

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

Michael G. Nettles, Circuit Court Judge

RECEIVED

JUN 21 2012

S.C. Supreme Court

MORRIS HICKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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THE STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF FLORENCE)	
)	
THE STATE,)	JUNE 1, 2010
)	
APPELLATE,)	
)	
VERSUS)	
)	
MORRIS HICKSON,)	2009-GS-21-1800
)	
RESPONDENT.)	
_____)	

BEFORE
THE HONORABLE LEE S. ALFORD

APPEARANCES

John C. Jepertinger, Esquire
ATTORNEYS FOR THE STATE

H. Lee Herron, Esquire
ATTORNEY FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

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NO EXHIBITS OFFERED

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3

1 (Whereupon, this hearing began at 9:52 a.m. on
2 Monday, June 21, 2010.)

3 **THE COURT:** Please place the defendant under oath
4 if you will.

5 **CLERK OF COURT:** Please raise your right hand.

WHEREUPON, MORRIS HICKSON**BEING DULY SWORN TESTIFIES AS FOLLOWS**

6
7
8
9 **MR. HICKSON:** I will.

10 **MR. JEPERTINGER:** If it pleases the Court, Your
11 Honor. My name is John Jepertinger. I am the Deputy
12 Solicitor here for the Twelfth Judicial Circuit.
13 Standing in front of you, 2009-GS-21-1800, is Morris
14 Hickson. Mr. Hickson is represented by Lee Herron of the
15 Florence County Bar.

16 Mr. Hickson in the Indictment is charged with armed
17 robbery, assault and battery with the intent to kill, and
18 also a possession of a weapon during the commission of a
19 violent crime.

20 Your Honor, Mr. Hickson is before you this morning
21 to enter guilty pleas to armed robbery, and to assault
22 and battery with intent to kill.

23 The possession of a weapon during commission of a
24 violent crime is being dismissed.

25 And I am going to present to you the Sentencing

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1 Sheets, Your Honor. There is a recommendation of
2 concurrent in this matter, Your Honor. And I would also
3 tell the Court that the victims have been contacted.
4 They are present in the courtroom, Your Honor. This, in
5 the foreman's chair, this is Mr. Saroj Patel, who's
6 convenient store was robbed that day. Mr. Sonny Patel,
7 who is an employee that day of the convenient store was
8 there when the convenient store was being robbed.
9 Sitting to Mr. Patel right is Ms. Isabella Lowrey, who is
10 also an employee and working at the convenient store, and
11 who happened to be shot in the face during the armed
12 robbery, Your Honor. That is Ms. Lowrey's daughter, and
13 a friend that is in court today. We also have
14 Investigator Thomas McFadden of the Sheriff's Department,
15 who is also present on behalf of law enforcement.

16 THE COURT: Sir, you are Morris Hickson, is that
17 right?

18 MR. HICKSON: Yes, sir.

19 THE COURT: Mr. Hickson, how old are you?

20 MR. HICKSON: Nineteen.

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

22 MR. HICKSON: Eleven grade.

23 THE COURT: What do you do for a job or
24 occupation?

25 MR. HICKSON: I was going too Adult-Ed until this..

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5

1 THE COURT: Are you married, sir?

2 MR. HICKSON: No, sir.

3 THE COURT: Do you have children?

4 MR. HICKSON: Yes, sir.

5 THE COURT: What are their ages?

6 MR. HICKSON: One.

7 THE COURT: One, one-year-old?

8 MR. HICKSON: I have two.

9 THE COURT: Two at one year old? How much time
10 did you serve in jail on this charge?

11 MR. HICKSON: Ten months.

12 THE COURT: Mr. Hickson, you are charged with two
13 offenses today. You are charged with armed robbery,
14 which offense is classified as a felony. It carries a
15 mandatory minimum sentence of ten years. It carries a
16 maximum sentence of thirty-years. It is a no parol
17 offense, which means you would be expected to serve
18 whatever sentence you receive on this charge. It is
19 classified as a violent offense, which could affect your
20 ability to participate in certain programs at the
21 Department of Corrections. It is also classified as a
22 most serious offense. The importance of that
23 classification is, should you get two most serious
24 offenses on your record, or a combination of three
25 serious and most serious offenses on your record, upon

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1 receiving the second such offense, the third such offense
2 you could get a sentence of life without parol. It is
3 so-called two strike and three strikes rule. This
4 offense classifies as one of those strikes under both the
5 two and three strike rule. Do you understand that?

6 MR. HICKSON: Yes, sir.

7 THE COURT: You are also charged today with
8 assault and battery with intent to kill, which is also
9 classified as a felony, and it carries a maximum
10 punishment of twenty years. It too is a no parol offense.
11 It is classified as a violent offense and a most serious
12 offense. Do you understand that charge, and the maximum
13 punishment you could receive on that charge?

14 MR. HICKSON: Yes, sir.

15 THE COURT: Understanding the charges, and the
16 maximum and minimum sentences you could receive on these
17 charges, the implications of having a most serious
18 offense, a no parol offense, and a violent offense on
19 your record; how do you plead to these charges today,
20 guilty or not guilty?

21 MR. HICKSON: Plead guilty.

22 THE COURT: Do you understand that by pleading
23 guilty, you give up your right to remain silent.

24 MR. HICKSON: Yes, sir.

25 THE COURT: Do you understand that by pleading

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1 guilty, you give up your right to a trial by jury?

2 MR. HICKSON: Yes, sir.

3 THE COURT: And if you give up your right to a
4 trial by jury, you also give up your right to assert any
5 legal defenses that you might have in a jury trial.

6 MR. HICKSON: Yes, sir.

7 THE COURT: Now, I know that your attorney has
8 gone over your rights with you and a jury trial. I am
9 going to do that as well.

10 If you requested a trial by jury, the state would
11 give you a trial. At trial, you would have the right to
12 confront and cross examine all witnesses against you.

13 You would have the right to present any witnesses
14 and/or evidence in your own defense.

15 You would have the right to testify in your own
16 defense, if you wished to do so. But no one could make
17 you testify in your trial.

18 If you decided to go to trial and not testify, the
19 judge would tell the jury that they could not hold your
20 failure to testify against you. In fact, the jury could
21 not even consider your failure to testify in their
22 deliberations on your guilt or innocence. You would be
23 presumed innocent throughout your trial. The state would
24 have to prove you guilty beyond a reasonable doubt to a
25 jury of twelve people. All twelve people would have to

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8

1 unanimously agree that you were guilty in order for you
2 to be convicted. And even if you were convicted, you
3 still have the right to appeal that conviction. Do you
4 understand your rights with regard to a trial by jury?

5 MR. HICKSON: Yes, sir.

6 THE COURT: Understanding that right do you still
7 want to plead guilty, or do you want me to set your cases
8 for trial?

9 MR. HICKSON: I'm gonna plead guilty.

10 THE COURT: The state has agreed to dismiss or nol
11 pros a possession of a weapon during the commission of a
12 violent crime. Dismiss that charge, and they are
13 recommending to the Court a concurrent sentence. Is that
14 your understanding of the agreement that you had with the
15 Solicitor's Office in order to plead guilty to these two
16 charges?

17 MR. HICKSON: Yes, sir.

18 THE COURT: Has anybody promised you anything
19 other than that in order to get you to plead guilty?

20 MR. HICKSON: No, sir.

21 THE COURT: Has anybody threatened you, coerced
22 you, or forced you to plead guilty against your will?

23 MR. HICKSON: No, sir.

24 THE COURT: Are you satisfied with the manor in
25 which your attorney has advised and represented you in

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9

1 these cases?

