

IN THE COMMON PLEAS COURT

TRANSCRIPT OF RECORD
2011-CP-42-5652

January 8, 2013
Spartanburg, South Carolina

B E F O R E :

HONORABLE J. DERHAM COLE, JUDGE

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

RODNEY W. RICHEY, ESQUIRE
Attorney for the Applicant

SUZANNE H. WHITE, ESQUIRE
Attorney for the State

Linda D. Moffitt
Circuit Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

WITNESSES

PAGE

RASHAD T. ALLEN (AW)

Direct examination by Mr. Richey

4

Cross-examination by Ms. White

7

JAMES A. CHEEK (AW)

Direct examination by Mr. Richey

12

No exhibits entered into evidence.

1 MS. WHITE: This is the case of Rashad Allen vs. the
2 State, 2011-CP-5652. He's represented today by Rodney
3 Richey.

4 Mr. Allen was indicted October of 2010 for burglary
5 first degree, armed robbery and kidnapping.

6 He was allowed to plead to burglary second degree and
7 strong arm robbery and pled as indicted to the kidnapping,
8 received concurrent sentences of 15 years on the burglary
9 and strong arm robbery and a sentence of 20 years suspended
10 to 15 years of service and three years of probation on the
11 kidnapping. That was June 6th of 2011.

12 He's filed this application alleging ineffective
13 assistance of counsel in that counsel failed to
14 investigate, an excessive sentence in that his sentence
15 violates state and federal law, and malicious prosecution.

16 So at this time the state would turn it over to
17 Mr. Richey.

18 THE COURT: Mr. Richey.

19 MR. RICHEY: Thank you, Your Honor. We would call as
20 our first witness, Mr. Allen.

21 THE COURT: Okay. Have you explained to Mr. Allen
22 what -- what -- the relief that I can grant?

23 MR. RICHEY: Yes, sir, I have.

24 THE COURT: And that would be a new trial.

25 MR. RICHEY: Yes, sir.

Rashad T. Allen
Direct examination by Mr. Richey

1 THE COURT: He understands that if he come backs for a
2 new trial that he'd be facing a charge of burglary in the
3 first degree for which he could receive a life sentence,
4 and if he's convicted of armed robbery he could receive a
5 sentence of 30 years, a mandatory minimum of ten.

6 I understand he was allowed to plead to burglary
7 second and common-law robbery.

8 MR. RICHEY: Yes, sir.

9 THE COURT: But he understands if he comes back and
10 gets relief that he'll be facing a potential life sentence
11 and a 30-year sentence on the armed robbery -- potential
12 life sentence on the burglary first.

13 MR. RICHEY: I've explained that to him and give him
14 the option to go forward or withdraw.

15 THE COURT: He still wishes to present his
16 application?

17 MR. RICHEY: That's what he's telling me.

18 THE COURT: Okay. Bring him on around.

19 RASHAD T. ALLEN, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. RICHEY

22 Q You are Rashad Allen, is that correct?

23 A Yes, sir.

24 Q And are you currently in the Department of Corrections?

25 A Yes, sir.

Rashad T. Allen
Direct examination by Mr. Richey

1 Q And you're in the Department of Corrections on what
2 charges?

3 A First degree burglary, kidnapping, armed robbery.

4 Q Okay. You were as the Court alluded to earlier, you --
5 you're not on first degree burglary, correct?

6 A Yes, sir.

7 Q Okay. Are you on common-law robbery?

8 A Yes, sir.

9 Q Okay. You allege that Mr. Cheek who was your attorney
10 did not properly represent you, correct?

11 A Yes, sir.

12 Q And I believe you've got two issues. The first issue
13 is that you believe that Mr. Cheek had a conflict of
14 interest, is that correct?

15 A Yes, sir.

16 Q And that is based on -- on what?

17 A Me and my lawyer -- me and my codefendant had the
18 same -- the same -- the same attorney. And I believe he was
19 telling me -- he was telling me one thing and telling my
20 codefendant the other.

21 Q So you're saying at the time of the representation that
22 Mr. Cheek was representing you and the codefendant. Is that
23 the same codefendant that pled the same day with you?

