

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

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S.C. Supreme Court

GENE W. HALL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

2009-GS-32-01262

2009-GS-32-01263

STATE OF SOUTH CAROLINA

VS.

GENE W. HALL

DEFENDANT

TRANSCRIPT OF RECORD

January 14, 2010
Lexiington, South Carolina

B E F O R E:

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE.

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

J. ANGELA GARRICK, ASSISTANT SOLICITOR
Attorney for the State

ALEX T. POSTIC, ESQ.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

AMERICAN ORDER OF STATE

I N D E X

DEFENDANT:

PAGE

GENE HALL

3

EXHIBITS

(There were no exhibits marked.)

1 THE CLERK: Gene Hall.

2 Indictment 2009-GS-32-1262, the State versus
3 Gene Warren Hall, indicted for criminal conspiracy. He is
4 pleading as charged.

5 Indictment 2009-GS-32-1263, State versus Gene
6 Warren Hall, indicted for armed robbery. He is pleading
7 to attempted armed robbery.

8 The indictments are true-billed and he is
9 represented by Mr. Postic.

10 Raise your right hand, please.

11 GENE HALL, after being duly sworn, testified as
12 follows:

13 THE COURT: Is this an Alford plea?

14 MS. GARRICK: It is, Your Honor.

15 MR. POSTIC: Yes, Your Honor.

16 THE COURT: Okay. Mr. Postic, you represent
17 Mr. Hall?

18 MR. POSTIC: I do, Your Honor.

19 THE COURT: Have you explained the nature of the
20 charges against him, the possible punishments he could
21 receive as well as his constitutional rights?

22 MR. POSTIC: Yes, Your Honor.

23 THE COURT: And he understands those?

24 MR. POSTIC: Yes, Your Honor.

25 THE COURT: And he wants to plead guilty?

1 MR. POSTIC: Yes, under North Carolina versus
2 Alford, yes, Your Honor.

3 THE COURT: Okay. Mr. Hall, have you had enough
4 time to talk to your lawyer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you satisfied with his
7 representation?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Has he done everything for you that
10 you think he should have done or could have done?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has anybody promised you anything or
13 threatened you in any way to get you to enter this plea?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Do you understand that you're
16 pleading under North Carolina versus Alford, but as far as
17 the law is concerned, it's to be treated just like you're
18 pleading guilty straight up; do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Are you under the influence of
21 alcohol or drugs today?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: You understand that whatever
24 sentence I give you is a non-paroleable offense?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And attempted armed robbery carries
2 up to 20 years and criminal conspiracy is up to five
3 years.

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you have any mental disease that
6 would keep you from understanding what you're doing?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: By pleading guilty, you're giving up
9 your right to remain silent as well as your right to a
10 jury trial on this; do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And in that jury trial you'd be
13 presumed innocent and the State would have to prove you
14 guilty of these charges beyond a reasonable doubt to all
15 12 jurors.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You'd be able to confront witnesses
18 that would testify against you and at trial your lawyer
19 could cross-examine those witnesses. He could subpoena
20 witnesses to testify in your behalf, he could put up any
21 defenses you may have, but when you plead guilty you give
22 all that up; do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: You're also giving up any appeals
25 that may come out of that trial by this guilty plea; do

1 you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Now, if you want to appeal this
4 sentence today, you must do so within ten days or you give
5 up that right; do you understand?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you want to ask me any questions
8 concerning your rights?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: The Solicitor's going to tell me
11 about the facts.

12 MS. GARRICK: Thank you, Your Honor. May it
13 please the Court.

14 Your Honor, this happened on February 28th,
15 2009, at the Arby's that's located at 1076 Lake Murray
16 Boulevard here in Lexington County.

17 Your Honor, it was about 8:30 in the morning.
18 There was staff there preparing ingredients and getting
19 ready to open up. There was a back door in the cooking
20 area of the store that was open, probably for ventilation
21 and to get air, and two men came in. They had coats on
22 with hoodies, bandannas, and one of them had a ski mask.
23 This is on video.

24 They come in, both of these men are armed. They
25 lay hands on the first person they come in contact with

1 which was Crystal Azukas, she was chopping ingredients
2 there at the back, and they tell her, "Give me the money."
3 They move her, circle around, gather up the other
4 employees and they go to the safe area where she opens the
5 safe and gives them approximately a thousand dollars or a
6 little less than a thousand dollars and then they run out
7 with the money.

8 Law enforcement is called very quickly. Irmo
9 Police Department begins an investigation. There is a
10 confidential informant that comes forward and gives law
11 enforcement information. Sergeant Ringer, who's here with
12 the police department, was the primary detective on the
13 case. He starts building a case that leads to a
14 co-defendant. The video shows the size and the shape of
15 the people and there is voices that you can hear on the
16 tape.

17 There is information received that Gene Hall was
18 involved. A law enforcement officer from the school is
19 brought down to listen to the tape, and she indicates
20 after listening to it and looking at it, without being
21 told that Gene Hall is a suspect, that she recognizes his
22 voice and the way he walks. And additionally, Gene Hall,
23 this defendant had previously worked at the Arby's so he
24 knew the layout, knew the people, knew where the safe was
25 and the money. Based on that, Mr. Hall was arrested.

1 Because he has no prior convictions, we've
2 reduced the armed robbery, which would have had of course
3 a mandatory minimum ten years, down to an attempted armed
4 robbery.

5 The store is asking for five hundred dollars
6 restitution. And at the appropriate time I'd like to tell
7 you a little bit more about the effect it's had on the
8 victim as well as have Sergeant Ringer speak with you.

9 THE COURT: Okay. Do you understand, Mr. Hall,
10 if this case went to trial, that would be the evidence
11 that the State would present against you?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And they're giving you the benefit
14 that instead of going to trial on armed robbery, to
15 allowing this plea for attempted armed robbery; do you
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: So I find there's a substantial
19 factual basis for this plea, it's freely and voluntarily
20 entered into, that you've had advice of competent counsel
21 whom you tell me you're satisfied with, and I'll accept
22 your plea.

23 Yes, ma'am.

24 MS. GARRICK: Your Honor, I can tell you
25 additionally just so the record's clear, all of the

1 companion charges will be nol prossed. That's a benefit
2 of this as well to the defendant. The kidnapping and the
3 possession of a pistol by someone under 21 and the
4 possession of a pistol during the commission of a violent
5 crime and the pointing and presenting are being nol
6 prossed.

7 Your Honor, I just want the Court to be aware,
8 one of the clerks is Crystal Azukas. She was the first
9 one that had the gun to her head and she's the one who
10 opened the safe. She was here this morning but she could
11 not be here this afternoon, but she did write a letter
12 that I'd like you to read and it documents the tremendous
13 impact it's had upon her life.

14 And I also just want you to recognize that
15 there's two ladies here from management at Arby's. They
16 were not present at the store during the armed robbery,
17 but Arby's is very much concerned about their employees
18 and they wanted you to be aware that they were here this
19 morning and they're here now.

20 If I may approach with this letter. Mr. Postic
21 has received a copy of this.

22 THE COURT: Okay.

23 MS. GARRICK: Thank you, Your Honor. I'd like
24 to put that in the clerk's packet at the conclusion of the
25 case.

1 Your Honor, this is Sergeant Ringer. He'd like
2 to address the Court on sentencing.

3 THE COURT: Yes, sir.

4 SERGEANT RINGER: Your Honor, upon consultation
5 with my command staff and having been the primary
6 investigator on this case, it's our only -- our respectful
7 recommendation that due to the severity of the initial
8 crime and the potential for violence, that we're more than
9 willing to agree to a lesser plea, but based on the impact
10 to the community, to the victims and the potential for
11 violence, that some prison sentence be imposed.

12 THE COURT: Thank you. Yes, sir.

13 MR. POSTIC: Thank you, Your Honor.

14 Before I get into the reason for the Alford, let
15 me give you a little background on Gene.

16 He's 19. He's a very young guy. He's got no
17 record.

18 He's got a very close family. This is his mom
19 and his stepfather. He is the second of six boys. She
20 works at Palmetto Richland Memorial Hospital in
21 administration. He works with the United States
22 Department of Corrections at Estill, the prison in Estill.
23 They're a very tight and strong family.

24 He has gone to school, has always had a job. We
25 had a bond hearing in circuit court, and at that time we

1 brought in an older elderly lady that he cares for -- she
2 couldn't make it today -- and her son, who's a paraplegic
3 in a wheelchair that Gene takes care of, so he's got
4 propensity for good and has a good citizen mindset at
5 times.

6 In the nine months he's been on bond, Your
7 Honor, he was put on electronic monitoring. And I'll tell
8 you, he's really a bright and thoughtful person.

9 We've discussed this case a lot, whether to go
10 to trial, whether or not to go to trial, going through the
11 evidence, and when he decided to do this today, on his own
12 he went to the people that put him on the electronic
13 monitoring and got a letter from them to present to the
14 Court to show that he's never violated the electronic
15 monitoring.

16 I mean, that's just the sort of person that he
17 is, that he would think outside the box to get something
18 like that. It's frankly not something I'd ever thought of
19 doing, and I've been doing this for awhile.

20 Your Honor, as far as a trial goes -- and we
21 went over this -- frankly I saw it as a jump ball, but,
22 you know, as an attorney I'm walking out the door I came
23 in either way.