2 MR. HICKSON: Yes, sir.

3 THE COURT: Have you and your attorney fully
4 discussed the charges against you?

5 MR. HICKSON: Yes, sir.

6 THE COURT: Has your attorney told you the
7 witnesses and evidence the state has available to present
8 at trial to prove your guilt?

9 MR. HICKSON: Yes, sir.

10 THE COURT: Has your attorney discussed with you
11 any possible legal defenses that might be available to
12 you, if you were to go to trial?

13 MR. HICKSON: Yes, sir.

14 THE COURT: Have you told your attorney the names
15 of any and all witnesses you know of that your attorney
16 could subpoena and bring to trial to assist you in your
17 defense, if you were to go to trial?

18 MR. HICKSON: Yes, sir.

19 THE COURT: Do you know of any witnesses that you
20 need to tell him about?

21 MR. HICKSON: No, sir.

22 THE COURT: Are you today under the influence of
23 any mind altering substance, such as, alcohol, drugs, or
24 prescription medications, which interferes with your
25 judgment or ability to understand what you are doing in

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1 court?

2 MR. HICKSON: No, sir.

3 THE COURT: Do you have any mental, emotional, or
4 nervous condition that interferes with your judgment or
5 ability to understand what you are doing in court?

6 MR. HICKSON: No, sir.

7 THE COURT: Are you pleading guilty today of your
8 own free will?

9 MR. HICKSON: Yes, sir.

10 THE COURT: Are you in fact guilty of these two
11 charges?

12 MR. HICKSON: Yes, sir.

13 THE COURT: Please give me the facts, Solicitor.

14 PRESENTATION OF THE FACTS

15 MR. JEPERTINGER: Yes, sir. On August 6, 2009,
16 Mr. Hickson, and a co-defendant by the name of William
17 Dickey --- Mr. Dickey's case is still open, and he was
18 going to offer testimony against Mr. Hickson in this
19 case, Your Honor, entered Strickland's Mini Mart.
20 Strickland's Mini Mart is on the west side of
21 Timmons ville. Timmons ville is about ten to twelve miles
22 west of Florence, on 76, Your Honor.

23 They were covered up in masks, if I can use that
24 term. I guess it was a covering of the face, Your Honor.
25 But they were disguised, Your Honor, with gloves on. Mr.

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11

1 Hickson went into the store. He had a shotgun with him,
2 Your Honor. Whether it was sawed off, or whether it was
3 full length, I don't think it was full length, but I
4 think it was a sawed off rifle, because when he got out
5 of the vehicle he was in --- the driver of that vehicle
6 noticed a larger type of gun, Your Honor.

7 They went into the store. Ms. Lowrey knew the co-
8 defendant William Dickey, even though he is covered up.
9 But he recognized him. He had been in the store several
10 times. And even with the covering she knew who he was.
11 Dickey, the co-defendant jumped the counter, and grabbed
12 the cash register, yelling to Mr. Patel, the gentlemen
13 here in the second --- get down Sonny, and Mr. Patel
14 complied. Ms. Lowrey, was near Mr. Patel at that time.
15 When she saw what was going on, she moved down the ---
16 was in front of the freezer area, Your Honor, toward a
17 security system they have on the wall. When she did
18 that, Mr. Hickson, who was still on the other side of the
19 counter, the customer side of the counter, kind of moved
20 along with her, pointed the shotgun at her, and fired.
21 The pellets struck her in such a fashion that her glasses
22 fell off, but they weren't damaged. However a pellet
23 caught in the eye --- or several pellets caught her, Your
24 Honor. And I have shown all of these photos to the
25 defense. She caught it in her right eye, Your Honor.

1 And as a result of that, she wears a glass eye in her
2 right eye this morning, Your Honor. While this was all
3 going on, the first gentleman that I told you about, the
4 one that yelled, Sonny, get down, he grabbed the cash
5 register. He got the cash register, and leaped over the
6 counter again with the cash register, got over it
7 somehow, and they left the store. And Mr. Saroj Patel
8 tells me how much was missing --

9 **MR. PATEL:** -- About \$1,400.

10 **MR. JEPERTINGER:** About \$1,400.00 was missing
11 from that cash register, Your Honor.

12 They left the store. Eventually they made it back
13 into a wooded area where they threw the cash register,
14 and divided some of the money. Mr. Hickson called a lady
15 that he had gone to school with by the name of Sonny
16 Toney, and she picked them up, and took them on their
17 way. Whether she knew what they had just done, or didn't
18 know, we can't prove, Your Honor. But she took them from
19 that wooded area, or as they are walking down away from
20 the store.

21 Eventually, law enforcement got names, they found
22 out who did it. They tried to retrieve the cash
23 register. I don't think you could find it could you,
24 Thomas, and none of the money was ever returned, as I
25 understand it.

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13

1 We go back to the store. Ms. Lowrey, even after
2 having been shot, and I think it is bird shot, Your
3 Honor, because when we looked at the door --- I went up
4 to the crime scene a few times, and it looked like bird
5 shot in one of the metal doors behind where she was
6 standing. She called 911, I believe, and she had the
7 where with all to do that. She knew she had been
8 injured. And as you can well imagine, a head shot like
9 this, pellets there, there was a significant amount of
10 blood there, and the police got out there, and they
11 investigated this case, Your Honor.

12 The co-defendants in this case, the individual that
13 drove them up to the scene has plead guilty to a
14 misprision of felony. She was the cousin of this
15 individual. She was prepared to testify against him
16 today. The other co-defendant, the one that took the
17 cash register initially, and yelled Sonny, he was going
18 to testify against him today. And should plead later
19 today, Your Honor.

20 **THE COURT:** Mr. Hickson, you have heard the facts
21 recited to the Court by the Solicitor's Office with
22 regard to these two charges. Do you disagree in any way
23 with what they say happened as to these two charges?

24 **MR. HICKSON:** No, sir.

25 **THE COURT:** I find the decision of the defendant,

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14

1 Morris Hickson, to plead guilty to these charges to be
2 made freely, voluntarily and intelligently. He has had
3 the representation of a competent attorney, with whom he
4 says he is satisfied. And I find the facts presented to
5 the Court, by the Solicitor's Office, concurred then by
6 the defendant, sufficient to support the guilty plea in
7 the case, and I will accept the pleas as freely and
8 voluntarily made.

9 Now, Mr. Hickson, if you disagree with the
10 proceeding in which we are currently involved, you have
11 ten days from today's date within which to file a notice
12 of intent to appeal. Do you understand your right to
13 appeal today's proceedings?

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

15 **THE COURT:** Now, do the victims wish to be heard,
16 Mr. Jepertinger?

17 **MR. JEPERTINGER:** Absolutely, either Mr. Saroj
18 Patel, the owner of the store, or Ms. Lowrey either one.

19 Her name is Isabella Lowrey. You can stand right
20 here ma'am, and speak up, keep your voice up so the court
21 reporter can hear you.