24 A Yes, sir.

25 Q Okay. And do you believe that Mr. Cheek was

Rashad T. Allen
Direct examination by Mr. Richey

1 ineffective because of that?

2 A Yes, sir.

3 Q Did you sign any document waiving any conflict? Do you
4 know?

5 A Other than him being my lawyer?

6 Q Yes.

7 A No, sir.

8 Q Okay. The second issue that you have is that you
9 believe that he did not investigate your case, is that
10 correct?

11 A Yes, sir.

12 Q And can you tell -- can you explain why you believe
13 that?

14 A I feel like if he would investigated my case he would
15 have knew that -- he would have knew that the victim was --
16 the victim said that she couldn't recognize me. And my
17 daughter turned around and say she thought she recognized
18 me. And as of my understanding thought cannot be used in --
19 in the courtroom.

20 And they never had no fingerprints. They had -- they
21 searched two -- two homes that I was at and never found
22 nothing.

23 They were looking for a -- a long gun, a ski mask and
24 all other things from the victim. And they never found
25 nothing, nary one of the belongings.

Rashad T. Allen
Cross-examination by Ms. White

1 Q And did you go over any discovery with Mr. Cheek?

2 A Mr. Cheek -- every time I tried to tell him, he was
3 like I'm guilty. He always told me I was guilty and I was
4 going to get sentenced, the judge's going to find me guilty
5 no matter what.

6 Q No. My question was did you go over the discovery, the
7 information from the state, with Mr. Cheek?

8 A I tried to, but, you know, he just rubbed it off.

9 Q Thank you. Answer any questions the attorney general
10 has.

11 CROSS-EXAMINATION

12 BY MS. WHITE

13 Q Mr. Allen, if you -- I'm going to ask you just a few
14 questions about the transcript.

15 Now, you were advised about your rights to go to trial
16 and contest the evidence potentially against you, weren't
17 you?

18 A Yes, ma'am.

19 Q Okay. And you agreed that you wanted to waive that
20 right, is that right?

21 A Yes, ma'am.

22 Q Okay. And when the solicitor read the facts into
23 evidence you actually said -- you were talking about some
24 issues of the identification and you thought that -- that
25 the -- the granddaughter couldn't correctly identify you, is

Rashad T. Allen
Cross-examination by Ms. White

1 that right?

2 A Yes, ma'am.

3 Q Okay. And that talked about the discovery. And y'all
4 mentioned going over discovery information at that point.
5 Do you recall that?

6 A Yes, ma'am. But he never -- he never went over my
7 discovery.

8 Every time I tried to talk to him he was always talking
9 about he had to talk to my codefendant and he'll go talk to
10 my codefendant. And the day that I signed the plea paper he
11 told me, he say I think you got a better chance than your
12 codefendant got.

13 Q Okay. And when the judge asked you if you were
14 pleading freely and voluntarily and if you were satisfied
15 with counsel you -- you said yes at that time, didn't you?

16 A Yes, ma'am. That's only because Mr. Cheek told me and
17 my codefendant at that time to say yes to everything that
18 the -- that the judge asked us.

19 Q So your testimony is that you were informed just to say
20 yes to everything.

21 A Yes, ma'am.

22 Q Okay. So when you started to speak up and he said has
23 anybody told you to answer any questions and you said no,
24 sir --

25 A Because Mr. Cheek told us to say no to certain

Rashad T. Allen
Cross-examination by Ms. White

1 questions just as well as that and say yes to certain, like
2 have your lawyer represented you the right way. He always
3 -- he told me and my codefendant to say yes.

4 Q Okay. And then when you did apologize and acknowledge
5 that you had basically gotten in with some, maybe some, bad
6 friends, and you apologized for doing that and putting
7 people at risk, was that not the truth?

8 A I mean, I got something to say. I mean, I had
9 something to do with it, but I didn't have nothing to do
10 with it, because at the time I was walking. It's -- it was
11 on my mama's birthday at that moment. And I was going to go
12 get me a hacker at one of my cousin's house that live up the
13 street from -- from us.