24 And we've discussed a lot of things. We know
25 the reputation this county has in jury trials, and he

1 understands that. And we went through everything. And
2 he's -- it's just a very brave decision to come forward
3 today with this and put the sentencing in your discretion.

4 As you heard, the evidence is that there's no
5 confession or any physical evidence. There's a tip and
6 there's the voice recognition of the school resource
7 officer. Frankly, I mean, he's not an expert in voice
8 recognition, but I don't think that would be something I
9 could keep out of trial.

10 The tipster, at the preliminary hearing
11 Investigator Ringer mentioned that the tipster mentioned
12 where the money and the gun could be found. Those items
13 were never found in this case.

14 There's no -- they have never analyzed any of
15 the clothing that they found from a search warrant to
16 determine whether or not they were Gene's clothing.
17 There's certain clothing that it's obvious that they're
18 wearing in the video.

19 There's no enhancement of the video to present
20 that -- you know, to come closer to identifying the person
21 that came in there that day.

22 And as somebody who's used to being on that side
23 of the courtroom, I know that it's common that people will
24 rob places that they used to work because they know the
25 lay of the land, they know certain things.

1 What I would have been hammering at the jury
2 trial, Your Honor, would be that none of these people who
3 were there ever said, "That's Gene Hall, we know him." He
4 worked there for four to five months with these people
5 every day and none of them said it was him.

6 Again, Your Honor, this is just -- I can't
7 imagine how difficult a decision this will be for you
8 because punishment -- I mean, it's very difficult.

9 He's obviously going to be accepting a felony.
10 He'll never be able to have a gun, he'll never be able to
11 vote. This will be a strike, a most serious crime. If he
12 serves any time, it will be 85 percent of whatever he
13 gets. He understands he's punished because of the company
14 that he's kept and some of his issues in the past.

15 Your Honor, if he does go to the Department of
16 Corrections, I'm a little concerned because these young
17 people can be influenced in a wrong way there, and I know
18 we've all seen that.

19 So I think I can ask you with a straight face
20 for an alternative to being behind the fence, but I
21 understand it's a very, very tough case, very tough
22 decision.

23 Home detention he's done well on.

24 A YOA sentence --

25 THE COURT: This doesn't qualify for YOA, does

1 it?

2 MR. POSTIC: Yes, I don't think it does.

3 THE COURT: It's a Felony C. It's got to be a B
4 or less.

5 MR. POSTIC: Yes, Your Honor. If there's
6 something similar to it. I don't know if there's anything
7 that could keep him out of the general population if he
8 was sentenced that way.

9 I know he wanted to not make -- just make an
10 apology or just to tell the victims, if they were here,
11 how sympathetic he was towards them. They're not here,
12 but I know he does still want to address the Court and I
13 know his mother wants to.

14 Let me make sure he still wants to.

15 THE COURT: Okay.

16 THE DEFENDANT: I want you to know that I thank
17 you for giving me the opportunity to speak.

18 You know, I feel like I'm in this position
19 because of the company I kept.

20 As for it being me on the videotape and being
21 the one pointing and presenting the gun and taking the
22 money, you know, I have to honestly say it wasn't me.

23 Me and my attorney, you know, he's represented
24 me the whole time and he tried his best to represent me
25 and prove my innocence up until now, but like he said, we

1 both felt like it was a jump ball, me taking a chance at a
2 trial, and it was just something I didn't want to do. I
3 felt like it was playing with my life, that my life was on
4 the line, so I have to accept responsibility. You know,
5 I've been put in this situation. And I understand I've
6 been put in this situation because of the company I keep,
7 so today I have to take and I have to own up to that part
8 right there.

9 MR. POSTIC: And this is Melvenia Hall,
10 M-E-L-V-E-N-I-A.

11 Okay. I'm sorry, sir, go ahead.

12 UNIDENTIFIED MALE: Sir, Gene is a wonderful
13 kid. He's smart. He don't give me and his mother no
14 problem. He goes to work, to school. He's a bright young
15 man and I love him to death.

16 THE COURT: Thank you.

17 MR. POSTIC: Your Honor, I forgot to present to
18 you a paycheck and that letter from the electronic
19 monitoring if I may, Your Honor.

20 THE COURT: I understand his position on Alford,
21 but when he's pleading before me, I've got to treat it as
22 if he's guilty as charged.

23 And, you know, it's not much more violent or
24 more dangerous than walking into a store with a gun and
25 robbing somebody. I mean, when these young men make this

1 decision, it's life changing for them, for their families,
2 for the community, for the victims and everyone else. And
3 our legislature, rightly so, says it's a serious offense.

4 And I've given him -- because of his lack of
5 record and you've done a good job, I've given him the
6 benefit of every doubt I can and the State has given him,
7 but on attempted armed robbery, the sentence of the Court
8 is he's committed to the State Department of Corrections
9 for a term of seven years. On the conspiracy it's five to
10 run concurrent.

11 MR. POSTIC: Thank you, Your Honor.

12 THE COURT: Thank you all for coming.

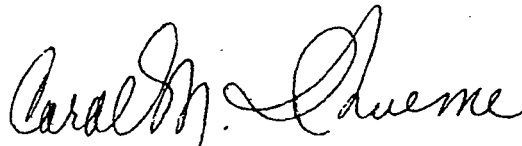
13 (The proceedings were concluded.)

14 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1
2
3
4 CERTIFICATE OF REPORTER5 STATE OF SOUTH CAROLINA)
6)
7 COUNTY OF LEXINGTON)8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Lexington County, South Carolina, on the 14th day of
15 January, 2010.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19 December 31, 2010

20
21 
2223 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

2010CP3203685

BETH A. CARRIGS
CLERK OF COURT
LEXINGTON, SC

2010 AUG 30 P 4

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FILED

STATE OF SOUTH CAROLINA

County of LEXINGTON
Gene W. Hall #338904

v.

State of South CarolinaIN THE COURT OF
COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEF1. Place of detention: Ridgeland Correctional Inst.2. Name and location of Court which imposed
sentence: Lexington County

3. Name(s) of co-defendant(s) (if any):

Marellis Armour4. The indictment number or numbers (if
known) upon which and the offenses for which
sentence was imposed:(a) 2009GS3201262(b) 2009GS3201263

(c)

A TRUE COPY

Lex. Co. C.C.P., G.S. & P.C.

5. The date upon which sentence was imposed
and the terms of the sentence:(a) 01-14-2010, 5 years in S.C. D.C.(b) 01-14-2010, 7 years concurrent with 2009GS3201262

(c)

DREB

to previous PER / CA / SV P que

ATTORNEY GENERAL'S OFFICE 19

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ADMINISTRATIVE INSTRUCTIONS

FILE _____ OPEN _____ F/O
HAVE _____ COPIES MADE
ROUTE TO _____
ORDER _____ TRANSC _____
FSN RECORDS _____ CLERK RECORDS _____
OTHER _____

ORIGINAL

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: ✓ Alford Plea

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

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

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

i. N/A

ii. N/A

iii. N/A

2010CP3203685

(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

ORIGINAL

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

(a) Was misled by my attorney

(b) " "

(c)

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

(a) Ineffective counsel and newly discovered evidence

(b) " "

(c)

2010CP 3203685

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

(a) Attorney withheld evidence and new evidence

(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

ORIGINAL

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

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

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

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

2010CP3203685

(b) the name and location of the Court in which each case 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 disposition:

i. N/A

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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

2010CP3203685

14. Has any ground set forth in (b) 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 (b) 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) was misled by attorney and believed there

(b) was nothing left to be done.

(c)

2010CP3203685

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 "yes" to one or more parts of (17),
list:

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

i. Alex Thomas Postic 1830 Marion ST, Columbia, S.C.

ii.

iii.

(b) the proceedings at which each such attorney

ORIGINAL

represented you:

- i. 0-20 yrs with no Recommendation
- ii. 0-5 yrs With no Recommendation
- iii. Sentenced to 7+5 yrs Concurrent

19. State clearly the relief you seek in filing this application; to redress my plea and to be sentenced again.

20. Are you now under Sentence from any other Court that you have not challenged? NO

2010CP3203685

STATE OF SOUTH CAROLINA }
 County of Jasper } VERIFICATION

I, Gene W. Hall, 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.

Signature Page to Follow

/s/ Lane Hall

SWORN to and subscribed before me this 25
day of August, 2010

Jacqueline L. Hall
Notary Public

My Commission Expires: 3-3-2019

2010CP3203685

FILED
2010 AUG 30 P 1:48
BETH A. JARRIG
CLERK OF COURT
LEXINGTON, SC

RECEIVED

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

I, Gene W. Hall, 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.

/s/ Gene Hall

SWORN or affirmed to and subscribed before me this
25 day of August, 2010.

[Signature]
Notary Public

my Commission Expires: 3/3/2019

2010CP3203685

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
	)	2010-CP-32-3685
	)	
Gene W. Hall, #338904,	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 30, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the May 2009 term of the Lexington County Grand Jury for Criminal Conspiracy (2009-GS-32-1262), and Armed Robbery (2009-GS-32-1263). He was represented by Alex Thomas Postic, Esquire. On January 14, 2010, the Applicant entered an Alford Plea. He was sentenced by the Honorable R. Farrell Cothran to confinement for five (5) years on the conspiracy charge, and a concurrent period of seven (7) years on the armed robbery charge. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Lexington 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. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

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

1. Ineffective assistance of counsel;
 - a. "Was misled by my attorney" (regarding right to appeal).
 - b. "Attorney withheld evidence and new evidence."