STATEMENT BY MS. ISABELLA LOWREY

22
23 **MS. LOWREY:** My name is Isabella Lowrey. I worked
24 seven days a week. And, at this particular day Morris
25 and Dickey came in, and Dickey jumped across the counter

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15

1 and told Sonny to get down on the floor. Shoved him,
2 kind of shoved him down. And like he say, I was standing
3 kind of close to Sonny, but then I walked next to office
4 where you go into the office, and the system is up there,
5 and I did put my hand on it. And I looked back and I saw
6 him with the gun pointed at me, and he shot me in my
7 face. He shot me in my head. All of this was lifted up
8 on this side. And two of the bullets went into my eye.
9 And they find out that I had bullets in my throat too,
10 and my shoulder. At night I can't sleep. I ache all the
11 time. And I don't --- anything --- if he had said, he
12 wanted whatever, he could get anything he wanted. But
13 they never speaked a word. We would hold nothing back
14 for anybody to rob. I would hold nothing back from them.
15 I want my life.

16 I have a daughter just like you have a mother. And
17 if somebody would have went in there and shoot your
18 mother, how would you feel? I haven't --- one daughter,
19 just only one daughter. And when they took me to the
20 hospital, McLeod, they said that nothing that they could
21 do for me. I prayed. I kept praying. I was --- This
22 whole side was swollen so big, I couldn't understand why
23 I was swelling so. And I could just barely could see. I
24 fell to the floor, and a voice told me, say, die in your
25 blood. Another voice came to me and said, you live. And

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16

1 then I saw in a see --- I saw my daughter and my
2 grandkids. And another voice say, slide in your blood,
3 and I did. I opened up the office door, and I just slide
4 right down, and I just kept praying. I said Lord, I want
5 to live. I want to see who did this to me. I want to
6 see the face. And I got in the office, and I could not
7 see the 911, I just barely could see it. My right eye
8 is my --- what I call my good eye. This left eye is
9 still blurry. Half of the time I can't see. I wake up
10 in the morning, and I have a glass eye. The glass eye is
11 sitting over her on the side. I got to try to place it
12 back into the socket it is supposed to be in. I lived a
13 normal life, and this boy took my life. Part of me is
14 dead. I walk around and kids look at me, and the eye is
15 not in place. I can't carry a mirror everywhere I go and
16 look at my eye. My eye is sitting on the side when I
17 look, and I wonder why the kids are looking at me so
18 hard. But, you have killed me. You killed part of me.
19 And I don't know why you came in there to rob, when there
20 are plenty of jobs out there. There are jobs out there.
21 And I want all the kids, all these young children to know
22 that there are jobs out there. If it's nothing but
23 Hardee's and McDonald's, there are jobs out there. Don't
24 go and destroy nobody life. Because, I did have a life,
25 and now I don't have a life. My life is gone. But, I

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17

1 just thank God that he kept me here. And he is keeping
2 me here. I have grandkids, and they keep saying,
3 grandma, are you going to be all right? But in my heart,
4 my heart, you took it away. You took a lot away from me.
5 Your mother, and I know, and I believe that you tried to
6 do your best. I don't know you. I never seen you before
7 until today, but your son is a bad son. He is bad. He
8 shot me. But anyway, I just want to say to the judge
9 that I am hurting today. My heart is broken. My heart
10 is broken. He broke my heart. He broke my whole life.
11 More for my daughter. I had table in my house, and I had
12 to give the table up, because I had to learn to walk and
13 do things in the house. I didn't have no glasses. I
14 can't see without these glasses on. Mr. Patel know if I
15 go to work, and I leave my glasses, I can't work. I have
16 got to go back home and get my glasses. And that was my
17 good eye. Now I don't have a good eye.

18 **THE COURT:** Thank you, ma'am.

19 **MR. JEPERTINGER:** Mr. Patel, do you want to say
20 anything?

21 **STATEMENT BY SAM PATEL**

22 **MR. PATEL:** My name is Sam Patel. This incident
23 just coming in the store and everything is a big
24 financial investment of the store. We lost lots of
25 business and probably like we are facing lots of ---

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18

1 let's put it like that, like foreclosure and all of that
2 stuff, and I am just fighting. They did real bad harm.
3 People are not coming into the store, true. So it is
4 just not the impact, but it is also financial impact that
5 I am trying to fight right now. Thank you.

6 **THE COURT:** Thank you, sir.

7 **MR. JEPERTINGER:** Anything from law enforcement?

8 **OFFICER:** No, sir.

9 **MR. JEPERTINGER:** Thank you so much judge.

10 **THE COURT:** Counsel.

11 **MR. HERRON:** Thank you, Your Honor, if it please
12 the Court?

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

14 STATEMENT ON BEHALF OF DEFENDANT BY MR. HERRON

15 **MR. HERRON:** Mr. Hickson has never been in trouble
16 a day in his life. I want to say that again. Mr. Hickson
17 has never been in trouble a day in his life. Mr. Hickson
18 was an eighteen-year-old stupid boy who got caught up in
19 the wrong crowd. Now obviously that is no kind of legal
20 defense, and I am not here making excuses for him. But
21 the guy that he got caught up with, Mr. Dickey, has a
22 substantial troubled history. And I think the testimony
23 would have been that Mr. Dickey talked him into this. He
24 talked Morris into doing something very stupid.

25 Judge, I don't want it to be taken the wrong way,

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19

1 and I am not making excuses, but the facts are that Mr.
2 Hickson has never been in trouble a day in his life. So
3 when someone says he is a bad kid, I would respectfully
4 disagree with that. I think he was a good kid that made
5 a terrible, terrible mistake. And I apologize to Ms.
6 Lowrey, and I apologize to Mr. Patel on behalf of my
7 client. But Mr. Hickson is a good kid. Eighteen years
8 of his life he was doing the right thing. He was doing
9 the right thing at the time, trying to get his GED,
10 trying to improve his life. He made terrible mistake
11 with Mr. Dickey, and unfortunately he understands that he
12 is going to have to pay for that mistake and he is going
13 to have to pay dearly.

14 But Judge, he's got --- he is a soft-spoken
15 individual. Just speaking with him, getting to know him,
16 he doesn't come across, and I don't believe for an
17 instant he comes across or he meant to do any serious
18 harm to anyone. I think he just got scared, and made a
19 stupid mistake.

20 He's got two children. He understands they are
21 going to grow up without a father. Your Honor, knows
22 what kind of impact kids growing up without a father can
23 have on them. They are already getting behind in life,
24 because they don't have any good role models to look up
25 to. Mr. Hickson's sole purpose was to plead guilty,

1 accept responsibility. And he has always accepted
2 responsibility for his actions, and get back to his kids.

3 Your Honor, I understand that this was a serious
4 crime, and the nature of it. But I would respectfully
5 ask Your Honor to take into consideration that Mr.
6 Hickson has never been arrested. He has never been
7 questioned a day in his life. This was a silly stupid
8 mistake by a careless young boy, who got talked into
9 doing something by someone else, who has been in trouble
10 a lot. He got hung up in the wrong crowd. It is not a
11 legal defense, judge, but I think certainly you can take
12 that into consideration as far as mitigation and
13 sentencing.

14 I would respectfully ask on behalf of my client for
15 the Court to show mercy on him, and Ms. Hickson as well
16 as Mr. Hickson would like to speak.