14 And when it -- when it happened my -- my codefendant,
15 next thing he told me, he say you won't have -- you won't
16 have to have nothing to do with it. He say just watch out.

17 And I said -- I said no, because you could step out
18 on -- step out the victim's front -- out the front door and
19 go to the middle of the street and point at my mama's house.

20 And I'm not -- I'm not dumb. You know, I'm smart. I'm
21 smart enough to know that if I do something like that close
22 to home it's going to -- it's going to put my whole family
23 involved with that. And that's not my -- that is not my --
24 my standards right there, to put my family in danger at all.

25 And I got a single parent. I got a single mama that --

Rashad T. Allen
Cross-examination by Ms. White

1 that work hard, and I refuse to go hurt another single
2 parent.

3 And I been knowing her granddaughter. I been knowing
4 her daughter over three or four years before that even
5 happened.

6 And then she turned around. And they say -- if I
7 live -- it's like if I live up the street from you, and you
8 know where I stay at, the police never came to my house the
9 first day, the second day. The police just went.

10 He say she-say stuff. And when they did that my
11 codefendant and them, they -- they been talking. And I
12 tried to explain to Mr. Cheek that they been -- my
13 codefendant -- both my codefendants been talking.

14 And how -- how can you say if you look into my motion,
15 how can you say -- I was -- one of my codefendants say I was
16 running. I was running, both me and my codefendant was
17 running.

18 One say I was just walking up the street with a -- with
19 a gun in my hand. If I know I just robbed a person and you
20 supposed to be -- you older than me and I say go knock on
21 this door, I'm fixing to rob these people, you going to be
22 smart enough to say, nah, I ain't going to do that.

23 Q Now, let me stop you for a minute. When you say
24 codefendants, you pled at the same time as Walter Suber?

25 A Yes, ma'am.

Rashad T. Allen
Cross-examination by Ms. White

1 Q Was there another codefendant involved?

2 A Yes, ma'am.

3 Q Okay. You didn't plead at the same time as him though.

4 A He never got -- they -- he -- they dropped the charges
5 on him the day he called in and was talking about he got
6 some information to get his name out of it. And he talked
7 to Walter Suber about taking his name out of it.

8 Q Okay. So your testimony is that Mr. Suber -- the other
9 codefendant who actually was involved convinced Mr. Suber to
10 place the blame on you?

11 A Yes, ma'am.

12 Q Okay. But you do acknowledge that at the plea you
13 admitted --

14 A Yes, ma'am.

15 Q -- being involved and doing that and apologizing to the
16 victim.

17 A Yes, ma'am. I understand that.

18 Q Okay. All right.

19 MS. WHITE: Your Honor, I think that's all the
20 questions I have at this time.

21 MR. RICHEY: No other questions.

22 THE COURT: You may step down.

23 MR. RICHEY: We call Mr. James Cheek.

24

25

James A. Cheek
Direct examination by Mr. Richey

1 JAMES A. CHEEK, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. RICHEY

4 Q Sir, would you state your name, please?

5 A My name is James Cheek.

6 Q Mr. Cheek, are you a lawyer in Spartanburg?

7 A I am.

8 Q And where are you currently -- where were you employed
9 on June the 6th of 2012?

10 A I was employed with the 7th Circuit Public Defender's
11 office.

12 Q Okay. And in that capacity do you recall representing
13 Rashad Allen?

14 A I do.

15 Q And you were in the courtroom when he gave his
16 testimony, and you listed two issues that -- about your
17 representation. And if I could, I'll go through them in
18 order.

19 No. 1, it's his position that there was a conflict of
20 interest that you had in representing him because you
21 represented the codefendant.

22 Can you explain to me whether you believe a conflict
23 existed or not at the time?

24 A No. I -- I can explain that I did not believe that a
25 conflict existed at the time. They were both telling the

James A. Cheek
Direct examination by Mr. Richey

1 same story.

2 Q Okay. And their interests were essentially the same in
3 that?

4 A Correct.

5 Q Okay. And the second issue raised was failure to
6 investigate the case.

7 Can you tell me about whether you investigated the
8 case? Did you go over discovery with him, or was there any
9 interaction between you and him regarding the evidence in
10 this case?