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was

deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland.

Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Here, in addition to making general allegations pertaining to Plea Counsel's performance, the Applicant also specifically claims that he was denied effective assistance of counsel because his attorney did not inform him of his right to appeal his guilty plea conviction. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Jones v. State, 677 S.E.2d 20 (2009). Counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 120 S.Ct. 1029 (2000). In making this determination, courts must take into account all the information counsel knew or should have known. Id. Although not determinative, a highly relevant factor in this inquiry will be whether the

conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id.

There being nothing in the record to indicate that the Applicant reasonably demonstrated to Counsel that he was interested in appealing, the State submits that the allegation is totally without merit and should be dismissed. Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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

VI.

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

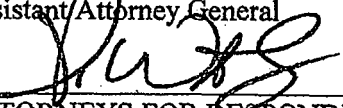
Respectfully submitted,

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By: 
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December 9, 2010

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	2010-CP-32-03685
Gene Hall #338904,	)	
	)	
Applicant,	)	
	)	
vs	)	PROOF OF SERVICE BY MAIL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Personally appeared before me, Lisa A. Süber, who being first duly sworn, states:

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

Catherine Taylor, Esquire
220 Operation Way MC-C 222
Cayce, South Carolina 29033

DATED this 14th day of December, 2010


LISA A. SUBER

1 State of South Carolina
2 County of Lexington
3
4

Court of Common Pleas

5 Gene W. Hall)

6 Plaintiff,)

7 v.)

8 State)

9 Defendant.)

Transcript of Record
10-CP-32-3685

10 August 31, 2011
11 Lexington, South Carolina
12

13 B E F O R E:

14 The Honorable William P. Keesley, Judge.
15

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

17 Robert FitzSimons, Esquire
18 Attorney for the Plaintiff

19 Kaelon E. May, Assist. Attorney General
20 Attorney for the State
21
22
23
24

25 Stacy L. Sheppard, RPR
Circuit Court Reporter

I N D E X

WITNESSPAGE

Alexander Thomas Postic

Direct Examination By Mr. FitzSimons 9

Cross-Examination By Ms. May 27

Redirect Examination By Mr. FitzSimons 30

Gene Hall

Direct Examination By Mr. FitzSimons 31

Cross-Examination By Ms. May 36

Redirect Examination By Mr. FitzSimons 39

Certificate of Reporter

44

1

E X H I B I T S

2

NO.DESCRIPTIONID.EVD.

3

4

5

(There were no exhibits admitted.)

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1 (The following proceedings were held on
2 August 31, 2011.)

3 **THE COURT:** What's the next case?

4 **MS. MAY:** Your Honor, we would call Gene Hall
5 v. State. It's case number 2010-CP-32-3685. I
6 believe we have a preliminary matter to delve into
7 before we get into the hearing.

8 **THE COURT:** What is it?

9 **MR. FITZSIMONS:** Your Honor, Bob FitzSimons for
10 Gene Hall. Mr. Hall informs me that he would ask
11 the Court to relieve me as counsel at this time. He
12 wishes to move orally.

13 **THE COURT:** What's the problem, Mr. Hall?

14 **MR. HALL:** Mr. FitzSimons, he's been my
15 attorney for nearly seven months. He hasn't shown
16 any interest in my case. I wrote him a letter
17 several months ago requesting some materials that I
18 would need in order to go through with this hearing,
19 such as my indictment sheets, court transcripts and
20 motion of discovery. He never responded to my
21 letter until last week. It was the 23rd to be
22 exact. That's when I found out I had a court date
23 today. He gave me some of my material, but not all
24 of them, not everything I requested.

25 This right here is another -- this right here

1 is my indictment sheet. I had two indictments, but
2 he just gave me this one today. The other one I got
3 last week. And I just don't feel he's taking an
4 interest in my case. I'm not confident in going
5 through this hearing with him and I don't believe
6 he's confident in a good outcome.

7 **THE COURT:** Well, your allegations in the
8 complaint are ineffective assistance of counsel and
9 newly discovered evidence. Why do you need the
10 indictments to -- copies of the indictments for
11 that?

12 **MR. HALL:** Copy of my indictments?

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

14 **MR. HALL:** Well, you know, I just want -- I
15 just felt like as far as the indictment goes and the
16 court transcripts, all of these could be beneficial
17 to me coming back to this hearing, so that's why I
18 requested my indictment sheets.

19 **THE COURT:** Well, the transcript is, including
20 the index and the certificate of the reporter, is
21 only 17 pages long. It wouldn't -- and it's double
22 spaced. You've got to give me more to work with
23 than what you're giving me.

24 **MR. HALL:** I mean, what else are you asking
25 for?

1 **THE COURT:** I'm asking you what is it that you
2 need to go forward that you haven't been provided.

3 **MR. HALL:** Well, I need my motion of discovery
4 and I don't have that, you know. So, basically, I
5 have no issues to argue up for now.

6 **THE COURT:** Well, you alleged newly discovered
7 evidence. Newly discovered evidence, what is it?
8 If it's newly discovered, it could not be in the
9 discovery material.

10 **MR. HALL:** I meant to make amendments to that,
11 amendments to my PCR application and have that
12 tooken [sic] out.

13 **THE COURT:** Well, if you take that out, the
14 only allegation is ineffective assistance of
15 counsel; is that right?

16 **MR. HALL:** Yes, Your Honor.

17 **THE COURT:** Is that the only amendment you were
18 going to do?

19 **MR. HALL:** As far as what I was asking for my
20 relief. I was informed by Mr. FitzSimons that I
21 couldn't ask for -- I couldn't ask for my plea to be
22 readdressed. The only thing I could ask for was a
23 new trial. So I wanted to make amendments and ask
24 for a new trial.

25 **THE COURT:** Well, that's the only relief the

1 Court can give you, so there's no really a need to
2 -- not really a need to amend it. What else?

3 MR. HALL: As far as amendments, that's all.

4 THE COURT: Counsel, these discovery materials
5 he's wanting, do you know what he's asking for?

6 MR. FITZSIMONS: Your Honor, my understanding
7 is that all discovery materials were provided to
8 Mr. Hall that had been provided to his defense
9 counsel. His defense counsel made copies of them
10 and provided them to him.

11 Your Honor, I think this comes down, and I'm
12 sitting here high in the briar patch I'll have to
13 say, this comes down to Mr. Hall not being happy
14 with the news that I brought him when I went to see
15 him down in Ridgeland last week. And I can't
16 control my analysis. He asked me in a letter, Do
17 you think I stand a good chance? And I went to see
18 him and told him, no. And then I went over with him
19 the case.

20 I'm prepared to go forward with the case. I am
21 hopeful that there may be something presented in the
22 form of a hearing that I haven't noticed or that may
23 sway the Court more than I'm afraid it will, but I
24 had to tell Mr. Hall. He stood up, he swore, he
25 pled guilty and now he wants to know can that be set

1 aside.

2 I did provide Mr. Hall a copy of this
3 transcript when I met with him last week.

4 **THE COURT:** Anything else you want to tell me,
5 Mr. Hall?

6 **MR. HALL:** No, Your Honor.

7 **THE COURT:** Motion is denied.

8 Are y'all ready to go forward?

9 **MR. FITZSIMONS:** Yes, sir, Your Honor.

10 **MS. MAY:** Yes, sir.

11 **THE COURT:** Madame Attorney General.

12 **MS. MAY:** This case comes from a PCR
13 application filed by Mr. Hall on August 30th, 2010.
14 Mr. Hall came before the Honorable Judge Cothran on
15 January 14, 2010. He was charged with armed robbery
16 and criminal conspiracy. Charges of kidnapping,
17 possession of a gun by a person under 21, possession
18 of a gun during the commission of a violent crime
19 and pointing and presenting a gun were all -- those
20 four were not pressed.

21 He pled guilty under North Carolina v. Alford
22 to the armed robbery and criminal conspiracy --
23 excuse me -- to attempted armed robbery and criminal
24 conspiracy. And Mr. Hall was sentenced to
25 confinement for seven years on the attempted armed

1 robbery and five years for the criminal conspiracy.
2 running concurrent. There was no appeal. And I'll
3 let Mr. FitzSimons...

4 **THE COURT:** All right. Mr. FitzSimons.

5 **MR. FITZSIMONS:** Thank you, Your Honor. We'd
6 call Gene Hall at this time.

7 **THE COURT:** Come up, please, Mr. Hall.

8 **MR. HALL:** I don't have...

9 **THE COURT:** Do you want to testify?

10 **MR. HALL:** No.

11 **THE COURT:** All right.

12 **MR. FITZSIMONS:** Thank you, Your Honor. Your
13 Honor, at this time, we'd call Alex Postic to the
14 stand.

15 **THE COURT:** Come around, please.

16 ALEXANDER THOMAS POSTIC,
17 having been duly sworn, testified as follows:

18 **THE CLERK:** Have a seat and state your name for
19 the record, please.

20 **THE WITNESS:** My name is Alexander Thomas
21 Postic.

22 DIRECT EXAMINATION

23 BY MR. FITZSIMONS:

24 **Q** Mr. Postic, when were you admitted to the bar?

25 **A** '94.