17 THE COURT: Yes, ma'am.

18 STATEMENT BY MS. PATINA HICKSON

19 MS. HICKSON: I am his mother judge.

20 THE COURT: Yes, ma'am, give us your full name for
21 the record, please.

22 MS. HICKSON: Patina Hickson.

23 THE COURT: Yes, ma'am.

24 MS. HICKSON: I would like to apologize to the lady
25 over there. I am so sorry. My heart goes out to you.

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21

1 But this is my baby. And he just got in the wrong crowd.
2 My cousin brought this man --- introduced him to this
3 man. He had just been out of jail two months. And they
4 got him to do this deal. I don't know why --- why, but I
5 ask you to forgive him. He is just my baby. And I am so
6 sorry. I love my baby. And I have the grand baby, and I
7 just look at him and he looks so much like his daddy. I
8 said Lord, one of my babies is gone. I got to raise this
9 one. I know inside he is a good boy. I tried the best I
10 know how. He knows about the Lord. He goes to church.
11 I struggled to raise five kids, and this is my baby. He
12 wasn't even suppose to be here, because I had my tubes
13 tied, but the Lord meant for him to be here. I prayed,
14 and I always said God had a reason for making you be
15 here. God had a reason for letting you be here. And I
16 pray to God that something good will come out of it,
17 because I know there is a reason for everything, and ask
18 God in your heart to forgive him, because we all want to
19 get into Heaven. And I just apologize. Thank you, so
20 much.

21 THE COURT: Yes, sir, Mr. Hickson.

22 STATEMENT BY THE DEFENDANT MR. HICKSON

23 MR. HICKSON: I want to apologize to the Court for
24 wasting y'all's time. And I want to apologize to the
25 victim for my actions and my co-defendant action. I want

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22

1 to be a man about what I did. I know that I got to take
2 it and go. I ain't gonna put nobody in the fire when I
3 put myself in there. I made my bed and I have to lay on
4 it.

5 **THE COURT:** Do you want to be heard?

6 **MR. JEPERTINGER:** Your Honor, we take exception to
7 what Mr. Herron said in terms of the level of
8 involvement, and in terms of planning. But other than
9 that, Your Honor, we have nothing further.

10 RULING OF THE COURT

11 **THE COURT:** Mr. Hickson, in sentencing in an
12 armed robbery, I always look at the circumstances and the
13 facts of the particular case. Because, there is a wide
14 range that the Court has between ten and thirty years.
15 So I always look at the facts and the circumstances of
16 the robbery itself to see what would be appropriate.

17 In case number 2009-GS-21-1800, Morris Hickson,
18 having plead guilty to armed robbery; the sentence of the
19 Court is that he is to be committed to the State
20 Department of Corrections for a determinate term of
21 twenty-five-years. This sentence is concurrent. He is
22 given credit for timed served.

23 In case number 2009-GS-21-1800, Morris Hickson,
24 having plead guilty to assault and battery with intent to
25 kill.

THE STATE VERSUS MORRIS HICKSON

23

1 The sentence of the Court is that he be committed to
2 the State Department of Corrections for a determinate
3 term of twenty-years. This sentence again is concurrent.
4 Credit for time served.

5 **MR. JEPERTINGER:** Thank you, Your Honor.

6 (Whereupon, this hearing was concluded at 10:20
7 a.m. on Monday, June 21, 2010.)

8 -- END OF TRANSCRIPT --

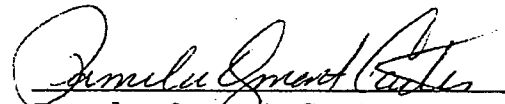
CERTIFICATE OF REPORTER

24

I, the undersigned, Pamela Ozment-Cartee, official court reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the hearing held of the above captioned case, relative to appeal, in The Court of General Sessions in Florence County, South Carolina, on the 21st day of June 2010.

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

April 22, 2011



Pamela Ozment-Cartee
Circuit Court Reporter

2011-CP-21-35

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Florence)

Morris Hickson #341459)

Full name and prison number (if any) of Applicant CERTIFIED: A TRUE COPY

v.

Conrad Hal Spearin
CLERK OF COURT C.P & G.S
FLORENCE COUNTY, SC

APPLICATION FOR
POST-CONVICTION RELIEF

State of South Carolina)

FILED
FEB 15 PM 9:35
CLERK OF COURT
FLORENCE COUNTY SC

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 Lee Correctional Institution (Sumter North 2214)
990 Wilsacoby Hwy, Bishopville, SC 29010
2. Name and location of Court which imposed sentence The Court of General Sessions for the 12th Judicial Circuit, Florence, SC
3. Name(s) of co-defendant(s) (if any) William Dickey
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2009-GS-21-1800

- (b) _____
- (c) _____

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

- (a) June 21, 2010 Robbery/Armed Robbery (25 years)
- (b) June 21, 2010 Assault/Assault and battery (20 years)
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty YES
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A

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

NO

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

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

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

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

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

(c) the date of each such result:

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

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

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

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

- (a) I requested that an appeal be filed but

- (b) COUNSEL NEVER did so.
- (c) _____

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

- (a) Ineffective assistance of counsel
- (b) Guilty pleas were not knowing, voluntary and intelligent
- (c) _____

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

- (a) Didnt Investigated the Case
- (b) _____
- (c) _____

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

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

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

- (a) the specific nature thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

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. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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) This Application for Post-Conviction Relief is
 (b) the proper way to raise these grounds for
 (c) relief.

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? N/A
 (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? NO

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. Scott P. Floyd
180 North Inby st msc-w Florence, S.C 29501
 - ii. D. Craig Brown
616 South Heit st. Florence SC 29501
 - iii. Herron H Lee
Schurthright + Rivers, PA, P.O. Box 6589, Florence, SC 29502
- (b) the proceedings at which each such attorney represented you:
- i. Paid to Start Care
 - ii. Provide All paper work
 - iii. Plea and Sentencing

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

For guilty pleas and sentences to be vacated, to be released from custody or a new trial ordered.

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 Florence)

VERIFICATION

I, Morris Hickson *341459, 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.

Morris Hickson

SWORN to and subscribed before me this 11
day of Feb 2011.

S. Braune (L.S.)
Notary Public

My Commission Expires: 5-16-14

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

I, ~~Morris Hickson~~ ~~#341459~~ Morris Hickson #341459, 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.

Morris Hickson
Applicant

SWORN or affirmed to and subscribed before me this
11 day of Feb. 2011.

[Signature]
Notary Public

My Commission Expires: 5-16-11

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Morris Hickson,)
 S.C.D.C. No. 341459,)
)
 Applicant,)
)
 VS.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. NO. 11-CP-21-394

RETURN

In response to the post-conviction relief application filed February 15, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the December 2009 term of the Florence County Grand Jury for Armed Robbery, Assault and Battery with Intent to Kill (ABWIK) and Possession of a Weapon during a Violent Crime. Applicant contends in his application that Scott P. Floyd, Esquire, D. Craig Brown, Esquire, and Herron H. Lee, Esquire all represented Applicant. Mr. Floyd's signature appears on the sentencing sheet. On June 21, 2010, Applicant pled guilty to Armed Robbery and ABWIK. Applicant was sentenced to twenty-five years imprisonment for Armed Robbery and a concurrent sentence of twenty years imprisonment for ABWIK. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject convictions and Applicant's records from the South

Carolina Department of Corrections. The guilty plea transcript will be forwarded upon receipt.

Respondent reserves the right to amend its return upon the receipt of further information or materials.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully because he received ineffective assistance of counsel rendering his plea involuntary – Applicant contends that his plea counsel failed to investigate the case.