11 A Yes, there was. Mr. Allen and I met approximately five
12 times regarding his case. I sat down, because I was
13 particularly concerned with him being a history of having
14 been a student at the Charles Lea Center. And so I took
15 particularly -- care and time to make sure he understood
16 everything. I went over the discovery with him several
17 times.

18 Q And -- and do you believe he understood those
19 discussions?

20 A I do.

21 Q And the issue that was raised about this identity in
22 terms of the lady not being able to identify him, was there
23 any issue of that in the case?

24 A Not -- that never had been an issue, because this
25 incident occurred outside of Ms. Letmon's home over on

Certificate

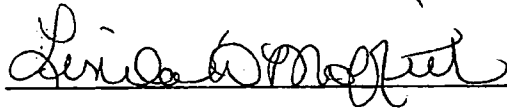
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 8th day of January 2013.

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

June 14, 2013



Linda D. Moffitt
Circuit Court Reporter

Handwritten mark resembling a stylized 'B' or '3'.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Rashad T. Allen, #344004,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2011-CP-42-5652

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 20, 2011. The Respondent made its Return on or about September 11, 2012. An evidentiary hearing into the matter was convened on January 8, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Rodney W. Richey, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. James A. Cheek, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 APR 12 PM 4:18
 M. HORN

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the October 2010 term of General Sessions for burglary, first degree (10-GS-42-5880), armed robbery (10-GS-42-5881), and kidnapping (10-GS-42-5882). The Applicant was represented by James A. Cheek, Esquire. The Applicant pled

SCANNED

COMPUTER

guilty to the lesser included offenses of burglary, second degree, and strong arm robbery. He pled guilty as indicted to kidnapping. On June 6, 2011, the Honorable Roger L. Couch sentenced the Applicant, to confinement for a period of twenty (20) years suspended upon the service of fifteen (15) years to three (3) years of probation for kidnapping, and fifteen (15) years each for the other two charges, sentences to run concurrent. The Applicant did not appeal his guilty plea 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 the case,
- 2. Excessive sentence; in that,
 - b. Sentence imposed is excessive in violation of State and Federal law, and
- 3. Malicious Prosecution, Prosecutorial misconduct.

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).

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 APR 2 PM 4:48
M. HOPE BLOOMERY

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), SCRCP). 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. 82, 86, 480 S.E.2d 733, 735 (1997) (*citing* Strickland).

Applicant testified that Counsel had a conflict of interest because Counsel represented both the Applicant and his co-defendant at their guilty pleas. Applicant testified that he never signed a waiver of conflict of interest. Applicant also testified that Counsel was ineffective for failing to investigate the case. Applicant testified that Counsel would not review the discovery materials with the Applicant.

Counsel testified that he did represent both the Applicant and his co-defendant at their

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 APR 12 PM 4:48
 H. HOPKINS BLACKLEY

separate guilty pleas. Counsel testified that both defendants were telling the same story and their interests were the same, so he did not believe that there was a conflict of interest. Counsel testified that there were witnesses outside of the home Applicant and his co-defendant were accused of breaking in, who were willing to testify that they saw Applicant and the co-defendant enter the home with masks on, but then take the masks off when they were in front of the home. Counsel also testified that he met with the Applicant approximately five times and reviewed the discovery materials with the Applicant several times.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. The Applicant's allegations that Counsel did not conduct an adequate pre-trial investigation or review discovery with Applicant without merit. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel completed an additional investigation. Accordingly, this allegation is dismissed.

The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id.; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). This Court finds that there was no conflict of interest as a result of Counsel representing both the Applicant and his co-defendant, when each was pleading

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2023 APR 12 PM 1:48
V. HOPE BARRETT, EX

guilty to their part in the crime and neither was pointing the finger at the other. This Court also finds that the Applicant failed to meet his burden of proof as to this claim. Therefore, the claim is denied.