- 1 Q Have you practiced law since that time?
- 2 A Yes, sir.
- 3 Q Has the primary focus of your practice been
- 4 criminal law?
- 5 A Yes, sir.
- 6 Q Have you worked as an assistant solicitor at
- 7 some point?
- 8 A I was an assistant solicitor in York County and
- 9 in Richland County.
- 10 Q Mr. Postic, how did you come to represent
- 11 Mr. Hall?
- 12 A Mr. -- I represented Mr. Hall as a juvenile in
- 13 Richland County and then I was retained to represent
- 14 him on this armed robbery charge.
- 15 Q So you had a prior existing relationship with
- 16 Mr. Hall and when he received his new charges, he
- 17 contacted you and retained you?
- 18 A His family did, yes.
- 19 Q Do you recall approximately how many times you
- 20 met with Mr. Hall? Was it more than five?
- 21 A Oh, yeah.
- 22 Q Were you able to secure a bond for Mr. Hall?
- 23 A Yes.
- 24 Q Were there any unusual circumstances or notable
- 25 stipulations to his bond?

1 **A** His bond was set in circuit court by Judge Lee.
2 It was a 10 percent bond on \$75,000 -- let me look
3 at the stipulations -- no contact with the victims,
4 electronic monitoring.

5 **Q** So Mr. Hall was under an electronic monitoring
6 order?

7 **A** That's correct.

8 **Q** Do you know or do you have a note there that
9 shows approximately how long Mr. Hall was at large
10 between his being released on a bond and his
11 pleading guilty?

12 **A** Let's see, looks like he was -- the bond was
13 set on April 2nd of 2009 and he pled guilty on
14 January 14th, 2010.

15 **Q** And did you meet with Mr. Hall in your office
16 on occasion between April and January?

17 **A** Yes.

18 **Q** More than once?

19 **A** Much more than once.

20 **Q** When did you first discuss with Mr. Hall the
21 possibility of a guilty plea?

22 **A** I can't really remember how it went. We
23 went -- typically, what I would do is just review
24 the evidence with him. There was a video that we
25 requested and we reviewed the video together. And

1 an offer was made by the Solicitor's office and then
2 we discussed taking a plea.

3 Q Now, you made reference to a video -- the Court
4 has the transcript before it, but other than that,
5 Judge Keesley does not know the circumstances or the
6 facts of this case. Could you outline those
7 briefly?

8 A There was an armed robbery in February of '09
9 of, I can't -- I think it was an Arby's in Irmo.
10 The -- a Crime Stoppers tip pointed to Mr. Hall and
11 several -- and one co-defendant. They were then --
12 or maybe it was more than one co-defendant. A video
13 was shown to a school resource officer without
14 telling him who these people were and they pointed
15 out Mr. Hall. And Mr. Hall was arrested on those
16 charges.

17 Q If I might interrupt you, please, you said that
18 a video was shown to the resource officer. Were the
19 faces of the robbers visible in the video?

20 A No.

21 Q Was there anything in the video that you were
22 able to see that would indicate Mr. Hall was one of
23 the robbers?

24 A For me?

25 Q Yes.

1 A One of them was about the same size as Gene,
2 but, I mean, he told me he wasn't involved.

3 Q So Mr. Hall told you he was not guilty?

4 A Yes.

5 Q However, you received a plea offer at some
6 point; is that correct?

7 A Yes.

8 Q And y'all pled in what I assume is the first
9 term in January in the new year. Do you recall when
10 you decided that Mr. Hall would plead?

11 A I can't remember, I mean, exactly. I know we
12 had a lot of discussions about it. We went over the
13 pros and cons. I went over the -- his defenses, the
14 pros and cons of his case. And I think -- I mean,
15 I'm speaking for Gene, but I think my memory is, is
16 that what tipped it towards a plea was that we had
17 an offer that got us out from under a mandatory
18 10 years, an armed robbery, that we would have had
19 an armed robbery. And, I mean, he liked the idea of
20 probation eligible, which attempted armed robbery
21 is.

22 Q Now, do you know was that offer communicated to
23 you before Christmas or was this a last minute
24 offer?

25 A I can't remember. I can't remember.

1 **Q** Did you do any independent investigation? Did
2 you hire an investigator? Did you travel to any
3 places? Did you hire any experts?

4 **A** Other than talking to my client and his family,
5 no.

6 **Q** The video, does that constitute the only
7 physical or forensic evidence in this case?

8 **A** There were some items recovered by a search
9 warrant, some clothing that was similar to the
10 clothing worn by the people in the video.

11 **Q** Was that recovered from the co-defendant's
12 home?

13 **A** Yes.

14 **Q** And was there any DNA analysis on that
15 clothing?

16 **A** No.

17 **Q** Either by the solicitor or by you?

18 **A** No.

19 **Q** Did you discuss with Mr. Hall an alibi?

20 **A** Yes.

21 **Q** What alibi did the two of you formulate or
22 discuss?

23 **A** It was a discussion -- I think the robbery
24 happened in the early morning, the discussion was
25 that he was at home asleep. His mother told me that

1 his car or the car that was -- he would have used
2 was blocked by another car so he couldn't have used
3 it, but that was the extent of any discussion of
4 alibi.

5 Q Did you ever meet with or have any conversation
6 with the co-defendant?

7 A No.

8 Q Are you aware that the co-defendant named
9 Mr. Hall as his alibi?

10 A I am aware of that.

11 Q Did any defendant or any other party offer a
12 statement in this case? Were there statements by
13 the witnesses, employees of the fast food --

14 A There were statements by the employees, yes.

15 Q Did they identify either Mr. Hall or the
16 co-defendant by name?

17 A They did not.

18 Q Did they say that they knew who Mr. Hall was?

19 A They -- Mr. Hall was a former employee of
20 Arby's and that was an issue -- that was an issue
21 that we were going to raise at trial that they
22 didn't name him.

23 Q In the transcript, you refer to this case as a
24 jump ball. What did you mean by that?

25 A Well, what I meant is that, that it was a risk

1 to go to trial, that, you know, that it was going to
2 be me against the State and us against the State and
3 they could very well come back guilty. That's what
4 I meant by it, just that there was no sure thing.

5 Q Did you tell Mr. Hall that he was likely to
6 suffer racial prejudice at the hands of a Lexington
7 County Jury?

8 A I don't think so.

9 Q. Would you have warned Mr. Hall that a Lexington
10 County Jury might be racially prejudiced?

11 A I don't think that that's what I said. I'm
12 sure I told him that Lexington County juries are, in
13 my opinion, seem pro-prosecution.

14 Q So did you tell Mr. Hall that if he went to
15 trial, he was likely to receive a larger sentence?

16 A What I told him was, is that he would not be
17 able to get -- if he was convicted of armed robbery,
18 that he could not get less than 10 years.

19 Q Did you tell Mr. Hall that if he was acquitted
20 at trial, he would go free?

21 A Yes, I'm sure, yes.

22 Q Was Mr. Hall -- at one point, did you discuss
23 with Mr. Hall a possibility of a sentence under the
24 Youthful Offender Act?

25 A I -- we had talked about that I'm sure, but --

1 and it was ineligible for -- I mean...

2 Q But he did not receive a Youthful Offender Act
3 sentence?

4 A No.

5 Q Did he know, prior to pleading under Alford
6 versus North Carolina [sic], that he could not
7 receive a Youthful Offender Act sentence?

8 A I can't remember telling him that. I do --
9 rereading the transcript, I see that I brought it up
10 as a possibility to Judge Cothran and Cothran
11 interrupted me and stated on the record that it was
12 not -- that he would not be eligible for it. So I
13 may have made an error there.

14 Q Did you stop at that point and ask for Mr. Hall
15 to be able to withdraw his plea?

16 A No, I did not.

17 Q When Mr. Hall pled, did he plead for a
18 negotiated sentence or a recommendation by the
19 State?

20 A No. It was a straight-up plea.

21 Q Pled straight up. Why did you not go to trial
22 in this case?

23 A Because Gene told me he wanted to plead guilty
24 or plead under North Carolina versus Alford.

25 Q Did you tell him that when he pled under North

1 Carolina versus Alford, he would be sentenced just
2 as if he was pleading guilty?

3 A Yes.

4 Q Do you know whether or not Mr. Hall had ever
5 observed a guilty plea prior to participating on his
6 own?

7 A I don't know.

8 Q Do you know whether or not Mr. Hall believed,
9 in the course of his guilty plea, it would be
10 appropriate for you to argue his innocence?

11 A What -- I know I argued out the points of the
12 case to him. I did not argue his innocence.

13 Q Do you know whether or not Mr. Hall understood
14 at the time of his guilty plea or his plea under
15 North Carolina versus Alford, that his innocence was
16 no longer an issue?

17 A I can't tell you what he knew.

18 Q Did you tell him specifically, When you plead,
19 you're no longer going to be able to argue that you
20 were not guilty?

21 A I explained to him the concept of no contest
22 and that what we were doing is taking advantage of
23 the plea offer extended by the State. And I told
24 him that, you know, essentially what he was doing is
25 he is maintaining that he is not guilty; however, it

1 was a deal that he could not give up.

2 Q And what was it about the deal that made it so
3 attractive that he should plead?

4 A That there was no mandatory minimum.

5 Q What was the maximum Mr. Hall was facing?

6 A Wow. You know, kidnap...

7 Q He had kidnapping and armed robbery; is that
8 correct?

9 A Well, no. He had kidnapping, armed robbery,
10 possession of a weapon during a crime of violence
11 and criminal conspiracy.