III.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *citing* Strickland.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

Where there has been a guilty plea, the applicant must prove prejudice by showing that, but

for counsel's errors, there is a reasonable probability he would not have pleaded guilty and instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203, 210 (1985); Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

Respondent submits that 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, an evidentiary hearing to fully resolve this issue is likely required. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges that he did not plead guilty freely and voluntarily. The State submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State,

345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Given Applicant's burden of proof and the analysis to be applied to this claim, Respondent submits that Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

V.

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

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code §17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

WHEREFORE, having made Return, the Respondent requests that this Court dismiss this Application with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DAVID SPENCER
Senior Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3727

April 19, 2011.

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF FLORENCE)	2011-CP-21-00394
)	
)	
)	
Morris Hickson))
)	
vs.)	TRANSCRIPT OF RECORD
)	
State of South Carolina))
<u>DEFENDANT</u>)	September 9, 2011
		Florence, South Carolina

B E F O R E :

THE HONORABLE MICHAEL G. NETTLES, JUDGE.

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

CHARLES T. BROOKS, III, ESQ.
Attorney for the Applicant

DAVID SPENCER, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KESHIA REED
Official Court Reporter

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I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS

Morris Hickson

 Mr. Brooks 5

 Mr. Spencer 10

Lee Herron

 Mr. Brooks 15

 Mr. Spencer

Certificate of Reporter

1 THE COURT: Mr. Spencer, you recognize.

2 MR. SPENCER: Thank you, Your Honor. The next
3 case I will call will be Morris Hickson vs. State. This
4 is 2011-CP-21-394. Applicant was indicted by the Florence
5 County grand jury for armed robbery, assault and battery
6 with intent to kill and possession of a weapon during a
7 violent crime. And he was represented -- that application
8 indicates Scott Floyd now Judge Brown and Herron H. Lee,
9 which I think should be H. Lee Herron, but Mr. Herron was
10 the attorney who represented him for the guilty plea.
11 Mr. Floyd I don't think actually ever represented him.
12 Mr. Brown was I don't think did significant work, but I
13 only had Mr. Herron here today.

14 Getting back to the procedural hearing,
15 procedural history, applicant pled guilty to armed robbery
16 and assault and battery with intent to kill. And he was
17 sentenced by Judge Alford to 25 years imprisonment on the
18 armed robbery charge and 20 years for the assault and
19 battery with intent to kill charge, gun charge was
20 dropped. He did not appeal his conviction or sentence.
21 Your Honor, he's represented here today by Mr. Charles
22 Brooks.

23 THE COURT: Those consecutive or concurrent?

24 MR. SPENCER: I apologize, Your Honor, it was
25 concurrent. And I would just ask that Mr. Brooks set out

1 the allegations for the record.

2 THE COURT: All right, yes, sir.

3 MR. BROOKS: Please the Court, Judge. I'm
4 representing Mr. Hickson, his allegations are involuntary
5 plea, lack of preparation in his case, lack of
6 investigation. And obviously, those are his real issues
7 as it relates to his plea counsel.

8 THE COURT: All right. So essentially,
9 ineffective assistance of counsel and the voluntariness of
10 his plea?

11 MR. BROOKS: That's correct.

12 THE COURT: All right. You may call your first
13 witness.

14 MR. BROOKS: We call Mr. Hickson to the stand.

15 THE COURT: Mr. Hickson, please come forward and
16 place your left hand on the Bible and raise your right
17 hand as the clerk administers your oath.

18 THE CLERK: You swear the testimony you give in
19 this case to be the truth, the whole truth, and nothing
20 but the truth so help you God?

21 THE WITNESS: Yes, ma'am.

22 THE CLERK: Be seated and state your name for
23 the record.

24 THE COURT: Yes, sir, have a seat in the witness
25 chair. I'm going to ask that you pull up real close to

1 that microphone speak, loudly, clearly and slowly in order
2 that we can hear everything that you got to say and start
3 with your full name.

4 THE WITNESS: Morris Hickson.

5 THE COURT: Speak up just a little bit.

6 THE WITNESS: Morris Hickson.

7 WHEREUPON,

8 Morris Hickson,

9 after first having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BROOKS:

12 Q Mr. Hickson, how are you today?

13 A I'm all right.

14 Q Now, you brought this application for post-conviction
15 relief; is that correct?

16 A Yes, sir.

17 Q And we talked about this. We talk through letters
18 and we talked back then about this stuff. You understand
19 that?

20 A Yes, sir.

21 Q And I explain to you what the only remedy that Judge
22 Nettles could give you was to give you a new trial in
23 effect would start over?

24 A Yes, sir.

25 Q You understand that?

1 A Yes sir.

2 Q And you understand that even though you got a 25 year
3 sentence, you max out around 2032; isn't that correct?

4 A Yes, sir.

5 Q That if Judge Nettles gives you a new trial, you
6 could face about what 55 years?

7 A Yes, sir.

8 Q So you could go from bad to worse. We talked about
9 that?

10 A Yes, sir.

11 Q And you said you understood that and that you still
12 wanted to go forward; is that correct?

13 A Right.

14 Q Okay. Now, one of the complaints is that you really
15 didn't intend to plea. You had Mr. Herron as your lawyer
16 at the plea, but you kind of got passed around from lawyer
17 to lawyer; isn't that correct?

18 A Yes, sir.

19 Q And go ahead and tell the Court about?

20 A See I had started off with Scott Floyd. He end up
21 representing my co-defendant. When I got Mr. Herron, he
22 didn't even really -- he ain't brought me no information.
23 He just tell me what I'm going to do plead guilty or take
24 it to trial. I told him I was going to take it to trial.
25 He been like that's not the best thing for me to do due

1 to the fact my co-defendant had said I was with him during
2 the crime.

3 Q Okay. All right. How did -- so you told Mr. Herron
4 that you wanted to go to trial?

5 A Yes, sir.

6 Q How did it end up going from you gone take it to
7 trial to you end up pleading guilty in front of Judge
8 Alford? How did that turn about?

9 A Cause when me and Mr. Herron had a conversation, he
10 made it look like I wasn't looking at the time they give
11 me. If I would plead guilty, I would get a life sentence
12 cause I never been in any trouble.

13 Q Okay. So -- and help me now, I'm trying to get this
14 PCR for you. What -- you understand you could have still
15 gone to trial?

16 A Yes, sir.

17 Q And did you think that you was gone go to jail if you
18 pled?

19 A I knew if I pled, I was going to jail, but I ain't
20 thought I was going for the time they give me.

21 Q What did you think?

22 A I was thinking same thing he tell me, I wouldn't get
23 over 15 years because I never been in any trouble.

24 Q Okay. And you had a co-defendant in the case; right?

25 A Yes, sir.

1 Q What did the co-defendant get?

2 A He get 12 years.

3 Q And you got 25?

4 A Yes, sir.

5 Q And that's really what you upset about; isn't it?

6 A Kind of, yeah, because the situation he made it like
7 I did everything, but he really did majority of
8 everything.

9 Q Okay. Now, is the reason that you pled guilty
10 because you thought you were gone get a similar sentence
11 to your co-defendant at the time?

12 A The reason I pled guilty I was illiterate to the law.
13 I didn't knew -- I didn't really knew the facts of the
14 charges I was looking at.

