

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

J. Ernest Kinard, Jr., Circuit Court Judge

RECEIVED

AUG - 2 2013

S.C. Supreme Court

SOLOMON SMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000254

APPENDIX

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) COURT OF GENERAL SESSIONS
) 2012-GS-40-03073

State of South Carolina,

Plaintiff,

vs.

Solomon Z. Smith,

Defendant.

TRANSCRIPT OF RECORD

July 20, 2011
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

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

RICHARD C.R. CATHCART, ASSISTANT SOLICITOR
Attorney for the Plaintiff

TYNIKA A. CLAXTON, ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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JULY 20, 2011

MR. CATHCART: Solomon Smith.

THE CLERK: Please raise your right hand.

(WHEREUPON, the Defendant complies.)

THE CLERK: Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: Yes, ma'am.

THE CLERK: Thank you.

THE COURT: Yes, sir?

MR. CATHCART: May it please the Court, Your Honor?

Standing before you is Solomon Smith. He is here pleading guilty to attempted armed robbery. This is a charge that carries up to 20 years in jail.

He is represented by Ms. Claxton, of the private bar.

THE COURT: All right, Ms. Claxton, you represent Solomon Smith, is that correct?

MS. CLAXTON: I do, Your Honor.

THE COURT: Have you explained to him the indictment, the possible punishment, and his constitutional rights?

MS. CLAXTON: I have, Your Honor.

1 THE COURT: And it appears it has not been
2 presented -- it has been presented?

3 MR. CATHCART: It has, Your Honor. For some
4 reason the stamp has been kind of light this past
5 month.

6 THE COURT: Okay. So it has been presented to
7 the Grand Jury.

8 In your opinion, does he understand the
9 charge, the punishment, and his rights?

10 MS. CLAXTON: He does, Your Honor.

11 THE COURT: And how does he wish to plead?

12 MS. CLAXTON: Guilty.

13 THE COURT: And do you agree with that
14 decision?

15 MS. CLAXTON: I do.

16 THE COURT: And you are Solomon Smith?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And, sir, you are pleading guilty
19 to attempted armed robbery, is that correct?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And how old are you, sir?

22 THE DEFENDANT: Twenty.

23 THE COURT: And, sir, are you on probation or
24 parole?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Which one?
2 THE DEFENDANT: Probation.
3 THE COURT: For what?
4 THE DEFENDANT: Strong armed.
5 THE COURT: How long are you on probation for?
6 THE DEFENDANT: Two years, ma'am.
7 THE COURT: And, sir, are you married?
8 THE DEFENDANT: No, ma'am.
9 THE COURT: Children?
10 THE DEFENDANT: Yes, ma'am.
11 THE COURT: How many?
12 THE DEFENDANT: Three.
13 THE COURT: Their ages?
14 THE DEFENDANT: Three, two and one.
15 THE COURT: Do they live with you, sir?
16 THE DEFENDANT: Yes, ma'am.
17 THE COURT: They live with you?
18 THE DEFENDANT: Yes, ma'am.
19 THE COURT: And who do you live with?
20 THE DEFENDANT: My mother.
21 THE COURT: And do you work, sir, when you are
22 not in jail?
23 THE DEFENDANT: Yes, ma'am.
24 THE COURT: And where do you work?
25 THE DEFENDANT: Columbia Farms.

1 THE COURT: Sir, have you been treated for the
2 abuse of alcohol or drugs?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Mental illness?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Within the last 24 hours have you
7 taken any medication, drugs or alcohol?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Are you aware of any physical,
10 emotional or nervous problem that might keep you
11 from understanding what you are doing today?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: And you are pleading guilty to
14 attempted armed robbery, is that correct?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Listen closely to the Solicitor
17 and officers as they state the facts, sir.

18 MR. CATHCART: May it please the Court, Your
19 Honor? Standing with me is Officer Gainey and
20 Officer Harden of the Columbia Police Department.
21 I believe Officer Gainey will be giving the facts
22 of this case, Your Honor.

23 If you would state your name for the record
24 and tell the Court basically what happened.

25 OFFICER GAINEY: Officer Gainey, of the

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Columbia Police Department.

The night that the event happened, me and Officer Harden were on foot on routine patrol observing the foot traffic coming from the Five Points area.

We were standing on the 1900 block of Greene Street. We observed the victim walking down the street on the sidewalk. Running up behind the victim was the Defendant and the Co-Defendant in the case. They flanked off of each other, and both of them jumped the victim at the same time, tackling him to the ground. The Co-Defendant pistol-whipped the victim. The Defendant was at the legs of the victim trying to obtain the items in the victim's pocket while also restraining his legs and striking the victim.

We ran up on them, both drawing our weapons, asking them to stop what they were doing, in which case both the Defendant and the Co-Defendant ran from us.

They were detained within 30 minutes of running from us.

MR. CATHCART: Your Honor, the Co-Defendant in this case is Harkeen Davis. He is still pending in our office, with the Public Defender's Office.

1 This Defendant, Mr. Davis, as soon as the
2 officers were apprehending them, they ran off.
3 They did a perimeter. Harkeen Davis was caught a
4 short time later. This Defendant ran off, actually
5 ran out of his shoes, was found up on Blossom
6 Street hiding underneath a car wearing just socks.
7 He was identified, both of them, by Officer Gainey
8 as the people who committed this act.

9 The pistol was found dropped from Mr. Davis,
10 who had the pistol, who was pistol-whipping the
11 victim at the time, threw it when he ran. The
12 pistol was recovered. It was a .22 caliber
13 semi-automatic handgun.

14 This Defendant gave a statement admitting to
15 doing this, basically indicating that he was an
16 unwilling participant, saying that Harkeen Davis
17 apparently allegedly kidnapped him earlier that day
18 and was making him ride around with him and then
19 made him commit this crime under a threat of him
20 being shot.

21 He also said that the reason he ran from the
22 police is because Harkeen Davis said he would shoot
23 him if he didn't run from the police. Obviously,
24 not very believable.

25 This Defendant's prior record dates back from

1 2009. He was originally charged with carjacking
2 pursuant to a plea offer. He pled on -- the court
3 date would be September the 14th of 2010 to strong
4 armed robbery and possession of a stolen motor
5 vehicle. The facts of that case were that the
6 Defendant on Garners Ferry Road acted as if he had
7 a pistol, told a 52-year-old lady to get out of the
8 car or he would shoot her in the face. That is
9 what he pled guilty to. I just point out to you
10 that he pled guilty to that about a month before he
11 committed this crime.

12 So when he says he was on probation for about
13 two years, he was on probation for about one month
14 when he went in the middle of Five Points and he
15 and his Co-Defendant, like jackals, surrounded this
16 victim and beat him down to the ground. But for
17 the fact that the Columbia Police Department was
18 there surveying that area, the victim would have
19 been robbed. They couldn't get the wallet out of
20 his pocket because it was buttoned at the time.
21 But for the fact that these officers were there,
22 the victim was not hurt worse than he was.

23 I have spoken with the victim. He is a
24 student at the University of South Carolina. He's
25 at home out of state for the summer. He'll be back

1 here coming up. He is interested in this case, but
2 he did not need to be here for this plea. I told
3 him I would keep him informed about what is going
4 on as to this plea.

5 Anything else?

6 OFFICER GAINNEY: I think that covers it.

7 MR. CATHCART: Your Honor, that is basically
8 the facts. This did occur here on Greene Street,
9 Five Points, Richland County. That is the extent
10 of the State's case.

11 THE COURT: All right, thank you.

12 Sir, do you agree with the facts as stated by
13 the State?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And are you in fact guilty of the
16 charges that he just stated, sir?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Sir, do you understand the
19 possible maximum sentence I can sentence you to,
20 sir, is 20 years in jail? Do you understand that,
21 sir?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And, all right. And this is his
24 first strike?

25 MR. CATHCART: Yes, Your Honor.

1 THE COURT: All right, sir, you understand
2 that this charge is classified as violent, most
3 serious, meaning that if you were to get another --
4 this is your first strike. You get two strikes,
5 sir. The Solicitor could pursue a case against you
6 for life without parole. Do you understand that,
7 sir?

8 THE DEFENDANT: Yes, ma'am.

9 MR. CATHCART: Your Honor, I would point out
10 that the case that he pled to beforehand, the
11 strong armed robbery, that was a reduction from the
12 carjacking, would have been another strike, so he
13 has already had the benefit of that prior plea
14 offer.

15 THE COURT: Do you understand that, sir?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: That this could possibly be your
18 second strike, but it was pled down previously, so
19 this is your first?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: They could be pursuing this --
22 what he is saying is they could be pursuing this as
23 life without parole. Do you understand that, sir?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Knowing that, you still wish to

1 plead guilty to this charge?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And, sir, you may have discussed
4 parole and parole eligibility with your lawyer and
5 other people, but until I sentence you, no one can
6 tell you when and if ever you will be eligible for
7 parole or under what conditions. You should assume
8 that you will serve the entire time in jail that I
9 sentence you to. Do you understand this, sir?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you fully understand the nature
12 of the charges against you and the range of
13 possible punishment?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: You understand, sir, when you
16 plead guilty that you give up certain
17 constitutional rights. Do you understand that,
18 sir?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: You have the right to a jury
21 trial, sir. At a jury trial I would instruct the
22 jury that there is a presumption -- that you are
23 presumed to be innocent, sir. The State would have
24 to prove your guilt beyond a reasonable doubt. Do
25 you understand that, sir?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: You and your attorney would have
3 the opportunity to question any witnesses against
4 you, as well as the right to present witnesses for
5 your defense. You would have the right, sir, to
6 remain silent. If you did not wish to testify, you
7 would not have to testify. Do you understand that,
8 sir?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: You understand the burden will be
11 solely upon the State to prove your guilt beyond a
12 reasonable doubt? Do you understand that, sir?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Sir, by pleading guilty you waive
15 these constitutional rights that I just explained
16 to you. Do you wish to waive your constitutional
17 rights, sir?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Are there any negotiations?

20 MR. CATHCART: No, ma'am.

21 THE COURT: And, sir, you are represented by
22 Ms. Tynika Claxton. Are you satisfied with her
23 representation?

24 THE DEFENDANT: I am, yes, ma'am.

25 THE COURT: And have you talked with her for

1 as long as is necessary for her to properly
2 represent you?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Do you need any more time to talk
5 with her?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: Have you understood your talks
8 with her?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Has she done everything for you
11 that you feel she could have done or should have
12 done?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Are you completely satisfied with
15 your lawyer's services?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Has anyone promised you anything
18 in exchange for your guilty plea today?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Are you pleading guilty of your
21 own free will?

22 THE DEFENDANT: I am, yes, ma'am.

23 THE COURT: Is anyone forcing you to plead
24 guilty?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: And are you pleading guilty
2 because you are guilty, sir?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Have you understood my questions?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Is there anything you would like
7 to ask me, sir?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Has anyone suggested to you how to
10 answer my questions?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Have you been absolutely truthful
13 in each and every question given to the Court
14 today?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Sir, you understand you have the
17 right to appeal the guilty plea and the sentence of
18 the Court within ten days of today's date? Do you
19 understand that, sir?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: If you cannot afford an attorney
22 for the appeal you will be appointed an attorney at
23 no cost to you. Do you understand that, sir?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And, sir, you wish for me to

1 accept your plea of guilty to attempted armed
2 robbery, is that correct?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right. I find that there is a
5 substantial factual basis for the plea. I also
6 find that the Defendant's decision to plead guilty
7 is freely, voluntarily, knowingly and intelligently
8 made. That the Defendant has indicated to me that
9 he is completely satisfied with his attorney who is
10 representing him. He has indicated to me that he
11 wishes that I accept his plea of guilty.

12 I will accept your plea, sir. I'll be glad to
13 hear -- anything else from the Solicitor?

14 MR. CATHCART: No, ma'am.

15 THE COURT: I will be glad to hear from Ms.
16 Claxton.

17 MS. CLAXTON: May it please the Court, Your
18 Honor? This is Solomon Smith. As he stated, he is
19 20 years old. He was born and raised here in
20 Columbia. He went to the tenth grade at C. A.
21 Johnson High School here in Columbia. He does have
22 his GED. He lives with his mother and his fiancée
23 and has three children. He worked at Columbia
24 Farms as he stated prior to this incident.

25 This is a tough case. Ever since I had it, he

1 has admitted his guilt in this case. In
2 mitigation, he did not have the weapon in this
3 case. The Co-Defendant did have the weapon. He is
4 here taking full responsibility for what he did and
5 is very remorseful for that.

6 He has been in jail, Your Honor, for I think
7 it will be nine months on the 29th of this month.
8 And he understands the seriousness of these
9 charges. I have explained it to him and he
10 understands it. We've been talking about it for
11 nine months.

12 His mother, his father, and other family
13 members are present in the courtroom. I believe
14 his mother would like to address the Court at the
15 appropriate time, and he also would like to address
16 the Court.

17 What we're asking for, Your Honor, is a short
18 active sentence. He tells me he has learned his
19 lesson. And I do believe him. He does seem
20 remorseful. But, again, he would like to address
21 the Court, and his mother would also like to
22 address the Court at the appropriate time.

23 THE COURT: All right. I will be glad to hear
24 from him.

25 THE DEFENDANT: Your Honor, I just want to

1 take the time to -- I understand the victim is not
2 here, but I do want to apologize to the victim. I
3 feel very bad about what happened. My heart goes
4 out to him. And I just I pray for the victim
5 plenty of nights at the county jail, praying that
6 what happened didn't affect his life, you know, and
7 that he can make it each and every day without
8 going in fear, Your Honor.

9 And I just want to apologize to my family and
10 everything for putting them through this.

11 That's all I want to say.

12 Thank you, Your Honor.

13 THE COURT: All right. Thank you.

14 I will be glad to hear from his family
15 members.

16 MS. DASH: Good morning, Your Honor. My name
17 is Dorothy Dash.

18 THE COURT: Ma'am, can you speak into the
19 microphone? My court reporter can't hear you.

20 MS. DASH: My name is Dorothy Dash.

21 THE COURT: Yes, ma'am?

22 MS. DASH: And that's my son, Solomon Smith.
23 And I raised him to go to church and be
24 responsible. And he has three children. He is a
25 very good father to his children. So I apologize

1 for all he's done. And I know he is sorry because
2 I visit him every Tuesday, and I know he is praying
3 asking God to forgive him. So I just ask you to,
4 you know, have mercy on him.

5 Thank you.

6 THE COURT: Thank you, ma'am.

7 Anything else? Anything else from the State?

8 MR. CATHCART: Your Honor, just one thing. I
9 just want to make sure that is on the record, that
10 needs to be on the record, is that while this
11 occurred in Five Points, when he attacked the
12 victim, it is not that he was just walking in Five
13 Points, he was turning into his house, to his
14 apartments, so right on the foot of his -- front of
15 his place where he lived is where he was attacked,
16 kicked down and pistol-whipped.

17 THE COURT: All right.

18 MS. CLAXTON: I did want to say -- clear up
19 about one thing. I believe he said that he -- his
20 probationary period was two years, not that he had
21 served two years on probation, I think that is how
22 much time he would have.

23 THE COURT: All right. The sentence of the
24 Court would be that the Defendant will be committed
25 to the State Department of Corrections for a

1 determinant sentence of ten years. He will be
2 given credit for the time he served of 254 days at
3 the Alvin S. Glenn Detention Center.

4 Thank you. Good luck to you, sir.

5 MR. CATHCART: Thank you, Your Honor.

6 THE DEFENDANT: Thank you.

7 (WHEREUPON, the proceedings were concluded.)

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(END OF TRANSCRIPT)

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appropriate [2] 17/15 17/22	coming [2] 7/4 10/1	face [1] 9/8
area [2] 7/5 9/18	commit [1] 8/19	fact [3] 9/17 9/21 10/15
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around [1] 8/18	complete [1] 21/11	factual [1] 16/5
ask [2] 15/7 19/3	completely [2] 14/14 16/9	family [3] 17/12 18/9 18/14
asking [3] 7/18 17/17 19/3	complies [1] 3/4	Farms [2] 5/25 16/24
ASSISTANT [1] 1/18	concluded [1] 20/7	
assume [1] 12/7	conditions [1] 12/7	
at [14] 7/11 7/13 8/11 9/20 9/24 9/25		

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 Fifth [2] 21/9 21/23
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 fully [1] 12/11
 further [1] 21/16

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 Grand [1] 4/7
 Greene [2] 7/6 10/8
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 most [1] 11/2
 mother [5] 5/20 16/22 17/12 17/14 17/21
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 Mr. Davis [2] 8/1 8/9
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 past [1] 4/4
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 pending [1] 7/24
 people [2] 8/8 12/5
 perimeter [1] 8/3
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 physical [1] 6/9
 pistol [7] 7/13 8/9 8/10 8/10 8/12 9/7-
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 pistol-whipped [2] 7/13 19/16
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 Plaintiff [2] 1/5 1/18
 plea [10] 9/2 10/2 10/4 11/13 14/18
 15/17 16/1 16/5 16/11 16/12

<p>P</p> <p>plead [5] 4/11 12/1 12/16 14/23 16/6 pleading [6] 3/14 4/18 6/13 13/14 14/20 15/1 pled [5] 9/2 9/9 9/10 11/10 11/18 plenty [1] 18/5 pocket [2] 7/15 9/20 point [2] 9/9 11/9 Points [5] 7/5 9/14 10/9 19/11 19/13 police [5] 6/20 7/1 8/22 8/23 9/17 possession [1] 9/4 possible [3] 3/23 10/19 12/13 possibly [1] 11/17 pray [1] 18/4 praying [2] 18/5 19/2 present [2] 13/4 17/13 presented [3] 4/2 4/2 4/6 presumed [1] 12/23 presumption [1] 12/22 previously [1] 11/18 prior [3] 8/25 11/13 16/24 private [1] 3/18 probation [6] 4/23 5/2 5/5 9/12 9/13 19/21 probationary [1] 19/20 problem [1] 6/10 proceedings [4] 2/5 2/14 20/7 21/12 promised [1] 14/17 properly [1] 14/1 prove [2] 12/24 13/11 Public [1] 7/25 punishment [3] 3/23 4/9 12/13 pursuant [1] 9/2 pursue [1] 11/5 pursuing [2] 11/21 11/22 putting [1] 18/10</p>	<p>routine [1] 7/3 RPR [2] 1/24 21/23 run [1] 8/23 running [2] 7/8 7/22</p>	<p>taken [1] 6/7 taking [1] 17/4 talk [1] 14/4 talked [1] 13/25 talking [1] 17/10 talks [1] 14/7</p>
<p>Q</p> <p>question [2] 13/3 15/13 questions [2] 15/4 15/10</p>	<p>S</p> <p>said [3] 8/21 8/22 19/19 same [1] 7/11 satisfied [3] 13/22 14/14 16/9 say [2] 18/11 19/18 saying [2] 8/16 11/22 School [1] 16/21 second [1] 11/18 seem [1] 17/19 semi [1] 8/13 semi-automatic [1] 8/13 sentence [8] 10/19 10/19 12/5 12/9 15/17 17/18 19/23 20/1 September [1] 9/3 September the [1] 9/3 serious [1] 11/3 seriousness [1] 17/8 serve [1] 12/8 served [2] 19/21 20/2 services [1] 14/15 SESSIONS [2] 1/1 21/14 she [2] 14/10 14/11 shoes [1] 8/5 shoot [2] 8/22 9/8 short [2] 8/4 17/17 shot [1] 8/20 should [2] 12/7 14/11 sidewalk [1] 7/8 silent [1] 13/6 since [1] 16/25 Smith [7] 1/7 3/2 3/13 3/20 4/16 16/18 18/22 socks [1] 8/6 solely [1] 13/11 SOLICITOR [4] 1/18 6/16 11/5 16/13 Solomon [7] 1/7 3/2 3/13 3/20 4/16 16/18 18/22 son [1] 18/22 soon [1] 8/1 sorry [1] 19/1 SOUTH [7] 1/1 1/4 1/9 9/24 21/4 21/9 21/14 speak [1] 18/18 spoken [1] 9/23 stamp [1] 4/4 standing [3] 3/13 6/19 7/6 State's [1] 10/10 stated [4] 10/12 10/16 16/18 16/24 statement [1] 8/14 stolen [1] 9/4 stop [1] 7/18 street [4] 7/7 7/8 8/6 10/8 strike [4] 10/24 11/4 11/12 11/18 strikes [1] 11/4 striking [1] 7/16 strong [3] 5/4 9/3 11/11 student [1] 9/24 substantial [1] 16/5 suggested [1] 15/9 summer [1] 9/25 sure [1] 19/9 surrounded [1] 9/15 surveying [1] 9/18 swear [1] 3/5</p>	<p>talks [1] 14/7 tells [1] 17/18 ten [2] 15/18 20/1 tenth [1] 16/20 testify [2] 13/6 13/7 thank [9] 3/9 10/11 18/12 18/13 19/5 19/6 20/4 20/5 20/6 that [68] that's [2] 18/11 18/22 Their [1] 5/13 there [6] 9/18 9/21 12/22 13/19 15/6 16/4 they [11] 5/15 5/17 6/17 7/10 7/18 7/21 8/2 8/3 9/19 11/21 11/22 thing [2] 19/8 19/19 think [3] 10/6 17/6 19/21 this [34] threat [1] 8/19 three [4] 5/12 5/14 16/23 18/24 threw [1] 8/11 through [1] 18/10 today [3] 6/11 14/18 15/14 today's [1] 15/18 told [2] 9/7 10/2 tough [1] 16/25 traffic [1] 7/4 TRANSCRIPT [3] 1/6 20/25 21/11 treated [1] 6/1 trial [3] 12/21 12/21 21/12 true [1] 21/11 truth [3] 3/6 3/6 3/6 truthful [1] 15/12 trying [1] 7/14 Tuesday [1] 19/2 turning [1] 19/13 Twenty [1] 4/22 TYNIKA [2] 1/19 13/22</p>
<p>R</p> <p>raise [1] 3/3 raised [2] 16/19 18/23 ran [7] 7/17 7/19 8/2 8/4 8/5 8/11 8/21 range [1] 12/12 reason [2] 4/4 8/21 reasonable [2] 12/24 13/12 record [6] 1/6 6/23 8/25 19/9 19/10 21/11 recovered [1] 8/12 reduction [1] 11/11 relative [1] 21/13 remain [1] 13/6 remorseful [2] 17/5 17/20 reporter [5] 1/25 18/19 21/1 21/8 21/23 represent [2] 3/20 14/2 representation [1] 13/23 represented [2] 3/17 13/21 representing [1] 16/10 responsibility [1] 17/4 responsible [1] 18/24 restraining [1] 7/15 RICHARD [1] 1/18 RICHLAND [4] 1/2 10/9 21/5 21/14 ride [1] 8/18 rights [5] 3/24 4/9 12/17 13/15 13/17 Road [1] 9/6 robbed [1] 9/19 robbery [6] 3/14 4/19 6/14 9/4 11/11 16/2</p>	<p>T</p> <p>tackling [1] 7/12</p>	<p>U</p> <p>under [2] 8/19 12/7 underneath [1] 8/6 understand [19] 4/8 10/18 10/20 11/1 11/6 11/15 11/23 12/9 12/11 12/15 12/17 12/25 13/7 13/10 13/12 15/16 15/19 15/23 18/1 understanding [1] 6/11 understands [2] 17/8 17/10 understood [2] 14/7 15/4 University [1] 9/24 until [1] 12/5 unwilling [1] 8/16 upon [1] 13/11</p> <p>V</p> <p>vehicle [1] 9/5 very [4] 8/24 17/5 18/3 18/25 victim's [1] 7/15 violent [1] 11/2 visit [1] 19/2 voluntarily [1] 16/7</p> <p>W</p> <p>waive [2] 13/14 13/16 walking [2] 7/7 19/12 wallet [1] 9/19 was [25] We [3] 7/6 7/7 7/17</p>

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 WHEREUPON [4] 2/4 2/13 3/4 20/7
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FORM 5

2012014004047

STATE OF SOUTH CAROLINA)

County of RICHLAND)

IN THE COURT OF COMMON PLEAS

SOLOMON ZACHARIAH SMITH #346955)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2012 JUN 11 PM 4:24
JANETTE W. MCBRIDE
C.P. & G.S.

RICHLAND COUNTY
FILED

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention LOWER YARD TIGER RIVER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence RICHLAND COUNTY COURT, 1701 MAIN ST, COLUMBIA, SC 29201
3. Name(s) of co-defendant(s) (if any) HAKEM DAVIS
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-400-3073 ATTEMPTED ARMED ROBBERY

- (b) _____
- (c) _____

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

- (a) July 20, 2011 / 10 YRS
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence? ^{NO}
MY ATTORNEY SAID SHE WOULD FILE AN APPEAL, BUT NEVER FILED IT.

8. If you answered Ayes@ to (7), list:

- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. N/A
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. N/A
 - iii. _____
- (c) the date of each such result:
 - i. _____
 - ii. N/A
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. N/A
 - iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) WAITING FOR MY ATTORNEY TO FILE THE APPEAL AS SHE SAID SHE WOULD.

(b) _____

(c) _____

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

(a) INELLECTIVE ASSISTANT OF COUNSEL

(b) _____

(c) _____

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

(a) WILL AMEND THE GROUNDS AND FACTS LATER

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction: NO

(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? _____

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

N/A

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

i. _____

ii. _____

iii. _____

N/A

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

N/A

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

N/A

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

i. _____

ii. _____

iii. _____

iv. _____

N/A

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

NONE

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

i. _____

ii. _____

iii. _____

NONE

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: Ineffective Assistant of Counsel; WAS WAITING FOR MY APPEAL TO BE FILED BEFORE FILING THIS (PCR); WILL AMEND GROUNDS LATER.

(a) _____

(b) _____

(c) _____

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

(a) your arraignment and plea? YES

(b) your trial, if any? NO

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

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

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

i. TYNEKA CLAXTON; CLAXTON LAW FIRM; P.O. BOX 50 BLYTHEWOOD, SC

ii. _____

iii. _____

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

i. TRIAL-GUILTY PLEA / ATTORNEY: TYNEKA CLAXTON

ii. _____

iii. _____

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

REVERSED / VACATED

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of RICHLAND)

VERIFICATION

I, SALOMON ZACHARIAH SMITH, 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.

Salomon Z. Smith

SWORN to and subscribed before me this 27th day of April, 2012

D. Kevin Mann (L.S.)
D. Kevin Mann Notary Public

My Commission Expires: May 18 2015

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

I, SOLOMON ZACHERIAH SMITH, 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.

Solomon Z. Smith
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of April, 2012.

D. Kevin Morrow
Notary Public.
D. Kevin Morrow

My Commission Expires: May 18, 2015

RICHLAND COUNTY
FILED
2012 JUN 11 PM 4: 25
JENNIFER W. MCCRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 SMITH Solomon Z -)
 # 00346955,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2012CP4004047

RICHLAND COUNTY
 FILED
 2012 JUL 12 AM 10:07
 JEANETTE W. MCBRIDE
 C.C.P. & G.S.

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 11, 2012, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was indicted at the July 2011 term of the Richland Grand Jury for Attempted Arm Robbery (2011-GS-40-3073).² He was represented by Tynika Claxton, Esquire, on the charge(s). On July 20, 2011, the Applicant appeared before The Honorable DeAndrea G. Benjamin where he pled guilty and was sentenced to ten (10) years imprisonment.

Direct Appeal

The Applicant did not appeal his conviction and/or sentence .

¹<http://www4.rcgov.us/publicindex/PlCaseDetails.aspx?County=40+&Casenum=2012CP4004047&CourtType=G&CaseType=Civil&CourtAgency=40002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00346955>

The application for post conviction relief (PCR) was filed June 11, 2012.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

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

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

- (a) Intellectual Assistant of Counsel
- (b) _____
- (c) _____

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

- (a) Will Amend the grounds and facts later
- (b) _____
- (c) _____

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.
 SMITH Solomon Z - State's Return - (2012CP4004047)
 Page 2 of 6

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

REVERSED / VACATED

IV.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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, 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, 80

L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). Even 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 (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 cannot be conclusively refuted by the record. 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).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Alexis K. Lindsay, Esquire regarding when the hearing should be set.⁴

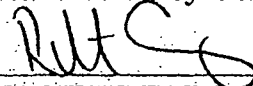
Respectfully submitted,

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July 3, 2012

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
County of Richland)	2012-CP-40-4047
)	
SOLOMON SMITH,)	
)	
APPLICANT,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
STATE OF SOUTH CAROLINA,)	
)	
RESPONDENT,)	

December 7, 2012
Columbia, South Carolina

BEFORE:

THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

APPEARANCES:

WILLIAM JORDAN, ESQ.
Attorney for the Applicant

ROBERT CORNEY, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KAREN AMBROZIAK
Official Court Reporter

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(No exhibits were introduced)

CERTIFICATE OF REPORTER 28

1 MR. CORNEY: May it please the Court, Your Honor.

2 THE COURT: Okay.

3 MR. CORNEY: Your Honor, the State calls the Post
4 Conviction Relief action of Solomon Smith. It's docket
5 number 2012-CP-40-4047.

6 Mr. Smith was true bill indicted at the July 2011
7 term of the Richland County grand jury for attempted armed
8 robbery. That was indictment number 2011-GS-40-3073.

9 Mr. Smith pled guilty July 20th, 2011 before Judge
10 Benjamin as indicted to that charge without recommendation
11 or negotiation.

12 He was sentenced to ten years imprisonment, did not
13 have a direct appeal from that plea by the time of the PCR
14 application, June 11th, 2012. He is represented today by
15 Mr. Will Jordan.

16 Just as a preliminary matter me for purposes in the
17 record, Your Honor, me and Mr. Jordan have discussed it
18 briefly, and I think it would be a good idea to start the
19 PCR hearing just by advising Mr. Smith, you know, of the
20 potential consequences and benefits of the Post Conviction
21 Relief application just to make sure we have it on the
22 record. He understands what he's doing in these
23 proceedings.

24 THE COURT: Okay. Mr. Smith, I don't know anything
25 about your case. You understand that?

1 THE APPLICANT: Yes, sir.

2 THE COURT: And we're here, and you can go forward.
3 Apparently, you're going forward saying your attorney was
4 ineffective, although it's pretty hard to win on a guilty
5 plea.

6 If you prevail on a PCR, it doesn't go away. All
7 that happens is you get a new trial which you can plead
8 again or you can get a trial, but you can be sentenced to
9 more time than this, it looks like. That's just the risk
10 that you run.

11 If there are other charges that are dismissed -- I
12 don't know anything about it at this point -- they can
13 also reindict those charges, especially.

14 Are we ready to go?

15 MR. CORNEY: And that's all from the State, just I'll
16 turn it over to Mr. Jordan. Thank you, Your Honor.

17 MR. JORDAN: May it please the Court, Your Honor.
18 I'm Will Jordan on behalf of Mr. Smith. As Mr. Corney
19 stated, we're here seeking post conviction relief on the
20 grounds of ineffective assistance of counsel.

21 Mr. Smith was, as Mr. Corney said, charged with
22 attempted armed robbery and did plead guilty to that
23 charge. We have -- I'll kind of summarize our argument
24 and then call Mr. Smith to the stand.

25 A brief summary, we have an argument that Ms. Claxton

1 who represented Mr. Smith as trial counsel advised
2 Mr. Smith that it was in his best interest to pled guilty
3 to the charge pending against him.

4 We have three reasons that that advice was inadequate
5 and led to Mr. Smith entering a plea of guilty, not based
6 on enough information to make a knowing and intelligent
7 plea of guilty.

8 Your Honor, our first argument is that Ms. Claxton
9 failed to properly investigate the case before advising
10 Mr. Smith to enter a guilty plea.

11 Mr. Smith will testify that he asked Ms. Claxton to
12 interview the police officers who are involved in this
13 case, the codefendant who is also charged with him, as
14 well as the victim of the case -- I mean of the crime.

15 Ms. Claxton didn't interview any of those
16 individuals. Not knowing the extent of the State's
17 evidence against him, he wasn't able to enter a knowing
18 and voluntary plea.

19 Second, Your Honor, Ms. Claxton failed to adequately
20 advise Mr. Smith of the range of the sentence he was
21 facing. Mr. Smith will testify more about that, but
22 again, not knowing the full possibility of the sentence
23 that he could receive, he wasn't able to make a knowing
24 and intelligent plea decision.

25 Third, Your Honor, Mr. Smith will testify today that

1 he would testify at trial that he did not know the
2 codefendant had a gun at the time of this incident.

3 Ms. Claxton failed to advise him that attempted armed
4 robbery requires the State to prove that he had a specific
5 intent to commit the crime that he was charged with.
6 Therefore, if the jury didn't believe Mr. Smith's
7 testimony that he didn't know the codefendant had a gun,
8 he couldn't have been convicted of attempted armed
9 robbery, and he didn't know that information at the time
10 that he decided to enter a guilty plea.

11 Finally, Your Honor, Mr. Smith asked Ms. Claxton to
12 file an appeal on his behalf after the time that he was
13 sentenced. Mr. Smith will testify that she indicated that
14 she would do that for him, and the appeal was never filed.

15 Your Honor, that's a summary of the grounds that
16 we're here seeking relief of Mr. Smith.

17 If it pleases the Court, at this time, I'll call
18 Mr. Smith to the stand.

19 THE COURT: All right. Come around.

20 THE BAILIFF: Place your left hand on the Bible.
21 Raise your right hand and face the clerk.

22 SOLOMON SMITH, after being duly sworn,
23 testified as follows:

24 THE COURT: Please have a seat there, sir. Speak
25 into that microphone. State your full name for the

1 record.

2 THE WITNESS: Solomon Smith.

3 DIRECT EXAMINATION:

4 BY MR. JORDAN:

5 Q Good morning, Mr. Smith.

6 A Good morning.

7 Q All right. You were charged with armed robbery; is
8 that correct, sir?

9 A Yes, sir.

10 Q Okay. And you ultimately pled guilty to that charge,
11 correct, sir?

12 A Yes, sir.

13 Q Did you plead guilty to the charge of armed robbery,
14 attempted armed robbery, based on the advice of your
15 counsel at the time?

16 A Yes, I did.

17 Q And who was your lawyer at the time?

18 A Tyneka Claxton.

19 Q Did Ms. Claxton advise you to plead guilty?

20 A Yes.

21 Q Did you rely on Ms. Claxton's advice to make a
22 decision to enter a guilty plea?

23 A Yes, I did.

24 Q Before you went into your sentencing hearing, at the
25 hearing where you pled guilty, how many times did you meet

1 with Ms. Claxton?

2 A Three.

3 Q Did Ms. Claxton ever provide you with discovery
4 materials for you to review that she received by the
5 State?

6 A Not physically.

7 Q Did you ask her about that?

8 A Yes, I did.

9 Q Did you ask Ms. Claxton to interview the police
10 officers who had arrested you and who had allegedly seen
11 the incident?

12 A Yes, I did.

13 Q Did she do that?

14 A No, she didn't.

15 Q Did you ask Ms. Claxton to interview the codefendant,
16 who was also charged?

17 A Yes.

18 Q Did she do that?

19 A No, she didn't.

20 Q Mr. Smith, at the time that you entered a plea of
21 guilty, what did you understand about the possible range
22 of sentence that you were facing?

23 A Not more than five.

24 Q Say that again. I couldn't quite hear you.

25 A I wasn't getting -- it wasn't exceeding five years.

1 Q Okay. And where did that understanding come from?

2 A Ms. Claxton.

3 Q Before you walked into that sentencing hearing, did
4 you have any idea that you could be sentenced up to 20
5 years for the crime that you were charged with?

6 A No, I didn't.

7 Q Did you tell Ms. Claxton that you and your
8 codefendant did not intend or attempt to rob the victim?

9 A Yes, I did.

10 Q Did you tell Ms. Claxton that you did not have any
11 knowledge that your codefendant did not have a gun at the
12 time of the alleged crime?

13 A Yes, sir.

14 Q Did you understand at the time that you entered a
15 plea of guilty, that you would have to -- that the State
16 would have to prove beyond a reasonable doubt that you had
17 a specific intent to commit the crime that you were
18 charged with in order to convict you?

19 A No, I didn't.

20 Q Mr. Smith, did you ask Ms. Claxton to appeal your
21 case after you were sentenced?

22 A Yes.

23 Q And did she tell you that she would do that?

24 A Yes, she did.

25 Q Okay. Did she file an appeal?

1 A No, she didn't.

2 Q At the sentencing hearing, do you recall answering a
3 number of questions asked directly to you?

4 A Yes, I did.

5 Q Did you have a conversation with Ms. Claxton about
6 those questions before you entered the courtroom that day?

7 A Yes.

8 Q And what did she tell you about what you would be
9 asked?

10 A She told me I would be asked was I satisfied with my
11 lawyer and do -- do I agree with everything the solicitor
12 is saying, kind of like go with the flow. You know, just
13 answer yes or no.

14 Q Did she advise you how you should respond to the
15 questions that the judge asked?

16 A Yes, she did.

17 Q What did she tell you about that?

18 A She asked me did I agree with her, and yes, that I
19 understand that -- the allegations against me and that
20 they are true, so get the five years.

21 MR. JORDAN: Nothing further, Your Honor.

22 MR. CORNEY: Just very briefly, Your Honor.

23 CROSS-EXAMINATION:

24 BY MR. CORNEY:

25 Q Mr. Smith, it's your contention that you had no idea

1 you could receive up to 20 years in prison for the guilty
2 plea that you were about to enter, correct?

3 A Yes.

4 Q Okay. So when Judge Benjamin advised you on page ten
5 of the transcript, which I don't know if you have a copy
6 of that in front of you or if you had a chance to review
7 the plea transcript before coming in here?

8 A No, I haven't.

9 Q Okay.

10 MR. CORNEY: If I may approach the witness, Your
11 Honor?

12 THE COURT: All right, page ten, line 18. I already
13 read the transcript.

14 BY MR. CORNEY:

15 Q And that's what I'd point the Court's attention to,
16 but if the transcript reflects that you told Judge
17 Benjamin you understood that you could receive up to 20
18 years in jail at the guilty plea, you wouldn't contest
19 that in the transcript, would you?

20 A No, I wouldn't.

21 Q Additionally, at the guilty plea hearing, Judge
22 Benjamin also asked you at the very end, "Has anyone
23 suggested to you how to answer any of my questions?"

24 You said, "No, ma'am," correct?

25 A Yes.

1 Q So you're relying on Judge Benjamin at that point in
2 time?

3 A I was going on the advice of my lawyer.

4 Q In line with Judge Benjamin, essentially.

5 A (Indicating).

6 Q That was a yes?

7 A I guess.

8 Q Okay. And it's your contention today also that you
9 did not know that the codefendant had a gun on him at the
10 time this robbery occurred, correct?

11 A Yes.

12 Q You gave a statement to the police before the guilty
13 plea after you were arrested?

14 A No, I didn't.

15 Q You didn't give a statement to police?

16 A No, I didn't.

17 Q Okay. So it wasn't your contention at any point in
18 time that the codefendant had threatened to shoot you if
19 you didn't participate in any of the robberies?

20 A No, I didn't.

21 Q All right. So that was a misstatement by the
22 solicitor on the record?

23 A Yes.

24 MR. CORNEY: Your Honor, that's all the questions I
25 have of Mr. Smith.

1 THE COURT: All right.

2 MR. CORNEY: Thank you very much.

3 MR. JORDAN: No further questions, Your Honor.

4 THE COURT: Step down.

5 MR. JORDAN: That would be all the witnesses for

6 the --

7 THE COURT: All right.

8 MR. JORDAN: -- applicant, Your Honor.

9 MR. CORNEY: Your Honor, the State would call
10 Ms. Tyneka Claxton to the stand, please.

11 THE COURT: Okay.

12 TYNEKA CLAXTON, after being duly
13 sworn, testified as follows:

14 THE CLERK: Please have a seat there. State your
15 full name for the record.

16 THE WITNESS: It's Tyneka Claxton.

17 DIRECT EXAMINATION:

18 BY MR. CORNEY:

19 Q Ms. Claxton, do you recall representing Mr. Smith on
20 the current charges that we're here for today?

21 A I do.

22 Q Okay. And how did you become involved in his
23 representation?

24 A I was appointed by the court to represent Mr. Smith.
25 There was a conflict with the Public Defender's Office.

1 Q Okay. Have you had an opportunity to review the
2 guilty plea transcript and your file before coming in here
3 today?

4 A I did.

5 Q Do you recall meeting with Mr. Solomon -- Mr. Smith
6 to discuss the charges he was facing?

7 A I do.

8 Q Okay. Any idea, recollection of how many times you
9 may have met with him? I believe Mr. Smith said three
10 times. Would you say that was accurate?

11 A I think it was probably four to five times, maybe
12 even more. I don't remember exactly.

13 Q Okay. And during those meetings, were you able to
14 review the indictments with him and the charges he was
15 facing?

16 A I did.

17 Q Were you able to review his constitutional rights
18 with him?

19 A I did.

20 Q And that included his right to a jury trial?

21 A I did.

22 Q All right. Were you able to review the potential
23 sentence he was facing?

24 A I did.

25 Q Okay. And that was zero to 20 years on the attempted

1 armed robbery?

2 A It is and I made him aware of that.

3 Q During your discussions, did you have any issues
4 communicating with him, or did he have any problems
5 participating in your discussions?

6 A No.

7 Q He seemed to understand what y'all were discussing
8 during the conversations?

9 A He did.

10 Q Now, from the outset of your representation, what was
11 his stance on the charges? Did he admit guilt? Did he
12 deny it? What was his stance in your discussion?

13 A To me, he always admitted his guilt. However, in his
14 statement to officers, he said that he was threatened at
15 gunpoint.

16 Q Okay. That was by the codefendant that he was with
17 that day?

18 A Yes.

19 Q Okay. And just as a brief factual background, if you
20 could, and I know you're kind of going from memory here,
21 could you give the Court just a very brief background of
22 how the arrest came about?

23 A Basically, it was -- it was an attempted armed
24 robbery that happened in Five Points. The officers saw
25 the crime being committed. They saw -- the officers saw

1 the crime firsthand being committed. He always said that,
2 you know, he was guilty of it. He knew the possible
3 penalties.

4 Q Okay. In your discussions with him and him saying
5 that, you know, it was the codefendant threatening him,
6 were you able to discuss with him how that may be a
7 triable issue, may be something you could raise at trial?

8 A Well, that was the statement he gave the police.
9 That wasn't what he told me.

10 Q At any point in time in your discussions with
11 Mr. Smith, did he ever indicate to you that he wished to
12 take this to trial?

13 A Never.

14 Q Now, regarding the discovery file, do you recall
15 receiving that from the State?

16 A Yes.

17 Q Okay. And did you have the opportunity to review it
18 with Mr. Smith?

19 A I did.

20 Q Okay. Did you -- were you ever able to give him a
21 copy of the discovery file?

22 A I did not give him a copy, but I did review it with
23 him.

24 Q Okay. And as part of that discovery file, were there
25 statements from the victim in there?

1 A It was.

2 Q Okay. Were you able to review that with Mr. Smith?

3 A I did.

4 Q Okay. Were there incident reports from the officers
5 involved in the arrest?

6 A There was.

7 Q All right. So you had a good idea, potentially, of
8 what they would have testified to at trial based on their
9 incident reports?

10 A I did.

11 Q Did you ever have the opportunity to interview those
12 officers?

13 A No, I did not.

14 Q His codefendant was charged in this crime, as well,
15 correct?

16 A He was.

17 Q Okay. And do you recall if he was appointed or
18 retained counsel on the charge?

19 A He was represented by the Public Defender's Office.
20 That's why I got Mr. Smith's case.

21 Q Okay. Did you ever have the opportunity to interview
22 this codefendant?

23 A I did not. I do believe that I -- I cannot remember
24 who his public defender was, but I do believe I spoke with
25 the public defender, but I don't recall who it was.

1 Q And his attorney obviously would have the ability to
2 stop you from talking with the codefendant?

3 A Exactly.

4 Q Okay. Do you recall if the victim was able to
5 identify Mr. Smith?

6 A Don't remember.

7 Q But as you said, Mr. Smith essentially admitted to
8 the -- to his guilt in the crime to the police in his
9 statement?

10 A He admitted his guilt to me, indicated that he did
11 not want a trial. He wanted to plead guilty, but I
12 believe his statement to the police was that he was forced
13 at gunpoint.

14 Q Okay. There was a -- I believe a .22 caliber handgun
15 found in close proximity to the actual robbery, correct?

16 A I believe so.

17 Q Based on your discussions with Mr. Smith, at any
18 point in time -- and I don't mean to sound repetitive, was
19 this ever going to be a trial? Was it ever something that
20 you were preparing for trial and he indicated he wanted a
21 trial?

22 A Never.

23 Q All right. Based on your discussions with Mr. Smith
24 and your review of the discovery and your investigation,
25 were you able to develop an opinion about the State's

1 ability to prove his guilt beyond a reasonable doubt at
2 trial?

3 A I do.

4 Q Okay. And what was that opinion?

5 A That he would be convicted if he had gone to trial.

6 Q All right. Do you recall discussing with him the
7 opportunity to enter the plea negotiations with the State?

8 A Yes. There were no plea negotiations.

9 Q No offers were ever extended by the State?

10 A No offers.

11 Q All right. And that was something you were able to
12 review with Mr. Smith?

13 A It was.

14 Q Okay. Were you able to discuss with Mr. Smith the
15 idea that by pleading guilty, he would be waiving his
16 right to challenge his side of the story, any defenses,
17 witnesses, all those types of things that go along with
18 pleading guilty?

19 A I do.

20 Q Was it your belief he understood those discussions?

21 A I believe that he understood.

22 Q Do you feel you gave him all the advice and
23 information necessary to make a knowing and intelligent
24 decision on whether to enter a guilty plea?

25 A I do.

1 Q At any point in time after the plea, did Mr. Smith
2 ever indicate to you that he wished to appeal the plea or
3 ever asked you to appeal the plea?

4 A He did not.

5 Q Did you ever receive any phone calls, letters,
6 anything along those lines after the plea date asking you
7 to appeal?

8 A No, he did not.

9 Q From your recollection of the guilty plea hearing, do
10 you recall anything that would have been preserved on
11 appeal had he wanted to appeal it?

12 A No.

13 MR. JORDAN: Beg the Court's indulgence for just one
14 moment, Your Honor.

15 (Pause).

16 That's all the questions I have for Ms. Claxton.

17 Thank you very much.

18 CROSS-EXAMINATION:

19 BY MR. JORDAN:

20 Q Good morning, Ms. Claxton.

21 A Good morning. How are you?

22 Q I don't have a lot of questions for you, but I wanted
23 to follow up on something you testified to Mr. Corney
24 about. You testified that during your representation of
25 Mr. Smith, he consistently admitted to you that he was

1 guilty. What did he admit to you that he was guilty of
2 doing?

3 A The fact that they chased the guy down; they -- his
4 codefendant pistol whipped the guy, and he held his legs
5 down and pulled his wallet or tried to get his wallet. I
6 believe that was the facts, that he admitted to the facts
7 in the incident report.

8 Q Do you recall him ever admitting to you that he knew
9 that his codefendant had a weapon on him?

10 A I don't know if he said those exact words but --

11 Q Did you explain to Mr. Smith the elements of
12 attempted armed robbery that the State would have to prove
13 beyond a reasonable doubt in order to convict him of the
14 crime?

15 A I did.

16 Q Did you advise Mr. Smith, in your opinion as his
17 attorney, that it was a good idea for him to enter a plea
18 of guilty?

19 A I believe I did.

20 Q Okay. And that advice was offered not having
21 interviewed the police, correct?

22 A Mr. Smith always told me he did not want a trial, so
23 it wasn't anything we went back and forth about, but I did
24 support his decision to plead guilty.

25 Q Okay. And I just wanted to be clear. I think I

1 understood from Mr. Corney's questions, you never did
2 interview the police, the codefendant, or the victim; is
3 that correct?

4 A That's correct.

5 Q Do you recall informing Mr. Smith that he would have
6 to have -- that the State would have to prove the specific
7 intent to rob the victim in order to convict him?

8 A I'm sure I did. I don't remember our exact
9 conversations from that far back, but I'm sure I did.

10 Q If Mr. Smith had told you that he never -- that he
11 didn't know the codefendant had a gun, would that have
12 changed your analysis in the case of the State's evidence
13 against him?

14 MR. CORNEY: Objection, Your Honor. That's
15 speculation.

16 THE COURT: Well, in addition to that, I mean, I'm
17 reading the transcript, and he told the police in his
18 statement that he participated because he thought his
19 codefendant was going to shoot him. So Lord knows he knew
20 he had a gun at one point or the other from what he told
21 you.

22 I'll look at the transcript.

23 MR. JORDAN: And, Your Honor, he said he never told
24 that to the police.

25 THE COURT: Oh, he never told it to the police. I

1 got you.

2 BY MR. JORDAN:

3 Q Ms. Claxton, did you provide Mr. Smith with copies of
4 the discovery materials that you received from the State?

5 A I didn't give him a copy, but we did go over it.

6 MR. JORDAN: I don't have any more questions, Your
7 Honor.

8 THE COURT: All right.

9 MR. CORNEY: Just a few brief questions.

10 REDIRECT EXAMINATION:

11 BY MR. CORNEY:

12 Q Ms. Claxton, in your experience as a criminal defense
13 attorney, would you agree there is some, I guess, dangers
14 with providing a defendant with his discovery materials at
15 the prison?

16 A Exactly. If you give them a copy at the prison, a
17 lot of times, they end up sharing it. It's just not a
18 good idea. If they insist on it, I do give them a copy,
19 and I think I explained that to him. He did not insist on
20 it.

21 Q All right. Did you ever tell Mr. Smith how to answer
22 the judge's questions?

23 A I never told him that.

24 Q All right. Were you able to review with him the
25 theory about accomplice liability or the hand of one is

1 the hand of all?

2 A I did.

3 Q And how that may apply to this case?

4 A I did.

5 Q And would you agree, without the officers here today
6 and without the victim here today, and codefendant here,
7 there's no way to know what they would have testified to
8 had they been called to trial.

9 A I agree.

10 MR. CORNEY: That's all the questions I have.

11 THE COURT: You can step down.

12 THE BAILIFF: All right. Watch your step.

13 MR. CORNEY: No further witnesses on behalf of the
14 State, Your Honor.

15 Nothing further from us, Your Honor.

16 THE COURT: Okay. Well, he can't win, you know. He
17 has got to present evidence showing that it was -- I don't
18 see any difference, which he didn't do.

19 He has testified two or three different ways just
20 reading the transcript, which he should have read.
21 Apparently, he didn't read it. At the hearing, they said
22 the defendant, that's him, was trying to obtain items from
23 the victim's pocket and so forth, eyewitness testimony
24 from the officers or specific intent is overridden by
25 action.

1 MR. JORDAN: Your Honor, we did review the testimony
2 that he had offered before in our meetings, so he was
3 aware of his prior testimony.

4 THE COURT: All right. Well, he is kind of lucky
5 that Judge Benjamin just gave him ten because the
6 solicitor tried to hammer it. I mean, he said, "Really,
7 this is his second strike. We dropped down the first
8 one."

9 Judge Benjamin, you know, didn't succumb to the tough
10 solicitor who was asking for probably 20 years on the
11 record.

12 MR. JORDAN: I understand, Your Honor. His
13 contention is simply that he wasn't given sufficient
14 information to enter the plea, and that's what we would
15 offer.

16 THE COURT: He was at the wrong place at the wrong
17 time participating voluntarily or involuntarily observed by
18 officers. He can't possibly win based on what I heard.
19 That's it.

20 MR. JORDAN: Thank you, Your Honor.

21 THE COURT: And, of course, he'll be able to appeal
22 this, you know. They're going to prepare an order, copy
23 you with it.

24 MR. CORNEY: Thank you, Your Honor. I will prepare a
25 proposed order, copy.

1 MR. JORDAN: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 MR. CORNEY: Thank you, Judge.

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5 (Whereupon, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Solomon Smith, # 346955,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2012-CP-40-04047

ORDER OF DISMISSAL

2013 JAN -7 PM 12:06
 FILED
 RICHLAND COUNTY
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed June 11, 2012. An evidentiary hearing was convened into the matter before this Court on Friday, December 7, 2012, at the Richland County Courthouse. Applicant was present at the hearing with counsel, William Jordan, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also before this Court were copies of the records of the Richland County Clerk of Court, the records of Applicant's guilty plea hearing and Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland County Clerk. Applicant was true bill indicted at the July 2011 term of the Richland Grand Jury for Attempted Armed Robbery (2011-GS-40-03073). He was represented by attorney Tynika Claxton, Esquire, on the charge(s). On July 20, 2011, Applicant pled guilty to the charge as indicted before the Honorable DeAndrea Benjamin without recommendations or negotiations

SCANNED

from the state. Judge Benjamin sentenced Applicant to ten (10) years imprisonment on the charge. No direct appeal was filed.

In the current action, Applicant alleges he is being held in custody unlawfully based upon the following:

1. Ineffective assistance of trial counsel for failure to properly prepare and investigate, specifically, but not limited to the following claims:
 - a. Failure to explain and provide complete discovery materials to Applicant prior to advising Applicant to plead guilty to the pending charge;
 - b. Failure to conduct an independent investigation into the evidence and witnesses that formed the State's case against Appellant, despite Appellant's request, prior to advising Applicant to plead guilty to the pending charge;
2. Ineffective assistance of trial counsel for failure to properly advise Applicant of the possible consequences of pleading guilty to the pending charge, specifically, but not limited to the following claim:
 - a. Failure to explain to Applicant of the range of sentence that the trial court could impose upon him following his entry of a guilty plea.
3. Ineffective assistance of trial counsel for failure to advise Applicant of the elements necessary to prove the crime of attempted armed robbery and of viable defenses to the charge, specifically, but not limited to the following claim:
 - a. Failure to explain to Applicant that in order to prove that a defendant is guilty of attempted armed robbery, the State must prove that the defendant had a specific intent to commit armed robbery. If he had gone to trial, Applicant would have testified that he and co-defendant got into an altercation with the victim and co-defendant pulled out a gun, which Applicant did not know co-defendant had. Under those facts, Applicant would not have had the requisite intent to commit armed robbery and could not have been found guilty of attempted armed robbery.
4. Ineffective assistance of trial counsel for failure to file an appeal on Applicant's behalf, despite Applicant's request and trial counsel's assurance that she would file an appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient

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

Failure to Investigate

Applicant first alleges counsel was ineffective for failing to properly investigate his case prior to advising him to enter a guilty plea. Specifically, Applicant stated he requested counsel interview the arresting officers, co-defendant and victim during her pre-trial investigation, all of which she failed to do. Applicant noted he was able to review the discovery materials with counsel during their several meetings prior to the plea, but said he was never given a copy of the discovery materials to keep at the Department of Corrections with him. On cross-examination, Applicant conceded he told the plea court he was satisfied with counsel's performance and preparation of his case.

Counsel testified she was appointed to represent Applicant on the current charges after the public defender's office was conflicted out of its representation of Applicant due to the ongoing representation of Applicant's codefendant. Counsel said she recalled receiving the discovery materials and reviewing them with Applicant during their five pre-plea meetings, but noted she did not give Applicant a copy of the discovery to keep. She said doing so was risky as there is a potential for other inmates to view the materials and then come forward as a "jail house snitch" against a defendant based on information he/she sees in the discovery materials. Counsel said the discovery included incident reports from the two eye-witness officers who made the

arrests, as well as the statement of victim given to law enforcement. Counsel testified the information in those statements was what the officers would testify to at trial. Additionally, counsel said codefendant was represented by counsel on the same charge at the time; therefore, she said, codefendants counsel was able to refuse to allow her to interview him or otherwise discuss the case with her. Counsel explicitly noted Applicant admitted his guilt to her from the outset of her representation and made it clear he never wanted to challenge the charges by taking the matter to trial.

This Court finds the allegation to be without merit. As a preliminary matter applied to the entirety of the findings set forth in this order, this Court finds counsel's testimony to be credible while conversely finding Applicant's testimony to be not credible. Applicant has failed to convince this Court counsel's performance was objectively unreasonable based on the circumstances. Counsel's credible testimony reflects Applicant conceded his guilt early on in the process and made it clear from the outset he wished to enter a guilty plea rather than proceed to trial. With this in mind, counsel reviewed the discovery materials with Applicant to ensure he was apprised of the state's evidence against him, which included the two arresting officer's incident reports and the victim's statement to police. Counsel was unable to interview codefendant as he was represented by legal counsel who refused to allow an interview. This Court finds Applicant has failed to prove counsel's investigation of the case was objectively unreasonable.

Further, this Court finds Applicant has failed to establish resulting prejudice. "This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333

S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Likewise, counsel's alleged "[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, 334, 496 S.E.2d 415, 417 (1998). Applicant neither provided the testimonies of these alleged witnesses at the PCR hearing, nor presented their statements through another means in accordance with the rules of evidence to prove such interviews would have resulted in beneficial information to Applicant. Accordingly, this Court finds Applicant has failed to carry his burden in proving both deficiency and resulting prejudice in this regard.

Failure to Advise Applicant of Elements of Crime

Applicant next contends counsel was ineffective for failing to adequately advise him of the elements of Attempted Armed Robbery, thereby rendering his subsequent guilty plea involuntary. Applicant stated he was not aware his codefendant had a gun on the night in question and, had he been properly advised of the intent requirement of the charge, he would not have pled guilty but rather insisted upon proceeding to trial. Applicant testified he told counsel he wanted to go to trial on the charge, as he wished to present the jury his testimony that he was not aware codefendant had a gun and had no specific intent to rob victim.

On cross-examination, Applicant conceded he gave answers to the plea judge indicating a desire to waive trial by entering a guilty plea, but said he did so only based upon counsel's coaching. When asked about his answer to Judge Benjamin that the answers given at the plea were his own, Applicant stated he had lied to the plea judge under oath. Likewise, despite the plea transcript's references to Applicant's statement to law enforcement in which he had said codefendant threatened to shoot him, Applicant testified he never gave any statements to law enforcement subsequent to his arrest.

Counsel testified from the outset of her representation of Applicant, he openly admitted his guilt of chasing down, tackling and robbing victim while codefendant pistol whipped victim. She noted Applicant had given a statement to law enforcement in which he alleged he committed the robbery under codefendant's threat to shoot Applicant if he did not participate. Counsel noted two police officers watched the crime occur from nearby and were able to arrest Applicant shortly thereafter in close proximity to the crime. She also said a .22 caliber handgun was left nearby the scene by codefendant.

Counsel testified she could not recall whether Applicant ever affirmatively said he *knew* codefendant had a gun that night, but said it was a logical assumption Applicant knew as Applicant's own statement to law enforcement included a reference to codefendant threatening to shoot him if he didn't participate. Counsel went on to say she reviewed the elements of the charge with Applicant in depth, as well as the application of the theories of accomplice liability/"hand of one, hand of all" to Applicant's case. Regarding the intent element of the charge, counsel said she didn't specifically recall the conversation she had with Applicant in that regard, but was sure they discussed it in depth.

This allegation is denied. Counsel credibly testified she was "sure" she reviewed all of the elements of the crime with Applicant including the specific element of intent. Counsel reviewed the theory of accomplice liability with Applicant and how such a theory would apply to the underlying facts of the charge to result in a finding of guilt at trial. Applicant's own statement to law enforcement as referenced by the record and testified to by counsel make clear Applicant was well aware codefendant was armed at the time of the crime. Counsel informed Applicant of all of the necessary information and gave him all the advice necessary for him to make an informed, intelligent and voluntary decision whether to plead guilty or proceed to trial. With all

of this in mind, Applicant made the independent decision to enter a plea. Counsel's credible testimony and the record before this Court directly contradict any finding that counsel's representation was deficient or otherwise unreasonable in this regard. Therefore, this Court finds no deficiency.

Further, this Court finds Applicant failed to prove resulting prejudice as there is no reasonable likelihood that, but-for counsel's alleged error, Applicant would not have pled but rather gone to trial on the charge. Counsel's credible testimony reflects Applicant had no interest whatsoever in challenging the state's evidence through trial. He readily admitted his guilt and sought to enter a beneficial plea from the outset of counsel's representation. Further, at trial Applicant was facing the testimony of two police officers who personally witnessed the robbery and were able to identify Applicant as one of the perpetrators after arresting him shortly thereafter. Based on these facts and the remainder of the evidence presented, this Court finds no reasonable probability that had counsel explained the intent element of the charge any differently, Applicant would have insisted upon proceeding to trial. Accordingly, this allegation is denied.

Failure to File Appeal

Applicant finally alleges counsel was ineffective for failing to timely file an appeal of the guilty plea on his behalf. Applicant testified he asked counsel to appeal the guilty plea shortly after entering it, which counsel said she would do, but no notice of appeal was ever filed.

Counsel testified plainly that Applicant never asked her to appeal the plea, and said she had no reason at any time to believe Applicant wanted to appeal the plea. She went on to say she never received any phone calls or letters from Applicant after the plea hearing indicating his desire to appeal. Counsel said that had Applicant requested she appeal, she would have

immediately filed a notice of appeal on his behalf. She finished by stating she did not see any issues preserved in the record for an appellate court to consider.

Based on counsel's credible testimony, this Court finds counsel was not ineffective in this regard and Applicant is not entitled to a belated direct appeal of the plea entered. Counsel was never requested to file an appeal and had no reason to believe Applicant would want to appeal the plea. Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing (such as when defendant specifically requests one be filed); there is no constitutional requirement that a defendant be informed of the right to direct appeal from a guilty plea. Roe v. Flores-Ortega, 528 U.S. 470 (2000). The South Carolina Supreme Court has applied this standard to guilty pleas as well, saying:

...absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to appeal from a guilty plea... The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal.

Weathers v. State, 319 S.C. 59, 459 S.E.2 838 (S.C. 1995). Applicant's testimony that he requested counsel appeal the plea is not credible. Accordingly, this Court denies Applicant's request for a belated direct appeal of the guilty plea.

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 advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate 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 31 day of Dec, 2012.



J. ERNEST KINARD, JR.
Presiding Judge
Fifth Judicial Circuit

Camden, South Carolina.

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WITNESSES

✓ (S) Robert Mccracken - Columbia Police Department

DOCKET NO. 2011GS4003073

The State of South Carolina

County of

Richland

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

Defendant

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



ARREST WARRANT NUMBER

K643232

COURT OF GENERAL SESSIONS

JULY TERM 2011

67

X Solomon J. Smith
Defendant

THE STATE
vs.

Solomon Smith

Witness:
C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: JUL 14 2011

VERDICT

Indictment for
ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330(B)
CDR Code: 0026

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

INDICTMENT/CASE#: 2011GS4003073

Solomon Smith

A/W#: K643232

AKA: _____
Race: _____ Sex: M Age: 20

Date of Offense: 10/29/2010

DOB: 1 SS#: _____

S.C. Code §: 16-11-0330(A)

Address: _____

CDR Code #: 0139

City, State, Zip: _____

DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Handwritten: Hermitage

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

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

The 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: [Signature] 6985 [Signature] [Signature] 72015
CATHART, RICHARD 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 10 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. 264 days
 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 PTUP _____

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

Payment Terms: _____ Obtain GED

Set by W/DPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____ Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2921 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-284 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 47.5 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-1 (DUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942 (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (OCJA Surcharge) \$5 \$ _____

§ 44-53-450 (Conditional Discharge) \$350 \$ _____

3% to Court (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/Deputy Clerk [Signature] Presiding Judge [Signature]

Court Reporter [Signature] Judge Code: 2161

SCCA/217 (05-2010) Sentence Date: 7-20-11