12 Q And the now unconstitutional possession of a
13 handgun by someone between the ages of 18 and 21?

14 A He had -- and he had pointing and presenting.
15 You're right, he did have that, too. Bob, I can't
16 -- I mean --

17 Q But the big ones were armed robbery and
18 kidnapping?

19 A Right.

20 Q And on armed robbery, he was facing a mandatory
21 10?

22 A It's 10 to 25.

23 Q And then on the kidnapping, he could have
24 received a life sentence?

25 A I think -- I'm not sure, but it's -- it might

1 be capped at 30 now. I can't remember.

2 **Q** Thirty. And you discussed with Mr. Hall that
3 he was facing a lot of time. When he pled guilty to
4 attempted armed robbery, what was the maximum
5 sentence he could have received?

6 **A** That's a D felony, 20. Is that right?

7 **Q** So while his charges were reduced, in fact, he
8 was still looking at up to 20 years and he pled
9 straight up; is that correct?

10 **A** He was, yes. Plus, the conspiracy is 25.

11 **Q** Do you recall specifically when you and
12 Mr. Hall nailed down the decision for him to plead
13 under North Carolina versus Alford? Was it the day
14 of trial?

15 **A** No. It was -- I was given the plea offer --
16 the prosecutor had told me she would give me a
17 month's notice if we were going to go to trial on
18 this case and she gave me the plea offer. And I
19 can't remember what day of the week this was, but, I
20 mean, I remember having a conversation in my office
21 with Gene about the deal and him telling me that
22 he's going to take it.

23 **Q** How old was Mr. Hall at the time of the plea?
24 Does 19 --

25 **A** Nineteen. He was 19, that's right.

1 Q Did you ever discuss these matters with
2 Mr. Hall in the presence of some older, more
3 experienced adult?

4 A Yeah.

5 Q Who would that have been?

6 A His mother.

7 Q So do you know whether or not his mother
8 understood when he pled under North Carolina versus
9 Alford in January, that he was facing up to
10 20 years?

11 A She knew. She knew.

12 Q And that he was not going to be able to argue
13 for his innocence at that point?

14 A (No response.)

15 Q Did you examine the indictments --

16 **THE COURT:** Did you answer?

17 **THE WITNESS:** I'm sorry, Your Honor. Yes.

18 **THE COURT:** Go ahead.

19 BY MR. FITZSIMONS:

20 Q I apologize, I didn't mean to step on your
21 answer. Did you examine the indictments in this
22 case?

23 A I can't remember.

24 Q Did you find anything remarkable about the
25 indictments, any defect in the indictments that

1 would have led you to challenge the indictments?

2 A I can't remember.

3 Q Do you ordinarily do that?

4 A Not really.

5 Q The only evidence against Mr. Hall, as far as
6 you know, was the clothing taken from his
7 co-defendant's house and the video that showed
8 someone that might have resembled Mr. Hall?

9 A And the voice recognition by the school
10 resource officer.

11 Q Did you have any third party expert examine the
12 audio portion of the tape so as to determine whether
13 or not there was any basis for saying that sounds
14 like Mr. Hall?

15 A No.

16 Q Did you listen to it yourself and were you able
17 to say it does or does not sound like Mr. Hall?

18 A I didn't.

19 Q Did you read the investigator's statement in
20 the incident report?

21 A Yes.

22 Q Did you cross-examine the investigator?

23 A At the prelim.

24 Q What did the investigator say when you
25 cross-examined him?

1 **A** What did he say? I asked him a lot of
2 questions. I asked him about whether or not there
3 was any forensics, fingerprints or that sort of
4 thing. I asked him, on the incident report, it
5 states that there were white males that were doing
6 the armed robbery. He said that was a misprint. I
7 had cross-examined him about who did the Crime
8 Stoppers tip. He said that was protected by
9 anonymity.

10 I asked him about exactly what the Chapin
11 School Resource Officer said about the -- about the
12 voice recognition, that the school -- he replied
13 that he said, without a doubt, it was Gene Hall. He
14 --, I asked him whether or not the school resource
15 officer was given any names. He told me it was a
16 blind viewing of the video and audio. I asked him
17 whether that -- whether the school resource officer
18 had been trained in voice recognition, he replied
19 negatively.

20 Let's see what else. I asked him about DNA on
21 the clothes that they found. I asked him about
22 shoes, didn't find any shoes. I asked him whether
23 any of the workers recognized Gene, he said no. I
24 asked specifically about the search warrant and what
25 they found and they mentioned that they found a ski

1 mask.

2 Q And the search warrant was not of Mr. Hall's
3 home, was it?

4 A That's right.

5 Q There was no evidence found in Mr. Hall's home,
6 was there?

7 A I don't think so.

8 Q In fact, they arrested Mr. Hall only after they
9 had already arrested the co-defendant; is that
10 correct?

11 A That's right.

12 Q Do you know whether or not the co-defendant
13 pled guilty or was tried?

14 A I don't know.

15 Q Do you know whether or not -- did the
16 co-defendant offer to testify against Mr. Hall?

17 A I did not know that he would do that.

18 Q I'm asking, I don't know.

19 A I don't think so.

20 Q Did you proceed close enough to the eve of
21 trial that you received a witness list?

22 A No.

23 Q Now, we've talked about discovery materials. I
24 gather then the discovery materials consists of the
25 video you talked about and police reports and

1 statements by witnesses; is that correct?

2 A That, the search warrant and the search warrant
3 results and the investigative report.

4 Q And no statements by either defendant?

5 A No statements except for the alibi presented by
6 the co-defendant -- or, actually, that was the
7 co-defendant's mother or grandmother.

8 Q At some point, there's a reference to there
9 actually being four parties to this case; is that
10 correct?

11 A That's correct.

12 Q Were either of the other two parties ever
13 identified?

14 A I believe so. I can't remember offhand.

15 Q Were they connected to Mr. Hall in some way?
16 Does that help you remember?

17 A I think one of them -- one of them, Chris
18 Monroe maybe was the name, was supposed to have been
19 with them.

20 Q Were there any statements from those
21 co-defendants?

22 A Not that I know.

23 Q So, again, you were presented an offer, the
24 offer included a reduction in charges. You never
25 went any further towards a trial preparation than

1 that?

2 **A** That's correct.

3 **Q** And at the trial -- excuse me -- at the plea,
4 Mr. Hall pled under North Carolina versus Alford.
5 You explained to him that he was not going to get --
6 that he was going to be sentenced at that point?

7 **A** Yes.

8 **Q** Did you explain to him specifically that there
9 was no knowing how large a sentence was going to be?

10 **A** Yes.

11 **Q** Did you hint to him that it might be on the low
12 side of 20 or on the high side of 20?

13 **A** I don't think I hinted either way.

14 **Q** And was anyone else present -- was his mother
15 or father present at the guilty plea?

16 **A** They were both there.

17 **Q** And did you contact Mr. Hall after the guilty
18 plea?

19 **A** I went to go see him at Kirkland.

20 **Q** Did you file an appeal on his behalf?

21 **A** He told me not -- I mean, I talked to him about
22 it and he said he didn't want to file an appeal.

23 **MR. FITZSIMONS:** That's all the questions I
24 have. Answer any questions the attorney general may
25 have.

1 **THE WITNESS:** Thank you.

2 **THE COURT:** Examination of this witness.

3 **MS. MAY:** Just briefly, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. MAY:

6 **Q** Mr. Postic, I believe you answered most of what
7 I was going to ask you by Mr. FitzSimons, but I just
8 have a few. When you met with Mr. Hall, did y'all
9 discuss the charges against him, even the ones that
10 were then later nol -- dropped, I guess?

11 **A** Yes.

12 **Q** And you discussed the possible punishment for
13 each of those?

14 **A** Yeah.

15 **Q** And, at that time, did you also inform him of
16 his constitutional rights, his right to remain
17 silent and right to a jury trial?

18 **A** I went through them.

19 **Q** And, at that time, did you discuss the State's
20 burden of proving guilt beyond a reasonable doubt if
21 the case were to go to trial?

22 **A** Yes.

23 **Q** And did you discuss his version of the facts or
24 his story?

25 **A** Yeah, we talked about it.

1 Q What did he say?

2 A That he was in bed and that he did not rob the
3 Arby's.

4 Q And I believe you mentioned he gave you an
5 alibi, his mother?

6 A Well, there was no specific alibi. It was just
7 that he was at home. There was no -- I mean, she
8 couldn't nail down the exact time just that his car
9 was there.

10 Q But you did speak to his mother and
11 investigated that, the alibi?

12 A Oh, yeah.

13 Q With regard to discovery, did you review the
14 discovery that you just mentioned with Mr. Hall?

15 A I did.

16 Q Did he provide you with the names of any
17 potential witnesses that might have been beneficial
18 to his case aside from the alibi?

19 A We didn't -- no.

20 Q And I believe you already answered, but just --
21 there was no independent investigation needed beyond
22 the discovery materials?

23 A There was -- we were not at the point of trial.
24 We were at the point of plea. And I had -- the
25 prosecutor and I had an understanding that she would

1 give me, she told me, at least a month's notice for
2 trial. And if we had not pled this case in January,
3 we may have tried it in February or March and that
4 is when I would have done these things.

5 Q And do you feel that you would have had
6 sufficient time to prepare for trial?

7 A Oh, yeah.

8 Q And even -- just with regard to the plea, did
9 you feel you had sufficient time to prepare for the
10 guilty plea?

11 A Yes.

12 Q And did you -- prior to the guilty plea, did
13 you discuss the issues and what exactly an Alford
14 plea meant with Mr. Hall?

15 A I did.

16 Q And did he seem to understand that discussion?

17 A Yes, he did.

18 Q And was it his decision to ultimately plead
19 under North Carolina v. Alford?

20 A His decision.

21 Q And I believe -- I just want to cover this.
22 You met with him after the guilty plea?

23 A I did.

24 Q And you asked him if he wanted you to file an
25 appeal?

1 **A** I asked him if he wanted me to file a notice of
2 appeal. I didn't -- that was beyond the scope of my
3 representation, but I asked -- I mean, an appeal
4 would have been, but I asked him that -- told him
5 that he could file one. And he said -- and, at that
6 point, he told me he was happy with the seven years.

7 **Q** And if he had indicated that he wanted you to
8 file an appeal, you would --

9 **A** I would have filed a notice of -- what I've
10 done in the past is I'd file a notice of appeal and
11 then hand it over to indigent defense.

12 **Q** Did you feel that you misled Mr. Hall in any
13 way in your representation?

14 **A** No.

15 **MS. MAY:** I have no further questions.

16 **THE COURT:** All right. Any further questions
17 of the witness?

18 **MR. FITZSIMONS:** Just one briefly.

19 REDIRECT EXAMINATION

20 BY MR. FITZSIMONS:

21 **Q** Mr. Postic, did you make any deals or otherwise
22 talk with the investigator in this case?

23 **A** Any deals with the investigator?

24 **Q** Did you have any conversation with him
25 regarding delivering Mr. Hall up or anything like

1 that?

2 **A** I talked to him about maybe giving us a
3 recommendation on the plea for probation or
4 something like that. I asked him would he be
5 willing to do -- to do that. He was not willing.

6 **MR. FITZSIMONS:** That's all I have. Thank you,
7 Your Honor.

8 **THE COURT:** Any other questions of the witness?

9 **MS. MAY:** No further questions, Your Honor.

10 **THE COURT:** Thank you, sir. You may step down.

11 **THE WITNESS:** Thank you, Your Honor.

12 **THE COURT:** Any other witnesses?

13 **MR. FITZSIMONS:** Your Honor, we'd call Mr. Hall
14 at this time.

15 **THE COURT:** Come around, please.

16 GENE HALL,
17 having been duly sworn, testified as follows:

18 **THE CLERK:** Have a seat. State your full name
19 for the record, please.

20 **THE COURT:** State your name, please, Mr. Hall.

21 **THE WITNESS:** Gene Hall.

22 DIRECT EXAMINATION

23 BY MR. FITZSIMONS:

24 **Q** Mr. Hall, how old are you now?

25 **A** Twenty.

1 Q And how old were you when you pled guilty?

2 A Nineteen.

3 Q How far did you go in school?

4 A Ninth grade.

5 Q So between ninth grade and the age of 19, when
6 you pled guilty, what did you do?

7 A Work.

8 Q What kind of work did you do?

9 A I did fast food and I worked at a supermarket
10 and I went to school. I reenrolled myself into
11 school. It was adult education.

12 Q Mr. Hall, how much experience do you have in
13 criminal procedure in the criminal law?

14 A None.

15 Q So when you pled guilty in January a year and a
16 half ago, what did you expect to happen?

17 A Probation.

18 Q Did you expect your lawyer to argue on your
19 behalf?

20 A I did.

21 Q Do you believe he did that?

22 A No.

23 Q What do you think he should have done that he
24 did not do?

25 A I think he could have -- he should have

1 investigated my case more thoroughly as far as, you
2 know, me having an alibi.

3 Q But when you were guilty -- when you were at
4 the guilty plea, when you pled under North Carolina
5 versus Alford, what did you expect your lawyer to do
6 that he did not do on your behalf?

7 A I mean, as far as the plea, I knew a decision
8 was going to be made, so.

9 Q All right. Then, prior to the plea, what did
10 you -- what would you ask now that Mr. Postic should
11 have done that would have kept you from going to
12 that plea?

13 A Brought up more issues, you know, as far as the
14 case goes, investigated the statement, you know,
15 what you just asked him about.

16 Q You need to be specific. What issues do you
17 think he could have brought up that would have
18 stopped you from going to the plea?

19 A You know, well, the main issue that -- the
20 investigator statement of the robbers being white,
21 that's one issue he didn't argue. It seems like the
22 main issue.

23 Q Do you remember when you decided to plead
24 instead of going to trial?

25 A I don't recall.

1 Q Why did you not go to trial?

2 A Mr. Postic told me it's a possibility that I
3 could be convicted because of the color of my skin.

4 Q So Mr. Postic told you there was a possibility
5 that you could be convicted because of the color of
6 your skin?

7 A Yes.

8 Q And that's why you decided to plead instead of
9 going to trial?

10 A Yes.

11 Q Knowing what you know now, would you go to
12 trial or would you plead?

13 A I would go to trial.

14 Q Is there anything else that you can think of,
15 specifically, that you believe Mr. Postic should
16 have done that he didn't do or should not have done
17 that he did do that led you to plead guilty instead
18 of going to trial?

19 A No.

20 Q Did you go and watch court before you
21 participated in court?

22 A You mean the same day I plead [sic]?

23 Q Well, before you decided whether or not to
24 plead, had you ever seen a trial?

25 A No.

1 Q Have you ever seen a guilty plea?

2 A Yes.

3 Q Did you understand what a guilty plea was going
4 to be like when you made that decision?

5 A Yes.

6 Q Did Mr. Postic explain to you when you pled
7 guilty that you were looking at up to 20 years?

8 A Yes.

9 Q One more time, why didn't you go to trial?

10 A Like I said, he told me it's a possibility that
11 I could be convicted because of the color of my
12 skin.

13 Q And if you had been convicted, how much time
14 were you looking at?

15 A Well, he told me I could get a life sentence.

16 Q Is there anything else you need to tell the
17 judge now about your case or about your trial?

18 A No.

19 Q Did you appeal your case?

20 A No.

21 Q Is there a reason you did not appeal your case?

22 A Mr. Postic told me that it would be denied.

23 Q Do you know of any appellate issues from your
24 plea that you believe would have led to your plea
25 being overturned?

1 **A** Can you repeat that question?

2 **Q** Do you know of anything about your plea, if it
3 was appealed, would lead to an appeal being granted?

4 **A** No.

5 **MR. FITZSIMONS:** Answer any questions the
6 attorney general has.

7 **THE COURT:** Cross.

8 **MS. MAY:** May it please the Court, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. MAY:

11 **Q** Mr. Hall, what exactly should your -- excuse me
12 -- should your attorney investigated further or more
13 thoroughly?

14 **A** As far as my alibi.

15 **Q** Do you recall Mr. Postic just testifying that
16 he did contact your mother and did discuss that
17 alibi? Was there another alibi aside from your mom
18 that you wanted him to investigate?

19 **A** Two more people, my brother, my stepfather.

20 **Q** And did you give him your brother and your
21 stepfather's names?

22 **A** Uh-huh.

23 **THE COURT:** Did you answer the question?

24 **THE WITNESS:** Yes.

25 **THE COURT:** The answer to the question was yes?

1 **THE WITNESS:** Yes, Your Honor.

2 **THE COURT:** Thank you.

3 BY MS. MAY:

4 **Q** At your guilty plea, do you remember the judge
5 asking you whether you wanted to give up your right
6 to a jury trial?

7 **A** Yes.

8 **Q** Do you remember answering yes?

9 **A** I think so.

10 **Q** If you -- and I believe you indicated you
11 wanted -- you did want a jury trial, correct?

12 **A** Yes.

13 **Q** Why didn't you tell the judge that you wanted a
14 jury trial?

15 **A** You said why didn't I tell him I wanted a jury
16 trial?

17 **Q** Why didn't you, yes, if that's what you wanted.

18 **A** Well, like I said, Mr. Postic told me it's a
19 possibility that I could be convicted because of my
20 skin. I mean, I wanted a jury trial, but, at the
21 same time, he told me that if I rejected the deal,
22 that, you know, if I had told him that, they would
23 grant that to me and I could be convicted for the
24 color of my skin.

25 **Q** That's the only reason that you were given why

1 you shouldn't go forward with a jury trial?

2 **A** I mean, if the color of my skin going to
3 outweigh the evidence no matter what the evidence
4 bring up, then, yes.

5 **Q** Did you tell the judge that at your plea
6 hearing that that was your understanding or your
7 reason for not going forward to a jury trial?

8 **A** No.

9 **MS. MAY:** Beg the Court's indulgence, Your
10 Honor, just a moment.

11 **THE COURT:** Yes, ma'am.

12 (Pause.)

13 BY MS. MAY:

14 **Q** Do you recall when -- the Solicitor stating the
15 facts of the case during your trial?

16 **A** Yes.

17 **Q** And the court asking you -- or, I guess,
18 advising you that that would be the evidence the
19 State would present against you if it went to -- if
20 the case went to trial?

21 **A** Yes.

22 **Q** Did you understand that?

23 **A** Yes.

24 **Q** And did you understand what an Alford plea was
25 going into your guilty plea? Did your attorney

1 explain to you what that was?

2 A Well, he told me that I wasn't pleading guilty,
3 you know, that -- he told me basically an Alford
4 plea was I wasn't pleading guilt, but I'm saying
5 that, you know, it's a 50/50 chance maybe.

6 Q Is that the jump ball? Is that what you're
7 referring to?

8 A Yes.

9 Q Okay. And you were looking at upwards of, I
10 guess, I believe it was 20 years and you were -- the
11 judge sentenced you to seven and five years
12 concurrent; is that correct?

13 A Yes.

14 Q Okay. And you withdrew your newly discovered
15 evidence claim; is that correct?

16 A Yes.

17 MS. MAY: I have no further questions, Your
18 Honor.

19 THE COURT: Redirect.

20 REDIRECT EXAMINATION

21 BY MR. FITZSIMONS:

22 Q Any of your questions [sic] that you gave to
23 the attorney general that you need to explain
24 further?

25 A No.

1 **MR. FITZSIMONS:** That's all I have. Thank you,
2 Your Honor.

3 **THE COURT:** Thank you, Mr. Hall. You can step
4 down.

5 **MR. FITZSIMONS:** Your Honor, that's the
6 Applicant's case.

7 **THE COURT:** Does the State have any evidence?

8 **MS. MAY:** No, Your Honor.

9 **THE COURT:** Any argument?

10 **MR. FITZSIMONS:** Briefly, Your Honor.

11 Your Honor, as the Court has noted, the
12 transcript in this case is very brief, 17 pages,
13 double spaced, including all the introduction and
14 all the ending they put on those things. Your
15 Honor, I would suggest that the evidence against
16 Mr. Hall is equally scant. In addition to the scant
17 evidence, Your Honor, trial counsel has testified
18 that he did not subject that evidence to any
19 independent scrutiny or analysis.

20 As you have seen, both from his testimony and
21 his demeanor and you can glean from his life
22 experiences, Mr. Hall is unsophisticated and easily
23 swayed. Your Honor, I would suggest that he was
24 persuaded not to go to trial despite this being what
25 his trial counsel called a jump ball case by a fear

1 of racial prejudice and also by a lack of
2 understanding of the process.

3 Your Honor, you may or may not have noticed in
4 his answer to the attorney general, it was fairly
5 clear to me, that he did not understand that
6 pleading under Alford would result in a sentence.
7 Your Honor, I would suggest that that failure to
8 understand can come from only one place and that is
9 from ineffective assistance of counsel. I'd ask the
10 Court to reverse Mr. Hall's conviction and grant him
11 a new trial.

12 **THE COURT:** Thank you.

13 Does the State wish to be heard?

14 **MS. MAY:** Yes, Your Honor. May it please the
15 Court.

16 With regard to the appeal allegation,
17 Mr. Postic testified that he, himself, which is,
18 based on my short experience, out of character for a
19 plea counsel to affirmatively ask their client if
20 they want to appeal, usually it's the other way
21 around, but he made the point to ask Mr. Hall if he
22 wanted to appeal. Mr. Postic said that Mr. Hall did
23 not wish to appeal.

24 And then with regard to the ineffective
25 assistance of counsel, specifically the alibi

1 investigation, Mr. Hall, he alluded to his brother
2 and his stepfather, that he wanted them to be
3 questioned for an alibi. They weren't here today to
4 testify to any alibi that they could or could not
5 provide. So I would submit that there's been no
6 prejudice shown there.

7 I think that the transcript is pretty clear.
8 The court advised him of that -- what he could be
9 sentenced up to. That's not unclear. He indicated
10 that he understood everything the judge was asking
11 of him and telling him. And I would submit that the
12 Applicant has failed to meet his burden and there is
13 no resulting prejudice whatsoever.

14 **THE COURT:** Anything in response?

15 **MR. FITZSIMONS:** No thanks, Your Honor.

16 **THE COURT:** I'll review the matter and notify
17 you of my decision in writing. Thank you very much.

18 Mr. Hall, if you wish to appeal anything from
19 this proceeding, including my decision not to
20 relieve your attorney, you have to do it in writing.
21 Make sure you tell your attorney to file a notice of
22 appeal if you wish to do so.

23 Were you appointed?

24 **MR. FITZSIMONS:** Yes, Your Honor.

25 **THE COURT:** If an appeal is filed, then there's

1 an agency in Columbia that will take over providing
2 you a lawyer for an appeal. You understand all
3 that?

4 MR. HALL: Yes, sir.

5 THE COURT: Thank you. Good luck to you, sir.

6 MR. FITZSIMONS: Thank you, Your Honor.

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8 END OF PROCEEDINGS

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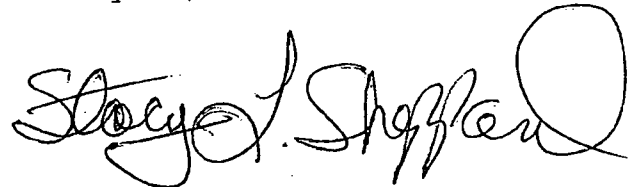
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 31st of August, 2011.

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

May 10, 2012

A handwritten signature in black ink, appearing to read "Stacy L. Sheppard", with a large, stylized loop at the end.

Stacy L. Sheppard, RPR
Circuit Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON)

2010-CP-32-3685

Gene W. Hall, #338904,)

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

FILED

2012 ... 11:23:30

Spec
11

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed August 30, 2010. Respondent made its Return on December 9, 2010. An evidentiary hearing into the matter was convened on August 31, 2011 at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Robert C. FitzSimons, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. The State offered the testimony of Alex Postic, Esquire (Mr. Postic), Applicant's plea counsel. This Court also had before it the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the May 2009 term of the Lexington County Grand Jury for Criminal Conspiracy (2009-GS-32-1262), and Armed Robbery (2009-GS-32-1263). He was represented by Alex Thomas

Postic, Esquire. On January 14, 2010, the Applicant entered an Alford Plea to criminal conspiracy and attempted armed robbery. He was sentenced by the Honorable R. Farrell Cothran to confinement for five (5) years on the conspiracy charge, and a concurrent period of seven (7) years on the attempted armed robbery charge. The Applicant did not appeal his guilty plea or sentence.

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

1. Ineffective assistance of counsel;
 - a. "Was misled by my attorney" (regarding right to appeal).
 - b. "Attorney withheld evidence and new evidence."

At the PCR hearing, Applicant amended his Application to include the following allegations:

- c. Failure to investigate alibi witnesses
- d. Advising Applicant that a jury in Lexington would be racially biased

2. Involuntary Guilty Plea

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR

EVIDENTIARY HEARING

Mr. Postic's Testimony

At the PCR hearing counsel testified that he represented the Applicant and met with him more than five (5) times prior to the Applicant's plea. Counsel testified that he was able to secure a bond with special circumstances (GPS bracelet) for the Applicant on April 2, 2009, and that the plea hearing was on January 14, 2010. Counsel testified that he filed a discovery motion and received the discovery materials. Counsel testified that the discovery materials included a video, incident reports, witness statements, search warrant, and an investigative report. Counsel testified that he reviewed the

video and the evidence with the Applicant, that the Solicitor made an offer to Applicant, and that counsel and Applicant discussed taking a plea. Counsel testified that he reviewed the pros and cons with the Applicant of taking a plea versus proceeding to trial and that Applicant got ~~out from~~ ^{Whe} a ten (10) year attempted armed robbery such that he be parole eligible. Counsel testified that he did not conduct an independent investigation, but that he was aware of/reviewed the video and the items recovered from the search warrant. Counsel testified that he and the Applicant discussed an alibi defense, that counsel investigated Applicant's alibi, but that counsel's investigation was not fruitful. Counsel testified there were statements made by the employees, that other employees did not identify the Applicant, and that this was a possible issue to raise at trial.

WPC #3
Counsel testified that he never told the Applicant that juries in Lexington County were racially prejudiced. Counsel testified that he informed the Applicant that the juries in Lexington County in counsel's opinion were pro-prosecution. Counsel testified that he informed Applicant if Applicant was convicted of Armed Robbery, Applicant could not receive less than a ten (10)-years sentence, but that if Applicant was not convicted he would serve no time. Counsel testified that he discussed a YOA sentence with the judge, but the judge informed counsel that Applicant was not eligible for a YOA sentence, and Applicant was aware of this and ~~choose~~ ^{chose} ^{Whe} not to withdraw his plea at that time. Counsel testified that this was a straight-up plea, that Applicant did not proceed to trial because Applicant wanted to take an Alford plea. Counsel testified that he explained what an Alford plea meant and the issues pertaining to such a plea to the Applicant and that the Applicant indicated he understood counsel.

Counsel testified that he explained the concept of "no contest" and the advantage of taking a plea offer. Counsel testified that the Applicant was facing an armed robbery charge and kidnapping.

Counsel testified that when the solicitor presented the plea offer counsel discussed the offer with Applicant in counsel's office, that Applicant indicated he wanted to plead, and that Applicant's mother was present during this discussion when the Applicant decided to take the plea offer. Counsel testified that he did not recall seeing any problems with the indictments. Counsel testified a school resource officer identified Applicant through voice recognition. Counsel testified that he read the investigator's statement and questioned the investigator at the preliminary hearing. Counsel testified that he asked for DNA and fingerprints, that he challenged the crime-stoppers tip by questioning the resource officer about any training in voice recognition the officer had received. Counsel testified there was no evidence found in Applicant's house, that Applicant was arrested after his co-defendant. Counsel testified there were 4 parties to the crime and that it was possible the other two identified the Applicant, however there were no statements from these co-defendants.

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Counsel testified that he and the Applicant reviewed the potential sentence, that counsel did not hint at a low or high sentence, and that Applicant's mother and father were present at the guilty plea. Counsel testified that he visited Applicant after the plea and that the Applicant did not ask counsel to file an appeal.

Applicant's Testimony

At the PCR hearing Applicant testified that at the time of his plea he was nineteen (19) years of age, that he completed the ninth grade, and that he had worked at a fast food restaurant and supermarket. Applicant testified that when he pled guilty he expected probation and for his counsel to argue on his behalf. Applicant testified that his counsel should have investigated more thoroughly, that counsel should have raised more issues such as the statement in the investigative report that asserted the person who robbed the place was caucasian. Applicant testified that counsel informed

Applicant he could be convicted based on the color of his skin. Applicant testified that he understood what the guilty plea hearing entailed, that counsel advised Applicant he was facing twenty (20) years, and that the only reason Applicant did not want to proceed to trial was because counsel said Applicant would be convicted based on the color of his skin. Applicant testified that counsel should have investigated his alibi, specifically by interviewing Applicant's brother and step-father.

III. APPLICABLE LAW

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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).

IV. FINDING OF FACT AND CONCLUSIONS OF LAW

2/24/20
#6
This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcript from Applicant's guilty plea, and legal arguments of counsel. Pursuant to S.C. Code Ann § 17-27-80 (2003), this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

1. Ineffective Assistance of Counsel

a. Failure to file appeal

This Court finds that Applicant was not deprived of his right to appeal. Applicant failed to prove that he instructed his attorney to appeal from his guilty plea. Weather v. State, 319 S.C. 59, 459 S.E.2d 838 (1995). Plea counsel testified credibly that he visited the Applicant at prison shortly after the plea hearing and that Applicant informed counsel that he did not wish to appeal. There is no constitutional requirement that necessitates that trial counsel inform a criminal defendant of his right to appeal, following a guilty plea. Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); Carey v. Leverette, 605 F.2d 745 (4th Cir. 1979). Therefore, absent extraordinary circumstances, the failure

to be advised of his right to an appeal from the guilty plea does not result in a denial of the Applicant's due process rights. Younger v. Cox, 323 F.Supp. 412 (D.C. Va. 1971). There being nothing in the record to indicate that the Applicant conveyed to his trial attorney a desire to appeal, and there being no showing of extraordinary circumstances that would require counsel to inform his client of the right to appeal, this Court finds that counsel was not deficient nor was the Applicant prejudiced. Therefore, this allegation is denied and dismissed.

b. Attorney withheld evidence and new evidence

This Court finds that the Applicant abandoned his claim of newly discovered evidence, and he did not present any newly discovered evidence during the PCR hearing. This Court finds that the Applicant has failed to meet his burden of proof; therefore, this allegation is denied and dismissed.

jac
#7
c. Failure to investigate alibi witnesses

This Court finds that Applicant's allegation that plea counsel was ineffective for failing to investigate, specifically alibi witnesses, is without merit. This Court finds that while Applicant testified he asked counsel to interview his brother and step-father because they would provide alibis, Applicant did not present any alibi witnesses at the PCR hearing. Counsel testified that he investigated Applicant's alibi but that he was unable to substantiate an alibi for the Applicant. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassett v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). An 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, 509 S.E.2d 807 (1998). This

Court finds that the Applicant has failed to meet his burden of proof; therefore, this allegation is denied and dismissed.

d. Advising Applicant that a jury in Lexington would be racially biased

This Court finds that Applicant's allegation that plea counsel was ineffective for advising Applicant that a jury in Lexington would be racially biased and that Applicant would be convicted based on the color of his skin is without merit. Counsel denied making this statement, under oath. Counsel testified that he may have told the Applicant that juries in Lexington County tend to be pro-prosecution. This Court finds counsel's testimony in this regard to be credible. This Court finds that Applicant failed to show that counsel's performance was deficient and resulting prejudice; therefore, this allegation is denied and dismissed.

WPC #8
2. Involuntary Guilty Plea

This Court finds that Applicant has failed to prove that his plea was involuntary. Counsel testified and demonstrated that he was well-informed about Applicant's case; that he knew the strengths and weaknesses of the case; and, that he properly represented Applicant before, during, and after the plea. Counsel testified that he and the Applicant met multiple times, discussed the evidence in Applicant's case, and reviewed the options available to Applicant. Applicant elected to accept a plea offer from the solicitor and enter a plea under Alford and Applicant understood what he was doing. Counsel testified that he and the Applicant discussed what an Alford plea entailed and that Applicant understood. Applicant was fully apprised of the potential sentence he faced and counsel did not lead him to believe one way or another. This Court finds that Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered. The overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects

that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Therefore, this Court finds that this allegation is denied and dismissed.

V. CONCLUSION

Based on all the forgoing, 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 for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

WAL
#9

2012 JUN 29 2 38

FILED

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 30TH day of Dec., 2011.

William P. Keesley
William P. Keesley
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

#10

FILED

2012 DEC 31 09:38

WITNESSES

Irmo Police Department

Brett Ringer

Law Enforcement Case #:

JAG

ARREST WARRANT NUMBER

1206849

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 5-12-09

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009GS3201263

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2009

THE STATE
vs.

Gene Warren Hall

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

DONALD V. MYERS, SOLICITOR

☐ County
☒ STATE OF SOUTH CAROLINA
 1-0206840
 WARRANT

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

INDICTMENT FOR
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on MAY 2009, the Grand Jurors of Lexington County present upon their oath:

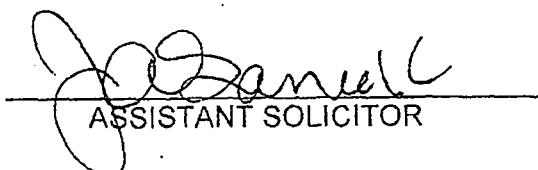
That **Gene Warren Hall** did in Lexington County, South Carolina on or about February 28, 2009, knowingly and willfully while armed with a deadly weapon, to wit: a handgun, did feloniously take from the employees of Arby's Restaurant, by means of force, threats or intimidation goods or monies being described as follows:

U. S. currency in the amount of \$910.00 with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

A TRUE COPY


 Lex. Co. C.C.C.P., G.S. & EC.

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Lexington

VS.

Gene Warren Hall

INDICTMENT/CASE#:

2009GS3201263

AW#: 1206849

Date of Offense: 2/28/2009

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

AKA:

Race: B

Sex: M

Age: 19

DOB:

SS#:

Address:

City, State, Zip: Irmo, SC

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Attempted Armed Robbery

In violation of § 16-11-330 (B) of the S.C. Code of Laws, bearing CDR Code # 0026

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

The charge is:

☐ As indicted,☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(defendant's initials)

The pleas:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Solicitor

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 7 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.☐ The Defendant is to be placed on 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 SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	\$
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$58-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
\$47.12 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$100	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
\$90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ 130.00

Random Drug/Alcohol Testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ Beginning
\$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel.
\$47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date

WITNESSES

Irmo Police Department

Brett Ringer

Law Enforcement Case #:

JAG

ARREST WARRANT NUMBER

I206850

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 5-12-09

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009GS3201262

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2009

THE STATE

vs.

Gene Warren Hall

CDR #: 0049

Indictment for

CRIMINAL CONSPIRACY

§ 16-17-0410

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 CRIMINAL CONSPIRACY

§ 16-17-0410

At a Court of General Sessions, convened on MAY 2009, the Grand Jurors of Lexington County present upon their oath:

That **Gene Warren Hall** did in Lexington County, South Carolina on or about February 28, 2009 knowingly and willfully unite, combine, conspire, confederate, agree and have tacit understanding with a co-defendant, for the purpose of accomplishing a criminal or unlawful object and/or an object neither criminal nor unlawful but by criminal or unlawful means; to wit: Armed Robbery, in violation of the common law and punishable under Section 16 -17- 410 of the South Carolina Code of Laws, 1976, as amended.

A TRUE COPY

[Signature]
 Lex. Co. C.C.C.P., G.S. & P.C.

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

[Signature]
 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

LCL

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Lexington

INDICTMENT/CASE#:

2009GS3201262

VS.

Gene Warren Hall

AW#: 1206850

Date of Offense: 2/28/2009

AKA:

Race:

B

Sex:

M

Age:

19

S.C. Code §:

16-17-0410

DOB:

SS#:

CDR Code #:

0049

Address:

City, State, Zip:

Irmo, SC

DL#

SID#

*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: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

In violation of § 16-17-0410

of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC w/minor 1st or Lewd 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:

Solicitor

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 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and or paymentof \$; 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.☐ The Defendant is to be placed on 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 SCDPPPSAttend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

§47.12 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

§90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$	100.00
\$	100
\$	12
\$	25
\$	500
\$	25
\$	100
\$	50
\$	40/ea
\$	5
\$	300
\$	13000

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date

1-14-10