15 Q Now, if you had it to do all over again, would you
16 have gone to trial?

17 A Yes, sir.

18 Q Why is that?

19 A They never had no evidence. They had statements
20 saying that my co-defendant said I was with him.

21 Q Okay. Now, what if your co-defendant would have
22 testified against you at trial?

23 A It would have been what it was.

24 Q Okay. You understand you could have still been found
25 guilty?

1 A Yes, sir.

2 Q And you understand that what you were facing you
3 could go back and face a lot of time you talked about?

4 A Yes, sir.

5 Q Okay. So was -- do you recall how many times you
6 talk to Mr. Herron in preparing your case?

7 A I probably talk to him three times at the most, but
8 every time I talk to him, he was telling me I'm going to
9 plead guilty or not. We only really have a conversation
10 about pleading guilty. He ain't never really sat down and
11 talk to me about the case.

12 Q Did you tell him you wanted a trial?

13 A When I tell him, he was like that's not the best
14 thing for me to do.

15 Q Okay. Did you think when you pled you were gone get
16 something like 15 years?

17 A Yes, sir.

18 Q Why did you think that?

19 A Because he was like -- the way he came at me he was
20 like the best thing for you to do is go ahead and man up
21 to it and the judge is gone look out for you. But when I
22 did what he said, I get 25 years.

23 Q How old are you, Morris?

24 A Twenty.

25 Q So you were what 18, 19 years old at the time this

1 all went down?

2 A Yes, sir.

3 Q Okay. Now, and based on what happened, you're asking
4 Judge Nettles to give you a new trial; is that right?

5 A Yes, sir.

6 Q Is there anything else we haven't covered that you
7 want to tell the judge why you should get a new trial?

8 A No, sir.

9 Q You sure?

10 A Oh, yeah, the fact Mr. Floyd came and talk to me, but
11 then he end up representing my co-defendant. I get some
12 papers in the mail saying his signature is on my
13 sentencing sheet, but his signature is on my sentencing
14 sheet Mr. Herron.

15 Q Okay. Is there anything else?

16 A No, sir.

17 MR. BROOKS: All right. Answer any questions of
18 Mr. Spencer.

19 CROSS-EXAMINATION

20 BY MR. SPENCER:

21 Q Mr. Hickson, now, you were involved in an armed
22 robbery; is that correct?

23 A Yes, sir.

24 Q Okay. So you did the armed robbery. I guess, is it
25 your contention that you didn't have the gun your

1 co-defendant did?

2 A Yes, sir.

3 Q But you understood that your co-defendant was going
4 to say no you had the gun and he was unarmed?

5 A Exactly.

6 Q Okay. And Ms. Tony she was going to testify that you
7 came to her and ask for a ride; is that right?

8 A That's really no evidence.

9 Q But she would testify against you?

10 A She was testifying that she pick us up.

11 Q Right. So she was also gone testify at trial? You
12 understood it?

13 A I understood, but they ain't never brought her name
14 up. All my paperwork said Crystal Waiters and William
15 Dickey.

16 Q And now you said you were hoping for a 15 year
17 sentence?

18 A I was hoping for a lighter sentence than what I have.

19 Q I understand that. But Judge Alford did tell you the
20 potential sentence you were facing; isn't that right?

21 A He told me I was looking at ten to 30.

22 Q Right. And your attorney told you the potential
23 sentence you were facing; didn't he?

24 A Yeah, but he did say that I wasn't looking -- I was
25 going to get that much time due to the fact I never been

1 in any trouble.

2 Q Did he promise you you weren't going to get too much
3 time or was he hoping?

4 A I look at it like this, his word was his word. He
5 told me you was not looking at that much time. He just
6 said you not looking at that much time because you never
7 been in any trouble. You do not have a background record.

8 Q He brought up to the plea judge didn't he, that he
9 was -- that you had never been in trouble before?

10 A Yeah, he said it, but he still didn't investigate my
11 case. We didn't sit down and talk about the case.

12 Q Remember, when Judge Alford asked you whether you
13 were satisfied with your attorney or not?

14 A I said yeah.

15 Q And you told him yes, but what you're saying is you
16 really weren't satisfied with his services?

17 A The reason I said yeah because everything he told me,
18 but like I told you earlier, I was illiterate to the law.
19 I couldn't tell you about none of the charges I was
20 looking at until after I got to ---

21 Q Well, are you saying you were -- you weren't
22 satisfied with his services at the time you pled guilty?

23 A Not really.

24 Q Were you satisfied with his services at that point in
25 time?

1 A No.

2 Q No, you really weren't?

3 A No.

4 Q But you didn't tell Judge Alford that?

5 A I just went ahead through the program because he was
6 making it like you got a chance not getting that much
7 time.

8 Q And he said you got a chance of not getting so much
9 time?

10 A Yeah, but when I push the issue to him about me not
11 being the one with the weapon, he said, oh, they ain't
12 want to hear that. Go ahead plead guilty. We gone do our
13 best to see you will not get a life sentence.

14 Q And the State in fact was contending that you did
15 have the gun; is that right?

16 A That what the State say, but that's really what my
17 co-defendant say.

18 MR. SPENCER: Beg the Court's indulgence.

19 (WHEREUPON, a pause in the proceedings.)

20 BY MR. SPENCER:

21 Q Do you recall apologizing to the Court?

22 A Yes, sir. I apologize for being there. I never
23 apologize for hurting anyone because I never had a weapon
24 in my possession.

25 Q You apologize for your actions and your

1 co-defendant's actions; right?

2 A Exactly.

3 MR. SPENCER: Beg the Court's indulgence one
4 more moment.

5 (WHEREUPON, a pause in the proceedings.)

6 MR. SPENCER: Your Honor, I have no other
7 questions.

8 THE COURT: Who sentence the co-defendant do we
9 know?

10 MR. SPENCER: Your Honor, I'm not recalling off
11 the top of my head.

12 MR. BROOKS: Judge, in the paperwork look like
13 Judge Alford sentence both of them.

14 THE COURT: I was just asking.

15 MR. BROOKS: That's what it looks like.

16 THE COURT: Any redirect?

17 MR. BROOKS: No, sir.

18 THE COURT: All right, very good.

19 You may step down.

20 (WHEREUPON, the witness leaves the witness
21 stand.)

22 MR. BROOKS: Call Mr. Lee Herron to the stand.

23 THE COURT: Mr. Herron, I'm going to ask if you
24 could to place your left hand on the Bible and raise your
25 right hand as the clerk administers the oath.

1 THE CLERK: Do you swear the testimony you give
2 in this case will be the truth, the whole truth, and
3 nothing but the truth so help you God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: Be seated and state your name for
6 the record.

7 THE WITNESS: Lee Herron.

8 WHEREUPON,

9 Lee Herron,

10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BROOKS:

13 Q Mr. Herron, how are you?

14 A Good. How about you?

15 Q I'm good. And you represented Mr. Hickson in this
16 matter?

17 A I did.

18 Q You were court appointed; is that correct?

19 A I was.

20 Q Now, he came to you because of being conflict of
21 interest?

22 A Yes, sir.

23 Q I believe that's why Mr. Floyd's name was on first
24 and then Mr. Brown now Judge Brown because of all these
25 people conflicted out because it was a multi-defendant

1 case. Is that the reason?