Excessive Sentence

The Applicant alleged that his sentence was excessive. This Court finds that the allegation lacks merit. The court has broad discretion in imposing criminal sentences. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976). Absent a showing of partiality, prejudice, oppression or corrupt motive by the sentencing court, or absent a showing that the statutory punishment in and of itself constitutes cruel and unusual punishment, the post-conviction relief court has no authority or jurisdiction to review or change a sentence falling within statutory limits. State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979). The Applicant did not object to the sentence handed down by the trial court. The Applicant's failure to object has waived any allegation that his sentence was excessive or otherwise improper. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981).

Furthermore, the Applicant failed to present any testimony or support of his claim. Therefore, this Court finds that the Applicant has failed to meet his burden of proof as to his claim and it is denied and dismissed.

Malicious Prosecution

The Applicant failed to provide any testimony or evidence in support of this claim. Therefore, this Court finds that the Applicant failed to meet his burden of proof and this claim is denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 APR 12 PM 4:48
M. JOPELACKLEY

Applicant's testimony is not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

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), SCRCR, 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


FILED
CLERK OF COURT
PAUL HARRIS COUNTY
2013 APR 2 PM 4:08
M. HOPBLACKLY

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 2nd day of April, 2013.



J. Derham Cole
Presiding Judge

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 APR 12 PM 4:48
M. HOPE BLACKLEY

WITNESSES

SPTBG. PUBLIC SAFETY DEPT.

[Handwritten signature]

DOCKET NO.

5880

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

TERM

ARREST WARRANT NUMBER

M-750180

THE STATE
vs.

ACTION OF GRAND JURY

RASHAD TRAMMAINE ALLEN

Foreperson of Grand Jury

Date: 11/2/2014

VERDICT

[Handwritten mark]

Indictment for

BURGLARY, FIRST DEGREE
(DWELLING)

Foreperson of Petit Jury:

[Handwritten mark]

Date:

SC Code: 16-11-0311
CDR Code: 79
Class: FEL/EXM(IV)

OCT 26 PM 1:59

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE

(DWELLING)

That the Defendant, Rashad Tramaine Allen, did in Spartanburg County, on or about September 16, 2010, willfully and intentionally enter the dwelling belonging to Doris Letmon, located at _____, South Carolina, without consent and with the intent to commit a crime therein, and when; in effecting entry or while in the building or in immediate flight therefrom, the defendant

(1) was armed with a deadly weapon

in violation of Section 16-11-311, 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

WITNESS

SPTBG. PUBLIC SAFETY

[Signature]

ARREST WARRANT NUMBER

M-750181

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 10-22-18

SENTENCE MADE

Computer

FORFEITURE WARRANTS

Foreperson of Petit Jury

Date of Assessment and
Form Card Made

Computer

OFFICE OF THE ATTORNEY GENERAL

DOCKET NO.

10000-5001

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
vs.

RASHAD TRAMAINNE ALLEN

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330 (A)
CDR Code: 0139
Class FEL-A(V)

LED
CLERK OF COURT
SPARTANBURG COUNTY

2018 OCT 26 PM 2:00

M. HOPE BLACKLEY

WITNESSES

SPTBG. PUBLIC SAFETY DEPT.

[Handwritten signature]

ARREST WARRANT NUMBER

M-750182

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 10-22-10

SENTENCE MADE
VERDICT
Computer

WARRANTS
SIGNATURE

[Handwritten initials]

Foreperson of Grand Jury
Date:

Computer

DOCKET NO. -

10-03-2010 5882
The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 24 2010

TERM

THE STATE
vs.

RASHAD TRAMAINNE ALLEN

Indictment for
KIDNAPPING

SC Code: 16-03-910
CDR Code: 0095
Class FEL-A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
OCT 26 PM 2:00
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)


INDICTMENT

At a Court of General Sessions, convened on 9 OCT 22 2010 , the
Grand Jurors of Spartanburg County present upon their oath:

KIDNAPPING

The Defendant, Rashad Tramaine Allen, did in Spartanburg County, on or about September 16, 2010, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Doris Letmon, while being armed with a firearm, without authority of law, all in violation of Section 16-03-910, *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