2 A That's my understanding, yes, sir.

3 Q Can you give a brief summary of what the State's case
4 was against Mr. Hickson?

5 A Sure, two armed men -- well, two men in mask went
6 into Strickland's convenience store after -- while in the
7 store, someone fired a shot at the clerk. They ordered
8 the clerk down. The clerk didn't go down, started running
9 for the door, the telephone I believe. Someone shot at
10 her with a shotgun. The pellets went passed her head and
11 struck a freezer door or some kind of metal door and the
12 pellets bounce back and struck her in the right eye. She
13 ended up actually losing the eye, actually had a glass eye
14 from the sentencing. Those two individuals then left --
15 well, they were dropped off there by a third individual
16 who had left and then after the robbery, they left and
17 then the authorities picked them up. And both Mr. Hickson
18 and his co-defendant gave statements to police. At first
19 -- during his first statements, Mr. Hickson, I believe,
20 denied being there or denied any wrongdoing. However, in
21 a second statement, he stated that he had the cash
22 register, so he placed himself at the scene. And
23 basically, admitted to doing part of the robbery. He had
24 always maintained that he wasn't the one doing the
25 shooting. The problem that we had was not only was his

1 co-defendant gone testify that he did the shooting, but
2 his cousin, Crystal Waiters, testified during her guilty
3 sentence during -- in front of actually Judge Nettles that
4 is it was her cousin, Morris Hickson, who she saw exit the
5 vehicle with the shotgun. So I told Morris that we were
6 gone have issues. I said I understood what he was saying
7 that he didn't do the shooting, but you got your
8 co-defendant says you did the shooting. And we're gone
9 actually have your cousin that's gone testify she saw you
10 with the shotgun. Then I went on to explain to him the
11 hand of one hand of all legal principle. I try to explain
12 it to him best I could. Basically, my advice to him was I
13 didn't feel like it was a strong case to go to trial
14 because I thought we had way too much stuff going against
15 us especially his statement basically that he took the
16 cash register.

17 Q And so you advised him to take a plea?

18 A Yes, I did. I work with -- I tried to get John
19 Jepertinger to offer him some kind of plea, but
20 unfortunately with the kind of injuries that the victim
21 had, Mr. Jepertinger would not give us anything and I
22 explain that to Morris. And to be honest with you, I
23 didn't think Morris deserved 25 years, but I told him all
24 along no one can make any guarantees about the sentence
25 that he is going to get. I just told him that it look

1 good that he didn't have any kind of criminal history.
2 And that's obviously something that the judges will take
3 into consideration with sentencing. But I never promised
4 my clients anything as far as sentencing go. I just don't
5 do that.

6 Q His co-defendant, the other gentleman he got 12
7 years?

8 A That's what I heard. I think I heard that from you
9 or the attorney general, but I didn't know -- I think
10 Morris actually pled first, if I'm not mistaken. So
11 that's the first -- today, was actually the first time I
12 heard what his co-defendant got.

13 Q He pled before the other gentleman, but he pled after
14 his cousin?

15 A It's my understanding that his cousin pled guilty and
16 then Morris plead guilty. And maybe, the gentleman pled
17 guilty, that's my understanding.

18 Q His cousin -- cause you told him about his cousin
19 said he had a shotgun?

20 A Crystal Waiters, yes, sir, because we actually had
21 the transcript of the guilty plea as part of discovery.

22 Q And you told him all of that?

23 A I did that.

24 Q You thought that he would probably get significantly
25 lesser time because of the fact he didn't have a record?

1 A I told him that that's something that judges take
2 into consideration. And I said it look good for him that
3 he didn't have any kind of criminal record, but again, I
4 don't -- if he ask me -- I can't remember if he ask me
5 specific how much time he's gone look at. I never make
6 any promises. I always just say I can't make those
7 guarantees. That's always up to the judge. But I did
8 keep telling him that it look good that he didn't have a
9 criminal history and I actually tried to point that out in
10 detail to Judge Alford as well.

11 MR. BROOKS: Beg the Court's indulgence.

12 (WHEREUPON, a pause in the proceedings.)

13 MR. BROOKS: No other questions.

14 THE COURT: Any cross-examination?

15 MR. SPENCER: Briefly, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. SPENCER:

18 Q Mr. Herron, my understanding you didn't give any
19 estimation of how much time he might get if he pled
20 guilty?

21 A I don't ever do that. I've never done that.

22 Q Did you advise him of the potential sentence he was
23 facing?

24 A I advised him of what he was facing, yes, sir, I did
25 advise him of that.

1 Q And I don't want to put words in your mouth, but
2 you're strategy basically was to try and get hopefully a
3 more lenient sentence by pleading guilty as oppose to
4 going to trial?

5 A Absolutely.

6 Q And whose decision was it to plead guilty?

7 A Morris'.

8 Q Okay. And if he wanted to go to trial, were you
9 ready for trial?

10 A I like trying cases, so, yeah, I would have went to
11 trial with it, but I continued to explain to him this was
12 not a case that I felt we had a good chance of winning
13 based on all the evidence.

14 MR. SPENCER: Your Honor, I have no further
15 questions.

16 THE COURT: All right. Any redirect
17 examination?

18 MR. BROOKS: No, sir.

19 THE COURT: You may step down.

20 (WHEREUPON, the witness leaves the witness
21 stand.)

22 THE COURT: Anything further?

23 MR. BROOKS: That's the applicant's case, Judge.

24 THE COURT: Anything from the State?

25 MR. SPENCER: Briefly, Your Honor, just some

1 closing comments.

2 THE COURT: Very good.

3 MR. SPENCER: Basically, there's a case out
4 there Wolfe vs. State wishful thinking doesn't make out a
5 claim basically. This is a case that was reasonable trial
6 strategy. Of course, it was Mr. Hickson's decision. He
7 made that decision to try and get a -- trying to go
8 forward and plead guilty and hope the judge gave him some
9 benefit for admitting his guilt. But the transcript which
10 I did go through, the victim, Ms. Lowery, had caught a
11 pellet in the eye and she gave some very -- for
12 Mr. Hickson's point of view, some very damaging statements
13 as to the severity of the injury to her and severity of
14 the injury to her life if you will, which possibly played
15 into Judge Alford's sentence. But basically, Mr. Herron
16 gave good advice as to the likelihood of succeeding at
17 trial, not very good. Basically, he was going to have
18 co-defendants testifying against him. And never
19 guaranteed him any kind of sentence and that doesn't
20 constitute ineffective assistance where counsel goes over
21 the different paths to pursue and the defendant makes an
22 informed choice and that's what happened in this case.

23 THE COURT: Yes, sir.

24 MR. BROOKS: Please the Court, Judge, we would
25 respectfully ask the Court to grant Mr. Hickson's

1 post-conviction relief for the reasons he outlined on the
2 witness stand and his lawyer was ineffective. This was an
3 involuntary plea in a sense that he thought that he was
4 going to get a certain amount of sentence, obviously,
5 significantly different and a significant lesser time than
6 what he received. For those purposes, we would
7 respectfully ask the Court to grant this PCR.

8 THE COURT: Very good. All right. Mr. Hickson,
9 I'm going to take this matter under advisement. I'm going
10 to review the transcripts and the documents been provided
11 to me and review my notes, think about it for a while.
12 I'm going to render my decision and you'll be notified
13 through your lawyer about my decision. Good luck to you.

14 END OF REQUESTED TRANSCRIPT
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STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Morris Hickson,
S.C.D.C. No. 341459,

Applicant,

VS.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

C.A. NO. 11-CP-21-394

ORDER OF DISMISSAL

FILED
2011 OCT 14 PM 3:59
TONNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

This matter is before this Court by way of an application for post-conviction relief (PCR) filed February 15, 2011. The State made its return on April 19, 2011. A hearing on the matter was convened at the Florence County Courthouse on September 9, 2011. Applicant was present and represented by Charles T. Brooks, III, Esquire. The State was represented by David Spencer of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf at the hearing. His plea counsel, Herron H. Lee, Esquire, also testified. In addition, this Court had before it the transcript of Applicant's guilty plea proceeding, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the Department of Corrections, the PCR application and the State's return.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the December 2009 term of the Florence County Grand Jury for Armed Robbery, Assault and Battery with Intent to Kill (ABWIK) and Possession of a Weapon during a Violent Crime. Applicant was represented

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Tonnie Reel-Shearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

by Herron H. Lee, Esquire. On June 21, 2010, Applicant pled guilty to Armed Robbery and ABWIK. Applicant was sentenced by the Honorable Lee S. Alford to twenty-five years imprisonment for Armed Robbery and a concurrent sentence of twenty years imprisonment for ABWIK. Applicant did not appeal his conviction or sentence.

ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully because he received ineffective assistance of counsel rendering his plea involuntary – Applicant contends that his plea counsel failed to investigate the case and that Applicant was expecting a sentence of fifteen years or less.

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 (1985).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant alleges his plea was rendered involuntary by ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing

professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). 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); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court will now address each allegation of ineffective assistance of counsel:

Applicant's expectation of a lower sentence

Applicant alleges that when he pled guilty, he expected to receive a sentence of fifteen years or less. Counsel unequivocally testified that he never promised Applicant how much time he would

receive or even attempted to predict how much time Applicant would receive when he pled guilty. Counsel testified that Applicant admitted to him and law enforcement that he participated in the robbery and only disputed whether he possessed the rifle and shot the victim. Counsel testified that the other two co-defendant's would have testified at trial that Applicant was the gunman. Further, Counsel advised Applicant that he would be guilty of armed robber and ABWIK under the hand of one is the hand of all theory. Counsel further advised Applicant that it might be in his best interest to plead guilty and emphasize his youth and lack of a criminal record. Counsel pursued this strategy at the plea hearing. Counsel testified that it was Applicant's decision to plead guilty.

This Court finds that applicant was aware of the charges, elements of the offense, and potential defenses. Further, this Court finds that Applicant was not coerced, pressured, or promised anything in return for his guilty plea. Applicant admitted his guilt at the plea hearing and acknowledged his involvement at the PCR hearing. Under these circumstances, Counsel's advice to Applicant to plead guilty was well within the professional norms of competent representation. This Court further finds Counsel's testimony credible and gives it great weight, finding in particular that Counsel did not promise Applicant a lighter sentence. Further, the plea court advised Applicant of the maximum and minimum sentences he could receive. Tr. pp. 5-6. This Court finds Applicant's testimony to the contrary lacks credibility. Further, Applicant's hopes for a lighter sentence does not render his plea involuntary where he was advised of the possible sentences he could receive and chose to plead guilty. See Wolfe v. State, 326 S.C. 158, 164-165, 485 S.E.2d 367, 370 (1997) (finding "wishful thinking" does not equal misapprehension as to the possible sentence the applicant would receive). This Court denies this allegation.

Failure to investigate

Applicant alleges counsel failed to adequately investigate the case. This Court finds that Applicant failed to show what benefits would have accrued from further investigation and has failed to meet his burden of prejudice. Further, Counsel testified that he was prepared for trial should Applicant have chosen to go to trial. Counsel felt conviction was likely, however, since Applicant admitted to participating in the robbery and the co-defendants would testify that he was the gunman. This Court finds Counsel's testimony was credible and he adequately investigated and prepared the case for trial. Further, this Court finds Applicant failed to meet his burden of proving prejudice. Accordingly, this allegation is denied.

CONCLUSION

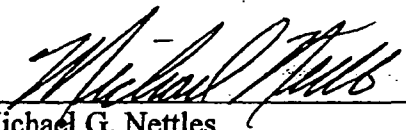
Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

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 13 day of Oct, 2011.



Michael G. Nettles
Presiding Judge
12th Judicial Circuit



South Carolina

WITNESSES

William Hester Florence County Sheriff

JOHN C JEPERTINGER

ARREST WARRANT NUMBER

M270213 M270214 M270216

M270218 M270219 M270220

ACTION OF GRAND JURY

TRUE BILL

Ben M. Schaffer
Foreperson of Grand Jury
Date: _____

VERDICT

Foreperson of Petit Jury Date: _____

DOCKET NO. 2009-GS-21-1800

The State of South Carolina

County of

FLORENCE

=====

COURT OF GENERAL SESSIONS

DECEMBER TERM 2009

=====

THE STATE

vs.

**MORRIS HICKSON
WILLIAM DICKEY**

=====

Indictment for

**ARMED ROBBERY (TWO COUNTS)
ASSAULT AND BATTERY WITH
INTENT TO KILL(TWO COUNTS)
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME
(TWO COUNTS)**

=====

*DETTIFIED: A TRUE COPY
Clerk of Court
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.*

COMMIE REFL-000000
DEC 3 2009
FLORENCE COUNTY, S.C.

2009 DEC -3 PM 2:03

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR

ARMED ROBBERY (TWO COUNTS)
ASSAULT AND BATTERY WITH INTENT TO KILL
(TWO COUNTS)
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME
(TWO COUNTS)

At a Court of General Sessions, convened on DECEMBER 3, 2009 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ARMED ROBBERY

That MORRIS HICKSON did in Florence County on or about August 6, 2009, while armed with a deadly weapon, to wit: a sawed off shotgun, take and carry away personal property of Strickland's Grocery from or in the immediate presence of ISABELLA LOWERY with intent to deprive Strickland's Grocery of possession of the store's cash register and its contents, by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT TWO- ASSAULT AND BATTERY WITH INTENT TO KILL

That MORRIS HICKSON did in Florence County on or about August 6, 2009, commit an unlawful act of violent injury to the victim, ISABELLA LOWERY, with malice, thus committing the crime of Assault and Battery with Intent to Kill, in violation of Section 16-03-0620, S. C. Code of Laws, 1976, as amended.

COUNT THREE - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That MORRIS HICKSON did in Florence County, on or about August 6, 2009, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR ARMED ROBBERY, ASSAULT AND BATTERY WITH INTENT TO KILL AND POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME WITH THE AFORESAID NAMES(S) OF MORRIS HICKSON AND WILLIAM DICKEY SHOWN THEREON:

COUNT FOUR- ARMED ROBBERY

That WILLIAM DICKEY did in Florence County on or about August 6, 2009, while armed with a deadly weapon; to wit: a sawed off shotgun, take and carry away personal property of Strickland's Grocery from or in the immediate presence of ISABELLA LOWERY with intent to deprive Strickland's Grocery of possession of the store's cash register and its contents, by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT FIVE- ASSAULT AND BATTERY WITH INTENT TO KILL

That WILLIAM DICKEY did in Florence County on or about August 6, 2009, commit an unlawful act of violent injury to the victim, ISABELLA LOWERY, with malice, thus committing the crime of Assault and Battery with Intent to Kill, in violation of Section 16-03-0620, S. C. Code of Laws, 1976, as amended.

COUNT SIX- POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That WILLIAM DICKEY did in Florence County, on or about August 6, 2009, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR