

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

DeAndrea G. Benjamin, Circuit Court Judge

RECEIVED

SEP 03 2013

S.C. Supreme Court

PATRICK SPIGNER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213349

A P P E N D I X

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

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

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED MAY 17, 2010	1
APPLICATION FOR POST-CONVICTION RELIEF	17
RETURN	24
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 22, 2012	29
ORDER OF DISMISSAL	62
SENTENCING SHEETS	67

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

CASE NO. 2010-GS-38-0710
2010-GS-38-0711

STATE OF SOUTH CAROLINA)

versus)

PATRICK SPIGNER,)

DEFENDANT)

TRANSCRIPT OF RECORD

DATE:

MAY 17, 2010

BEFORE:

HONORABLE EDGAR DICKSON, PRESIDING JUDGE

APPEARANCES:

DONALD SORENSON, ESQUIRE
ASSISTANT SOLICITOR
FOR THE STATE

SARA FORD, ESQUIRE
PUBLIC DEFENDER
FOR THE DEFENDANT

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

I N D E XPAGE

EXAMINATION BY THE COURT:

PATRICK SPIGNER

4

SENTENCE OF THE COURT

14

E X H I B I T S

NONE

1

5

3

4

5

6

7

9

5

Q

5

3

•

E

2

7

9

10

1

EXAM - PATRICK SPIGNER BY THE COURT

4

EXAMINATION OF PATRICK SPIGNERBY THE COURT:

Q. ALRIGHT. GOOD AFTERNOON, MR. SPIGNER, HOW ARE YOU, SIR?

A. GOOD.

Q. AND YOU'VE BEEN IN FRONT OF ME RECENTLY, HAVEN'T YOU?

A. YES, SIR.

Q. OKAY. AND MR. SPIGNER, THE SENTENCING SHEET TELLS ME THAT YOU ARE TWENTY-THREE YEARS OLD. IS THAT CORRECT?

A. YES, SIR.

Q. ALRIGHT. AND MS. FORD'S BEEN REPRESENTING YOU ON THIS?

A. YES, SIR.

Q. SHE'S GONE OVER THESE CHARGES WITH YOU?

A. YES, SIR.

Q. SHE'S GONE OVER WHAT YOUR POSSIBLE SENTENCE IS IN EACH OF THESE?

A. YES, SIR.

Q. YOU'VE HEARD THE SOLICITOR TELL ME THAT THEY ARE RECOMMENDING A FIFTEEN YEAR SENTENCE?

A. YES, SIR.

Q. OKAY. OTHER THAN THAT RECOMMENDATION HAS ANYBODY PROMISED YOU ANYTHING TO GET YOU TO PLEAD GUILTY

EXAM - PATRICK SPIGNER BY THE COURT

5

1. HERE TODAY?
2. A. NO, SIR.
3. Q. HAS ANYBODY THREATENED YOU TO GET YOU TO PLEAD
4. GUILTY HERE TODAY?
5. A. NO, SIR.
6. Q. OKAY. YOU'RE DOING IT FREELY AND VOLUNTARILY?
7. A. YES, SIR.
8. Q. I KNOW MS. FORD HAS GONE OVER YOUR CONSTITUTIONAL
9. RIGHTS WITH YOU?
10. A. YES, SIR.
11. Q. DO YOU UNDERSTAND, YOU HAVE THE RIGHT TO HAVE A
12. JURY TRIAL ON EITHER ONE OR BOTH OF THESE
13. CHARGES?
14. A. YES, SIR.
15. Q. DO YOU WANT A JURY TRIAL?
16. A. NO, SIR.
17. Q. HAVE YOU UNDERSTOOD EVERYTHING MS. FORD HAS TOLD
18. YOU?
19. A. YES, SIR.
20. Q. ARE YOU SATISFIED WITH HER SERVICES AS YOUR
21. ATTORNEY?
22. A. YES, SIR.
23. Q. OKAY. DO YOU NEED ANYMORE TIME TO TALK WITH HER?
24. A. NO, SIR.
25. Q. ALRIGHT, SIR. NEITHER ONE OF THESE INDICTMENTS

EXAM - PATRICK SPIGNER BY THE COURT

6

1 HAS BEEN PRESENTED TO THE GRAND JURY AND I SEE ON
2 THE BACK OF EACH ONE OF THEM YOU HAVE WAIVED
3 PRESENTMENT TO THE GRAND JURY, IS THAT CORRECT?

4 A. YES, SIR.

5 Q. ALRIGHT, SIR. ALRIGHT, THE FIRST INDICTMENT I
6 HAVE IS 2010-711, IT IS THE ARMED ROBBERY
7 INDICTMENT, MR. SPIGNER, AND IT ALLEGES THAT YOU
8 DID, IN ORANGEBURG COUNTY, ON OR ABOUT OCTOBER
9 THIRTY-FIRST, TWO THOUSAND NINE, BY USE OF FORCE,
10 THREATS OR INTIMIDATION, OR WHILE ARMED WITH A
11 DEADLY WEAPON OR USING THE REPRESENTATION OF A
12 DEADLY WEAPON IN THE COMMISSION OF A ROBBERY DID
13 TAKE GOODS OR MONIES FROM THE VICTIM, A MR.
14 GLOVER, WITH THE INTENT TO DEPRIVE THE VICTIM OF
15 POSSESSION OF SUCH GOODS AND MONIES, AND THAT THE
16 WEAPON YOU HAD WITH YOU WAS A RIFLE. DO YOU
17 UNDERSTAND THE ALLEGATIONS CONTAINED IN THIS
18 INDICTMENT?

19 A. YES, SIR.

20 Q. ALRIGHT, SIR. ALRIGHT, NOW, MR. SPIGNER, HOW DO
21 YOU PLEAD TO THE CHARGE OF ARMED ROBBERY?

22 A. GUILTY.

23 Q. THANK YOU, SIR. THE NEXT INDICTMENT I HAVE IS
24 2010-710. AGAIN I SEE THAT YOU'VE WAIVED
25 PRESENTMENT TO THE GRAND JURY ON THAT ONE WAS

1 WELL. THIS IS A KIDNAPING INDICTMENT AND IT
2 ALLEGES, MR. SPIGNER, THAT YOU DID, IN ORANGEBURG
3 COUNTY, ON OR ABOUT OCTOBER THIRTY-FIRST, TWO
4 THOUSAND AND NINE, DID UNLAWFULLY SEIZE, CONFINE,
5 KIDNAP, ABDUCT OR CARRY AWAY MR. GLOVER WITHOUT
6 AUTHORITY OF LAW. DO YOU UNDERSTAND THE
7 ALLEGATIONS CONTAINED IN THIS INDICTMENT?

8 A. YES, SIR.

9 Q. ALRIGHT, SIR. HOW DO YOU PLEAD TO THIS CHARGE OF
10 KIDNAPING?

11 A. GUILTY.

12 Q. THANK YOU, SIR.

13 THE COURT: ALRIGHT, MR. SORENSON.

14 SOLICITOR SORENSON: THANK YOU, MAY IT
15 PLEASE THE COURT, YOUR HONOR. IN THE COURT WITH ME
16 TODAY IN THE FRONT ROW IS THE VICTIM IN THIS CASE, MR.
17 COY GLOVER, WHO IS SEATED IN THE MIDDLE, ALONG WITH
18 HIS FATHER. THIS INCIDENT, YOUR HONOR, OCCURRED THE
19 EVENING OF OCTOBER THIRTY-FIRST OF TWO THOUSAND NINE,
20 OF LAST YEAR. MR. GLOVER WAS AT THE CAR WASH AT OLD
21 EDISTO DRIVE HERE IN ORANGEBURG ABOUT NINE:FIFTEEN OR
22 SO IN THE EVENING WASHING HIS CAR WHEN HE WAS
23 APPROACHED. A VEHICLE PULLED UP, TWO INDIVIDUALS
24 APPROACHED HIM, ONE OF THEM ARMED WITH AN ASSAULT
25 RIFLE THAT THE DEFENDANT LATER WAS -- THE VICTIM LATER

EXAM - PATRICK SPIGNER BY THE COURT

8

1 IDENTIFIED AS BEING THIS DEFENDANT, MR. SPIGNER. THEY
2 INITIALLY FORCED HIM INTO A VEHICLE. THERE WAS A
3 THIRD INDIVIDUAL THERE. HE WAS ULTIMATELY DRIVEN FROM
4 THAT LOCATION IN HIS OWN VEHICLE, IN THE BACK SEAT OF
5 HIS OWN VEHICLE AND FOLLOWED BY ANOTHER, A MALIBU. HE
6 WAS IN THE BACK SEAT, MR. SPIGNER WAS IN THE BACK SEAT
7 WITH HIM HOLDING THE ASSAULT RIFLE ON HIM WHILE
8 ANOTHER CO-DEFENDANT NAMED ANTONIO HAIR WAS DRIVING
9 THAT VEHICLE, WHICH WOULD BE, I'M SORRY, THE VICTIM'S
10 VEHICLE. ADDITIONALLY, YOUR HONOR, AS I INDICATED, A
11 THIRD CO-DEFENDANT BY THE NAME OF MICHAEL BUTLER WAS
12 FOLLOWING THE VEHICLE. THEY WENT INITIALLY OVER TO A
13 GAS STATION WHERE MR. BUTLER WENT IN AND HE WAS
14 ACTUALLY CAPTURED ON VIDEO INSIDE THAT LOCATION. THEY
15 THEN CAME OUT. DURING THE PROCESS OF THIS AN
16 INDIVIDUAL WHO KNEW MR. SPIGNER SAW HIM SEATED IN THE
17 BACK SEAT OF HIS VEHICLE, THOUGHT IT WAS KIND OF ODD,
18 AND ATTEMPTED TO ENGAGE HIM IN SOME CONVERSATION, AND
19 MR. GLOVER BASICALLY WAS IGNORING HIM. AS I
20 INDICATED, HE HAD MR. SPIGNER SEATED NEXT TO HIM WITH
21 AN ASSAULT RIFLE BASICALLY POINTED INTO HIS SIDE.
22 THAT INDIVIDUAL THEN WENT AND CONTACTED LAW
23 ENFORCEMENT. IN THE MEANTIME THEY LEFT THE LOCATION,
24 DROVE TO A, BASICALLY AN ABANDONED ROAD WHERE AT THAT
25 POINT IN TIME THEY ULTIMATELY ENDED UP TAKING MR.

EXAM - PATRICK SPIGNER BY THE COURT

9

1 GLOVER'S WALLET, HIS CELL PHONE, AND THEN THEY REMOVED
2 THE SPEAKERS FROM HIS VEHICLE AT THAT LOCATION, AND
3 THEN ALL FLED IN THE MALIBU THAT MR. BUTLER WAS
4 DRIVING. LAW ENFORCEMENT ULTIMATELY CAUGHT UP WITH
5 MR. GLOVER THAT NIGHT. HE TOLD THEM WHAT HAD HAPPENED,
6 DESCRIBED THE INDIVIDUALS, AND MORE IMPORTANTLY
7 DESCRIBED WHERE THEY HAD GONE AND ALSO THE MALIBU THAT
8 WAS ALSO INVOLVED. THAT MALIBU WAS STOPPED IN THE
9 EARLY MORNING HOURS BY THE SHERIFF'S OFFICE WITH MR.
10 BUTLER OCCUPYING IT. HE WAS TAKEN INTO CUSTODY AT
11 THAT POINT IN TIME. HE GAVE A STATEMENT ADMITTING TO
12 HIS INVOLVEMENT AND WAS SUBSEQUENTLY ALSO PICKED OUT
13 OF A LINEUP BY MR. GLOVER. HE ALSO PROVIDED
14 INFORMATION THAT LED THEM TO THE CO-DEFENDANT, ANTONIO
15 HAIR, WHO ULTIMATELY WAS ALSO PICKED OUT OF A LINEUP
16 BY MR. GLOVER AND THAT LED TO MR. SPIGNER BEING
17 DEVELOPED AS THE SUSPECT THAT HAD THE ASSAULT RIFLE.
18 HE WAS SUBSEQUENTLY ALSO PUT IN A LINEUP AND WAS
19 IDENTIFIED BY THE VICTIM AS BEING THE INDIVIDUAL WITH
20 THE RIFLE.

21 HIS ONLY PRIOR RECORD, YOUR HONOR, LOOKING,
22 IS FROM THE STATE OF NORTH CAROLINA, IS DRIVING
23 WITHOUT A, BASICALLY WITH A REVOKED DRIVER'S LICENSE.
24 HE DOES NOT HAVE ANY RECORD HERE IN SOUTH CAROLINA.

25 I DON'T BELIEVE MR. GLOVER WISHES TO ADDRESS

EXAM - PATRICK SPIGNER BY THE COURT

10

1 THE COURT. I MET WITH HIM ON MULTIPLE OCCASIONS NOW
2 IN THE LAST SEVERAL MONTHS AND HE WAS INVOLVED IN
3 REACHING THIS NEGOTIATION.

4 ONE THING WE WOULD ASK, YOUR HONOR, ON THE
5 KIDNAPING SENTENCING SHEET, IF YOU COULD NOTE ON THERE
6 SOMEWHERE THAT THIS IS NOT A SEX OFFENSE. OTHERWISE,
7 THEY'RE GOING TO PUT HIM ON THE SEX OFFENSE REGISTRY
8 AND WE'LL JUST BE DEALING WITH THAT AT SOME POINT IN
9 TIME DOWN THE ROAD.

10 THE COURT: OKAY.

11 SOLICITOR SORENSON: HE HAS BEEN
12 INCARCERATED, YOUR HONOR, SINCE, I BELIEVE IT WAS
13 ABOUT DECEMBER TENTH OF TWO THOUSAND NINE.

14 THE COURT: OKAY.

15 Q. ALRIGHT, MR. SPIGNER, HOW FAR DID YOU GO IN
16 SCHOOL?

17 A. ELEVENTH GRADE.

18 Q. WHERE WERE YOU GOING?

19 A. FRIENDLY HIGH SCHOOL.

20 Q. OH, YEAH, THAT'S RIGHT, BECAUSE I WAS ASKING YOU
21 WHO ARE THE FIGHTING FRIENDLYS, AND YOU TOLD ME
22 YOU WERE - - -

23 A. PATRIOTS.

24 Q. --- PATRIOTS. ALRIGHT, MR. SPIGNER, YOU'VE HEARD
25 WHAT THE SOLICITOR HAS TOLD ME ABOUT THESE

EXAM - PATRICK SPIGNER BY THE COURT

11

1 CHARGES?

2 A. YES, SIR.

3 Q. AND, YOU KNOW, MR. GLOVER IS HERE IN COURT AND
4 YOU PUT HIM THROUGH SOMETHING THAT NO ONE SHOULD
5 HAVE TO GO THROUGH.

6 A. YES, SIR.

7 Q. YOU KNOW: AND WHO IS HERE WITH YOU TODAY?

8 A. MY GRANDMOTHER.

9 Q. YOUR GRANDMOTHER. YOU PUT YOUR GRANDMOTHER
10 THROUGH SOMETHING, YOU KNOW, THAT YOU DIDN'T NEED
11 TO PUT HER THROUGH. AND YOU DIDN'T HAVE ANY KIND
12 OF A PRIOR RECORD BEFORE THIS.

13 A. NO, SIR.

14 Q. YOU KNOW, I'M JUST VERY SORRY, AND MA'AM, I'M
15 SORRY. MR. GLOVER, I'M SORRY ABOUT ALL OF THIS.
16 I MEAN -- UNDERSTANDING EVERYTHING THAT THE
17 SOLICITOR SAID, MR. SPIGNER, DO YOU STILL WANT ME
18 TO ACCEPT YOUR GUILTY PLEA HERE TODAY?

19 A. YES, SIR.

20 THE COURT: OKAY. MS. FORD, YOU'VE TALKED
21 WITH HIM, RIGHT?

22 MS. FORD: YES, SIR, I HAVE.

23 THE COURT: AND YOU'VE GONE OVER HIS RIGHTS
24 WITH HIM AND HIS CONSTITUTIONAL RIGHTS AND EVERYTHING?

25 MS. FORD: YOUR HONOR, I'VE FULL GONE OVER

1 THIS CASE WITH HIM, GONE OVER HIS DISCOVERY, HIS
2 CONSTITUTIONAL RIGHTS, HIS OPTIONS OF GOING TO TRIAL
3 VERSUS A GUILTY, PLEA. MS. TONYA'S ALSO GONE OVER ALL
4 OF THAT INFORMATION WITH HIS AS WELL, AND ...

5 THE COURT: DO YOU BELIEVE IT'S IN HIS BEST
6 INTEREST FOR SURE - - -

7 MS. FORD: YES, SIR.

8 THE COURT: --- WITH THESE KIND OF CHARGES
9 AGAINST HIM?

10 MS. FORD: YOUR HONOR, I DO.

11 THE COURT: ALRIGHT, MR. SPIGNER, I FIND
12 THAT YOUR DECISION TO PLEAD GUILTY IS FREELY,
13 VOLUNTARILY AND INTELLIGENTLY MADE. I FIND THAT
14 YOU'VE HAD THE ADVICE AND COUNSEL OF A COMPETENT
15 LAWYER WITH WHOM YOU TELL THE COURT YOU'RE SATISFIED.
16 I FIND THAT THERE IS A FACTUAL BASIS FOR YOU TO PLEAD
17 GUILTY TO THESE CHARGES, AND I WILL ACCEPT YOUR GUILTY
18 PLEA.

19 OKAY, MS. FORD.

20 MS. FORD: THANK YOU, YOUR HONOR, MR.
21 SPIGNER IS TWENTY-THREE YEARS OLD. HE IS SINGLE. HE
22 HAD MOVED TO ORANGEBURG ABOUT SEPTEMBER OF LAST YEAR,
23 HE HAD SOME FAMILY HERE. OBVIOUSLY, HE'S HERE WITH
24 HIS GRANDMOTHER, MRS. DAVIS. HE HAD SOME OTHER FAMILY
25 MEMBERS THAT WERE IN THE AREA AND THAT'S WHY HE WAS,

1 THAT'S WHY HE MOVED HERE TO ORANGEBURG. YOUR HONOR,
2 HE HAD BEEN EMPLOYED WITH UPS AND FED-EX, HE'D WORKED
3 BOTH OF THOSE PLACES FOR A YEAR BEFORE HE MOVED HERE,
4 BUT UNFORTUNATELY, HADN'T FOUND EMPLOYMENT YET. YOUR
5 HONOR, HE, MR. SPIGNER HAS OBVIOUSLY MADE ONE OF THE
6 POOREST DECISIONS OF HIS LIFE, BUT HE TAKES
7 RESPONSIBILITY FOR WHAT HE DID. YOUR HONOR, AS YOU
8 HEARD, HE HAS NO PRIOR RECORD, HAD NEVER BEEN IN ANY
9 KIND OF TROUBLE BEFORE. MR. SPIGNER IS A VERY
10 INTELLIGENT YOUNG MAN, HE'S ARTICULATE, AND HAD A GOOD
11 LIFE IN FRONT OF HIM. UNFORTUNATELY, HE MADE A VERY
12 POOR DECISION BUT HE'S STANDING HERE TAKING
13 RESPONSIBILITY FOR THAT, YOUR HONOR. I WOULD ASK THAT
14 ON THE SENTENCING SHEET IF YOU WOULD NOTE FOR HIM TO
15 AT LEAST BE LOOKED AT BY MENTAL HEALTH. I CERTAINLY
16 DON'T THINK THERE ARE ANY COMPETENCY ISSUES WITH MR.
17 SPIGNER, BUT I DO BELIEVE IT WOULD BE BENEFICIAL FOR
18 HIM TO AT LEAST BE EVALUATED FOR MENTAL HEALTH ISSUES.

19 YOUR HONOR, HE HAS BEEN INCARCERATED SINCE
20 DECEMBER EIGHTH, AND I WOULD ASK FOR CREDIT FOR THAT
21 TIME.

22 YOUR HONOR, MR. SPIGNER HAS INDICATED HE
23 DOESN'T WISH TO SPEAK BUT WANTS ME TO EXPRESS HIS
24 SORROW AND HIS, HOW SORRY HE TRULY IS FOR WHAT HE DID,
25 AND APOLOGIZE TO MR. GLOVER. AND HE SAYS THAT HE

1 TRULY, HE'S RECOMMITTED HIS LIFE, YOUR HONOR, AND HE
2 KNOWS THAT HE'S GOT TO SERVE HIS TIME, BUT HOPEFULLY
3 THIS WILL CERTAINLY BE A LESSON THAT HE WILL NEVER
4 REPEAT AGAIN.

5 THE COURT: ALRIGHT. AND MR. SPIGNER, YOU
6 DON'T HAVE TO SAY ANYTHING. I AM, YOU KNOW, YOU'VE GOT
7 A LOT OF POTENTIAL, THE GOOD NEWS, IF THERE IS ANY
8 GOOD NEWS, IS THAT YOU'LL STILL BE A RELATIVELY YOUNG
9 MAN WHEN YOU GET OUT, YOU KNOW, PARTICULARLY WHEN YOU
10 COMPARE IT WITH MY AGE, SAY, YOU KNOW. SO, HOPEFULLY,
11 YOU KNOW, HOPEFULLY YOU'LL LEARN FROM THIS AND
12 HOPEFULLY YOU WON'T DO ANYTHING LIKE THIS AGAIN, BUT,
13 YOU KNOW, MR. GLOVER SHOULDN'T HAVE HAD TO DEAL WITH A
14 SITUATION LIKE THIS. YOU SHOULD HAVE KNOWN BETTER,
15 YOU KNOW. SO, I'M GOING TO GO ALONG WITH THE
16 RECOMMENDATIONS.

17 SENTENCE OF THE COURT

18 MR. SPIGNER, THE SENTENCE OF THIS COURT IS,
19 YOU ARE COMMITTED TO THE STATE DEPARTMENT OF
20 CORRECTIONS FOR A PERIOD OF FIFTEEN YEARS ON EACH ONE
21 OF THESE CASE.

22 ON THE KIDNAPING CHARGE I'M ADDING THE
23 LANGUAGE THAT THIS IS NOT A SEX OFFENSE.

24 I'M ALSO ADDING THAT YOU SHALL BE EVALUATED
25 BY MENTAL HEALTH. OKAY.

1 I WILL GIVE YOU CREDIT FOR TIME SERVED, YOU
2 SAID SINCE DECEMBER THE EIGHT?

3 MS. FORD: YES, YOUR HONOR.

4 THE COURT: AND THESE SENTENCES ARE
5 CONCURRENT.

6 SO, GOOD LUCK TO YOU, MR. SPIGNER. OKAY?

7 MS. FORD: THANK YOU, YOUR HONOR.

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE SEVENTEENTH DAY OF MAY, 2010.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DATE: DECEMBER 27, 2010

Harry A. Walker
(MRS.) HARRY A. WALKER

FORM 5

STATE OF SOUTH CAROLINA

County of OrangeburgPatrick Spigner #340898

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2010-CP-38-1611

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Inst. P.O. Box 205
Ridgeville, South Carolina 29472
2. Name and location of Court which imposed sentence General Sessions
190 Gibson St. P.O. Box 9000 Orangeburg, SC 29116
3. Name(s) of co-defendant(s) (if any) Antonio Hair, Micheal Butler
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Armed Robbery 2010-GS-38-711
 - (b) Kidnapping 2010-GS-38-710

2010 NOV 22 4:42
CLERK OF COURT
ORANGEBURG

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Armed Robbery 15 years May 17, 2010
- (b) Kidnapping 15 years
- (c) Concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Guilty Plea
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Guilty Plea
- (b) Just beginning My Remedy

2008 NOV -8 A 12:42
FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Due Process Violation
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel talked me into pleading guilty
- (b) Counsel failed to investigate evidence
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. N/A
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

2010 NOV -8 A 2:42
 FILED FOR RECORD
 WINNIE B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

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

i.

ii.

iii.

iv.

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

N/A

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

(a) which grounds have been presented:

i.

ii.

iii.

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

i.

ii.

iii.

N/A

FILED FOR RECORD
WILLIAM B. CLARK
CLERK OF COURT
COLUMBIA, SC

2000 NOV -8 A 12:43

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

(a) Just beginning my Remedy
 (b) _____
 (c) _____

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? _____
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Sarah Ford
190 Gibson St. P.O. Box 112
 ii. Orangeburg, SC 29116
 iii. _____

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

i. Guilty Plea
Sentencing
 ii. _____
 iii. _____

FILED FOR RECORD
 WINNIE B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC
 200 NOV -18 12:43

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

~~Quota~~ / New trial / Time Cut
~~Aquittal~~ / Aquittal

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

NO!

STATE OF SOUTH CAROLINA)

County of

Orangeburg)

VERIFICATION

1. Patrick Spigner # 340 898

, 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]

SWORN to and subscribed before me this

day of

November

5th 2010

[Signature]
 Sybil Jones

(L.S.)

Notary Public

My Commission Expires

1/24/2018

2010 NOV - 8 A 12:43
 FILED FOR RECORD
 WINNIE B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC

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

I, Patrick Spigner # 340898, 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.

Patrick Spigner
Applicant

SWORN or affirmed to and subscribed before me this

5th day of November 2010.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

2010 NOV -8 A 12:43
FILED FOR RECORD
WINNIEFA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

2010-CP-38-1611

Patrick Spigner, #340898,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

(Appointment of Counsel Requested)

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 8, 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 Orangeburg County Clerk of Court. The Applicant was waived presentment on indictments for Kidnapping (2010-GS-38-0710) and Armed Robbery (2010-GS-38-0711). Sara Ford, Esquire, represented him. On May 17, 2010, the Applicant pled guilty. He was sentenced by the Honorable Edgar W. Dickson to the recommended sentence of fifteen (15) years for Kidnapping and fifteen (15) years for Armed Robbery, sentences to be served concurrently. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department

of Corrections, and the guilty plea transcript.¹ The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective assistance of counsel."
 - a. "Counsel talked me into pleading guilty."
 - b. "Counsel failed to investigate evidence."
2. "Due process rights violation."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

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

¹ The Clerk's records have been ordered but not yet received. The same will be forwarded upon receipt.

judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically

set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

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

VI.

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

[Signatures on next page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Feb 17, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2010-CP-38-1611

Patrick Spigner,

Plaintiff,

v.

State of South Carolina,

Defendant.

)
)
)
) Transcript of Record
)
)
)
)
)
)

May 22, 2012
Orangeburg, South Carolina

B E F O R E:

The Honorable DeAndrea G. Benjamin, Judge

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

David Spencer, Esquire
Attorney for the State

Scott Palmer, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

Spigner v. State 5/22/12

2

I N D E XWITNESS/DESCRIPTIONPAGE NO.

EXHIBITS:

No exhibits were marked to this proceeding.

Certificate of Court Reporter 33

Spigner v. State 5/22/12

3

1 MR. SPENCER: Judge, the next case I would call is
2 Patrick Spigner, 2010-CP-38-1611. Mr. Spigner filed this
3 application in November of 2010. He's presently confined
4 with the department of corrections. He waived presentment
5 on indictments for kidnaping, armed robbery and pled guilty
6 before Judge Dickson. He was represented by Ms. Sara Ford,
7 who is here today.

8 Judge this was pursuant to a negotiated sentence, 15
9 years on both charges served concurrently. He did not appeal
10 his conviction or sentence. He is represented here today by
11 Mr. Scot Palmer, and I would just ask that Mr. Palmer set
12 out his allegations for the record.

13 (Pause.)

14 MR. SPENCER: And I think -- whether I thought it or
15 whether I said it, it's always two different questions, but
16 I think I'd asked Mr. Palmer to set out his allegations on
17 the record.

18 THE COURT: You did. He was waiting on me.

19 MR. SPENCER: Oh, I'm sorry.

20 THE COURT: I'm writing notes to myself.

21 MR. SPENCER: I'm not trying to rush Your Honor.

22 THE COURT: Oh, that's okay.

23 MR. SPENCER: I wanted to make sure I wasn't the one
24 holding things up.

25 THE COURT: No. I wanted to make notes so when I go

1 back I'll know what it is.

2 Yes, sir, Mr. Palmer.

3 MR. PALMER: Yes, ma'am. May it please the Court.

4 THE COURT: Yes, sir.

5 MR. PALMER: And just for the record, pronounced
6 Spigner.

7 THE COURT: Okay.

8 MR. PALMER: Mr. Spigner's allegations are basically
9 simple but serious to him. He's alleging ineffective
10 assistance of counsel and as set forth in his application he
11 feels that he was coerced into pleading guilty without fully
12 understanding the gravity and the consequences of that act.
13 That's essentially the cornerstone of his application, Your
14 Honor.

15 THE COURT: All right.

16 MR. PALMER: I'll call him as a witness.

17 THE COURT: Anything else before we call him?

18 MR. SPENCER: And, Your Honor, I would say it was more
19 cause of action than ineffective assistance of counsel. I
20 guess we can just hear the testimony and try and detect what
21 the issues are.

22 THE COURT: All right. Yes, sir.

23 MR. PALMER: I call Patrick Spigner.

24 THE CLERK: Would you place your left hand on the Bible
25 and raise your right. State your name for the record,

Spigner v. State 5/22/12

5

1 please.

2 MR. SPIGNER: Patrick Spigner.

3 (WHEREUPON, Patrick Spigner was
4 sworn to tell the truth.)

5 THE CLERK: Thank you. You may be seated.

6 PATRICK SPIGNER - DIRECT EXAMINATION

7 BY MR. PALMER:

8 Q State your full name, please.

9 A Patrick Spigner.

10 Q Mr. Spigner where are you from and what is your age?

11 A I'm from Orangeburg, South Carolina. I'm 25 years old.

12 Q Do you have a high school education?

13 A I do now, sir.

14 Q At the time you pled guilty did you have one?

15 A No, sir.

16 Q Okay. Did you have any kind of a criminal record at
17 the time you pled guilty?

18 A No, sir.

19 Q Had you ever been arrested for anything?

20 A Trafficking -- I mean, not trafficking, but driving
21 under suspension.

22 Q It wasn't trafficking it was a traffic offense.

23 A Yes, a traffic offense.

24 Q I want to make sure we're clear on that. So is it fair
25 to say that this what you're in the institution for is your

1 first serious encounter with the criminal justice system?

2 A Yes, sir.

3 Q Okay. Now, you were arrested at some point and served
4 with a warrant for each of these charges; is that the way it
5 happened?

6 A Yes, sir.

7 Q And you were appointed a lawyer or did you hire one?

8 A I don't know my original lawyer for this case, but Sara
9 Ford took up my case when she came for my first appearance.

10 Q And was your original lawyer employed by the public
11 defender's office here in Orangeburg?

12 A I believe so.

13 Q And did you have a chance to meet with that original
14 lawyer?

15 A No, sir.

16 Q Okay. How soon after you were arrested did you meet
17 with Ms. Ford?

18 A I think it was a month, a month later.

19 Q Okay. Did you spend all of your time up until your
20 plea date at the detention center or were you out on bond?

21 A The whole time in the detention center.

22 Q Okay. So the first meeting you had with Ms. Ford was at
23 the detention center, you were confined?

24 A Yes, sir.

25 Q How many times did you meet with her up until the

Spigner v. State 5/22/12

7

1 guilty plea?

2 A Concerning this case?

3 Q Yes.

4 A Maybe two or three times concerning this case, because
5 I had another case.

6 Q Okay. You had another case in Orangeburg?

7 A Yes. I got caught with some drugs. So I had the drug
8 case and the armed robbery, kidnaping case.

9 Q Was Ms. Ford representing you also in the drug case?

10 A Yes, sir.

11 Q Has the drug case been resolved?

12 A I didn't hear anything about the -- it was like
13 dismissed seems like.

14 Q Okay. How many times did you say you met with Sara
15 Ford?

16 A Two or three times.

17 Q And out of those two or three times did you meet to
18 discuss the armed robbery, kidnaping case?

19 A Twice.

20 Q Okay. Did you make any requests that she do anything
21 in particular?

22 A I was trying to get a -- move for a bond.

23 Q Okay.

24 A Trying to get a bond.

25 Q Did she ever file a motion for a bond?

1 A No, sir.

2 Q Okay. Did you ask her to do anything else?

3 A Preliminary hearing.

4 Q Okay. Did she ever file for that?

5 A No, sir.

6 Q Did you ever get a preliminary?

7 A No, sir.

8 Q Okay. And when you appeared before Judge Dickson, for
9 the purpose of pleading guilty, and that was on May 17,
10 2010, was that the first time you had appeared before Judge
11 Dickson?

12 A No, sir.

13 Q You had appeared before him before that date?

14 A Yes, sir.

15 Q For what purpose?

16 A I wanted -- I wanted a substitute counsel. I wanted a
17 different lawyer, basically. Basically went in front of him
18 and told him I wasn't comfortable with the one I had.

19 Q And did you set forth reasons why you weren't
20 comfortable with Ms. Ford?

21 A I just felt like she wasn't representing me to her full
22 potential.

23 Q Okay. And you remember when we first met on this case
24 for your hearing in St. George?

25 A Yes.

Spigner v. State 5/22/12

9

1 Q And you asked me to move for a continuance?

2 A Yes, sir.

3 Q What was the purpose of the continuance?

4 A So I could get the documents because from what I know
5 you're supposed to record every time you go in front of the
6 judge. Well, I was trying to get the transcript so I would
7 have physical evidence to tell the Court that I did, in
8 fact, go in front of the judge to tell him I wasn't
9 comfortable with my lawyer but they didn't have those
10 documents.

11 Q So you wanted a transcript of your hearing basically,
12 your motion to relieve or substitute counsel?

13 A Yes, sir.

14 Q And did we ever get that transcript?

15 A No, sir.

16 Q And did you ever receive any indication that it
17 existed?

18 A No, sir. I tried to get the clerk of court to see who
19 the court reporter were at that time and I got a letter back
20 saying they don't have those documents.

21 Q Okay. So no transcript of that particular hearing?

22 A No, sir.

23 Q Well, without having the transcript what did you tell
24 Judge Dickson as a basis for your wanting your attorney
25 relieved and a new one appointed; what specifically did you

1 tell the judge was wrong with the representation you were
2 getting from Ms. Ford?

3 A I just felt like she wasn't taking any action on my
4 behalf. I felt like she wasn't representing me to her full
5 potential.

6 Q Okay, and after that hearing did you again meet with
7 Ms. Ford?

8 A I met before I pled -- I met with her one time right
9 before I pled guilty.

10 Q Okay. Right before, the same day or?

11 A The same day.

12 Q And before that day, before that meeting you're
13 describing now, did you and she ever discuss any terms of
14 the guilty plea?

15 A She talked to me -- when she first give me the
16 negotiated 15 years, I told her I didn't want to take the
17 plea. You know, she just kept throwing the 15 years at me.
18 I didn't want to take the plea. Then when it got down to
19 whether you're going to take the plea or not, it was like,
20 you know, this is what you're going to be facing if you
21 don't take the plea.

22 Q What did she tell you you'd be facing?

23 A 30 years.

24 Q Okay. Would that be on both counts or what was your
25 understanding?

Spigner v. State 5/22/12

11

1 A Everything. 30 years on everything.

2 Q Okay. And did you and she ever discuss going to trial?

3 A Yes, we discussed going to trial, but it was like --
4 because when she said do you want to go to trial, I said,
5 yeah. I said hold up. I need more time to really make my
6 decision, you know what I'm saying, because I didn't want to
7 really risk 30 years. You see what I'm saying.

8 Q When you told her that, was that the day of the guilty
9 plea or the before that?

10 A When we talked right before I plead guilty -- I'm
11 trying to remember.

12 Q Well, let me ask you this way, the day you appeared
13 before Judge Dickson the second time, May 22, did you
14 understand your purpose in being here in the courtroom was
15 to enter a guilty plea?

16 A No.

17 Q Was that what you wanted to do?

18 A No, that's not what I wanted to do but that's what I
19 end up choosing to do.

20 Q Okay. And do you remember Judge Dickson asking you
21 some questions?

22 A Yes.

23 Q And have you had a chance to review the transcript
24 since you've been institutionalized?

25 A Yes, I reviewed it. I understand you talk about the

1 questions about my talking with my lawyer, did anybody
2 promise -- you're talking about those questions, right?

3 Q Yes.

4 A Those questions I thought I had to answer because she
5 asked me do you know about the questions that they ask, do
6 you know, because I was in court watching other people
7 taking their guilty plea. She was like, well, if you've
8 seen everybody else out there giving a guilty plea you know
9 about the judge asking you these questions. I said, yeah.
10 She said, well, this is how you have to answer these
11 questions. See what I'm saying. So that's why when I went
12 in front of the judge I answered his questions. Did you
13 feel threatened? No. But in the whole sentence I didn't
14 really understand, you know, that this was going to effect
15 the future when I was answering these questions.

16 Q Well, let me ask you this, after Judge Dickson spoke
17 with you, you stood up here during the plea proceeding, did
18 you feel like you had a choice, did you feel like you could
19 stop that plea and ask for a trial?

20 A Not at the time.

21 Q Why not?

22 A I didn't have no type of understanding. I thought this
23 was what I had to do.

24 Q Okay. Now, do you remember if your attorney asked for
25 a mental or competency evaluation.

Spigner v. State 5/22/12

13

1 A Yes, she asked for the judge if I could be evaluated by
2 mental health.

3 Q Why, had you and she discussed that before?

4 A Yes. I told her I think I need to see -- I think I
5 need to see somebody.

6 Q And what was your reason for making that request?

7 A I've been under a lot of depression and I mean I've
8 been doing drugs on the street. I thought I needed to see
9 somebody. I knew I wasn't right in the head, you know what
10 I mean, as far as thinking-wise.

11 Q Okay. And does that condition persist; are you still
12 like that?

13 A No, sir.

14 Q Okay. And what happened to change your mind-set about
15 that?

16 A Just my whole environment, what I done went through,
17 what I put my family through.

18 Q At the time you pled guilty on May 17, 2010, how long
19 had you been in the detention center?

20 A Maybe six months.

21 Q Okay. And were you exposed to any drugs or anything at
22 that time?

23 A Yes.

24 Q Are you saying you were on drugs when you were here on
25 May 17, 2010.

1 A I'm not saying -- I did drugs while I was in the
2 detention center.

3 Q Do you remember the judge asking you whether you were
4 under the influence of anything?

5 A They didn't never ask that.

6 Q Okay. Now, what would you have said?

7 A I probably would say no.

8 Q Okay. Was it your intention to ask the judge for a
9 trial that day?

10 A Yes, that's what my original intention was until they
11 brung me around back and started talking about pleas and,
12 you know, facing up to 30 years.

13 Q What do you mean, bring you around back? Who did that?

14 A I talked to Ms. Ford before I really pled guilty.

15 Q Okay. And after you spoke with her did you really feel
16 better?

17 A I felt like I wasn't getting 30 years. So yeah, I felt
18 better that I wasn't about to do 30 years, but as far as
19 overall, no.

20 Q When you and she met on the times you described, did
21 you talk about defenses, did you talk about a trial
22 strategy?

23 A No, defenses.

24 Q There was no defense offered by her?

25 A No, sir.

Spigner v. State 5/22/12

15

1 Q Okay. Now, you filed this application and you filled
2 this out yourself?

3 A Yes.

4 Q Did you have a chance to look at the law surrounding
5 post-conviction relief?

6 A Yeah. I've read quite a little bit of it.

7 Q Okay. What are you asking here today in your
8 application?

9 A If possible I can get a new trial.

10 Q Do you think getting a new trial would be in your best
11 interest?

12 A I would rather prefer, you know, a lower sentence. Iw
13 would rather prefer that.

14 Q Okay. Now do you understand that this procedure here
15 cannot automatically result in a sentence reduction?

16 A Yes, I understand that.

17 Q The remedy you're seeking is a new trial?

18 A Yes, sir.

19 Q And if you get a new trial there may not be any
20 negotiation. You may get a new trial and face the maximum
21 punishment?

22 A Yes, sir.

23 Q And is that what you want to proceed with today?

24 A Yes, sir.

25 MR. PALMER: Thank you. Those are my questions, Your

1 Honor.

2 THE COURT: Please answer any questions that Mr. Spencer
3 has.

4 PATRICK SPENCER - DIRECT EXAMINATION

5 BY MR. SPENCER:

6 Q Mr. Spigner, why did you plead guilty?

7 A Because my attorney advised me to plead guilty.

8 Q Okay. And then you decided to follow her advice?

9 A Yes, sir.

10 Q And you were facing 30 years for kidnaping?

11 A Yes, sir.

12 Q And 30 years for armed robbery?

13 A Yes, sir.

14 Q And so you pled guilty to a negotiated 15 year sentence
15 to avoid getting a much harsher sentence; right?

16 A Yes, sir.

17 Q What defenses would you have wanted to pursue at trial?

18 A Ms. Ford advised me to plead guilty because I didn't
19 have a fight in going to trial because a statement was
20 written against me. Meanwhile, after reading the statement,
21 the statement never mentioned my name at all. It only
22 implemented the actions of the co-defendant who wrote the
23 statement.

24 Q Do you recall the solicitor going through the facts
25 that supported the charges?

Spigner v. State 5/22/12

17

1 A Repeat the question?

2 Q Well, I'll rephrase it for you. Do you recall the
3 solicitor describing what the State would prove had the case
4 gone to trial?

5 A Excuse me, Your Honor, I feel like we're here to talk
6 about ineffectiveness not the --

7 THE COURT: Well, All right. You need to answer the
8 questions. Thank you.

9 BY MR. SPENCER:

10 Q I'll rephrase it another way. Do you recall the facts
11 that the solicitor gave at the guilty plea?

12 A Yes, I recall.

13 Q And at what point did you tell Judge Dickson that's not
14 what happened?

15 A Neither time. I never told the judge.

16 Q Okay, and, in fact, that is what happened, isn't it?

17 A We're not here to talk about whether I'm guilty or not
18 guilty. We're here to talk about how my counsel is
19 ineffective.

20 THE COURT: All right, sir, please answer the question.
21 You can answer yes or no.

22 A Yes, that is what happened.

23 BY MR. SPENCER:

24 Q And so you were concerned you were going to get
25 convicted at trial and you pled guilty to avoid the harsher

1 sentence, correct?

2 A Uh-huh. (Affirmative response.)

3 Q And do you recall after the solicitor had gone through
4 the facts of the case that Judge Dickson asked you if you
5 still wanted the guilty plea to be accepted?

6 A Yes, sir.

7 Q And you said you did?

8 A You asked me -- repeat that again?

9 Q Sure. Do you recall Mr. -- excuse me, do you recall
10 Judge Dickson asked you if you still wanted to accept the
11 guilty plea; do you recall Judge Dickson asking you that?

12 A Do I still want to accept the guilty plea?

13 Q Sure. I'll show you.

14 MR. SPENCER: If I may approach?

15 THE COURT: Sure.

16 BY MR. SPENCER:

17 Q It's on Page 11 of the transcript. Are you able to
18 read?

19 A Yes, ma'am. I mean, yes, sir.

20 Q Okay. Just read to yourself Lines 14 through 19.

21 A No, I'm very sorry, Mr. Glover. I'm very sorry about
22 all this. I understand everything that the solicitor said.
23 Mr. Spigner do you want me to accept your plea here today.
24 Yes, sir.

25 Q Okay. Mr. Glover is the victim in this case, correct?

Spigner v. State 5/22/12

19

1 A Yes, sir.

2 MR. SPENCER: Thank you. I have no further questions.

3 THE COURT: Anything else from you, Mr. Palmer?

4 MR. PALMER: No further questions, Your Honor.

5 THE COURT: All right, sir, you may step down.

6 MR. SPIGNER: I had wanted to a little something that I
7 wrote down that I wanted to read and put on the record.

8 MR. PALMER: He did show me that this morning, Your
9 Honor, and I quite frankly forgot. If I could reopen his
10 testimony and let him submit his statement?

11 THE COURT: That's fine.

12 MR. PALMER: Thank you.

13 MR. SPIGNER: My guilty plea was involuntary by reason
14 of ineffective assistance of counsel. Counsel was
15 ineffective because failed to adequately advise me properly
16 prior to the plea. She advised me to plead guilty to
17 charges that were not presented to the grand jury. Counsel
18 didn't advise me of the Fifth Amendment which provides that
19 no person shall be required to answer for a capital or
20 otherwise infamous crime unless on presentment of indictment
21 of a grand jury. If I'd been advised of this right I would
22 not have waived presentment to the grand jury thus rendering
23 my waiver involuntary conflict of interest because counsel's
24 personal interest in having me plead guilty prevent me from
25 being advised of all possible defenses available. Also

1 conflict of interest effective performance because counsel
2 took no action on my behalf. Counsel failed to investigate
3 case, failed to make pre-trial motions to suppress lineup.
4 Never discussed possible defenses. Counsel failed to move
5 dismiss indictment. Had counsel done any of these actions I
6 would not have pled guilty and insisted on going to trial.
7 Had my counsel made a motion for a preliminary hearing I
8 would not have pled guilty and insisted on going to trial.
9 Had counsel made a motion for a competency hearing I would
10 not have pled guilty and insisted on going to trial.

11 That's it.

12 THE COURT: All right. Thank you. Any questions of him
13 regarding his statement?

14 MR. PALMER: No, Your Honor.

15 THE COURT: Anything from you, Mr. Spencer?

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

17 Your Honor, I have no further questions.

18 THE COURT: All right, sir, you may step down.

19 MR. PALMER: Applicant rests, Your Honor.

20 THE COURT: All right. Thank you.

21 MR. SPENCER: I would call Ms. Sara Ford, please.

22 THE CLERK: State your name for the record.

23 MS. FORD: Sara Ann Elizabeth Ford.

24 (WHEREUPON, Sara Ford was sworn to
25 tell the truth.)

Spigner v. State 5/22/12

21

1 THE CLERK: Thank you. You may be seated.

2 SARA FORD - DIRECT EXAMINATION

3 BY MR. SPENCER:

4 Q Ms. Ford, do you recall representing Mr. Spigner?

5 A Yes, I do.

6 Q All right. Then I apologize for my ignorance. You
7 were with the public defender's office?

8 A I was with the public defender's office at the time. I
9 was appointed.

10 Q All right. Did you discuss the charges with Mr.
11 Spigner?

12 A I did. I discussed all the charges with Mr. Spigner.
13 I was originally appointed on a distribution of drugs
14 charge, a crack cocaine charge, as well as a proximity
15 charge. Then I was also appointed on the armed robbery and
16 kidnaping charge.

17 Q Okay. Was the --

18 A And discussed, obviously, each of those extensively.

19 Q Now, as to the drug charges, and I understand from Mr.
20 Spigner that those were either dropped or no longer pursued
21 by the solicitor's office. Was that part of this plea
22 bargain?

23 A It was. All the drug charges were nol prossed per the
24 negotiations on the armed robbery and the kidnaping charges.

25 Q Okay. Now, did you get discovery from the solicitor's

1 office on this case?

2 A I did.

3 Q And did you review that with Mr. Spigner?

4 A I did.

5 Q Did you discuss any potential defenses from the
6 charges?

7 A We discussed the case fully from what the State
8 presented to us in the incident reports. We discussed all
9 the statements that were written. We discussed the lineup
10 identification that was provided. We also discussed any
11 possible defenses we would be able to present at trial.

12 Q Did Mr. Glover actually pick out Mr. Spigner from a
13 photo lineup; is that correct?

14 A That's correct.

15 Q And now the co-defendants gave statements to the
16 police; is that correct?

17 A Yes, sir.

18 Q Okay. Did Mr. Spigner give a statement to the police?

19 A Not to my recollection.

20 Q And in terms of potential defenses did you and Mr.
21 Spigner ever come up with any potential defenses to the
22 charge?

23 A When I would meet with a defendant I would, obviously,
24 go over, they would have an alibi. Obviously let me know
25 who those potential alibi witnesses would be so that we

Spigner v. State 5/22/12

23

1 might be able to interview them and present that defense to
2 the solicitor's office. And we discussed that possibility
3 as well as other defenses, and the strength and weakness of
4 presenting that defense at trial verses a guilty plea in
5 explaining the entire process to Mr. Spigner.

6 Q When the State presented its offer, did you discuss
7 that offer with Mr. Spigner?

8 A Yes, I did.

9 Q All right. Whose decision was it to plead guilty?

10 A Mr. Spigner's.

11 Q If he'd wanted a trial would you gone to trial?

12 A Yes, sir. We were prepared for trail, actually, I
13 believe the next week. After Mr. Spigner pled guilty, I
14 believe it was on the 17 he pled guilty, we were going to be
15 up for trial that next week.

16 Q And would you have been ready for that trial?

17 A Yes, sir. I'd actually given Ms. Hinds, who is the
18 Deputy Public Defender, a copy of the file. We were prepared
19 to move forward at trial.

20 Q In terms of waiving presentment on the indictments, did
21 you discuss with him the waiver of presenting the indictment
22 to the grand jury?

23 A Yes, I did, as well as, Ms. Hinds, actually.

24 Q And did he seem to have any difficulty in understanding
25 that?

1 A No, sir. Mr. Spigner, in my two and a-half years in
2 the public defender's office, is probably one of the most
3 intelligent clients I ever dealt with, but, no, he did not
4 appear to have any difficulty understanding what we were
5 talking about?

6 Q Was there anything in his demeanor or his actions or
7 your conversations that raised any concerns about his
8 competency?

9 A No, sir.

10 Q Was there any indications in your meetings with him
11 whether he was intoxicated or under the influence of any
12 drugs?

13 A No.

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

15 THE COURT: Yes, sir.

16 MR. SPENCER: I believe I have no further questions.

17 Thank you.

18 THE COURT: All right. Please answer any questions that
19 Mr. Palmer may have.

20 MR. PALMER: Thank you, Your Honor.

21 SARA FORD - CROSS-EXAMINATION

22 BY MR. PALMER:

23 Q Did you employ a private investigator in this man's
24 case?

25 A Not to my recollection. No.

1 Q You made some testimony about preparing for trial.
2 What were the defenses going to be?

3 A In my discussion with Mr. Spigner, any possible defense
4 that we had, possibility of alibi was not going to be
5 sufficient for trial, and, quite frankly, we didn't have a
6 good defense at trial based on what my discussions with Mr.
7 Spigner was, at least at the time.

8 Q I'm just wondering how you can say you were prepared
9 for trial if there weren't any defenses developed. What was
10 going to be the argument or the theory of the case?

11 A During my discussions with Mr. Spigner over three or
12 four months we discussed the strengths and the weaknesses of
13 his case. The weakness of the case was the victim picked
14 him out of a photo lineup as the individual who held him at
15 gun point in the back of a vehicle. When you have a victim
16 that can identify a defendant, it's going to be a tough
17 case. That's why, in this particular case, I explained
18 everything to him. In my opinion I don't think that we have
19 -- a trial is probably not going to be in your best
20 interest, however, if that's what you want to do we are
21 certainly going to proceed with that, or you can plead
22 guilty.

23 Q Did you --

24 A Those are his choices.

25 Q I didn't mean to talk over you.

1 A That's okay.

2 Q Did you file a motion to suppress the photo lineup or
3 have a hearing on that in any way?

4 A No, we did not.

5 Q Was there ever a preliminary hearing requested?

6 A Yes, there was, and one was scheduled for May 25 of
7 that -- of 2010.

8 Q So that was scheduled before you were notified of a
9 trial date?

10 A A letter went out to Mr. Spigner on April 28, 2010,
11 about a preliminary hearing that was to be held May 25,
12 2010. His second appearance was on the 10 of May, 2010, and
13 the offer, which was a negotiated 15 years was going to
14 expire that week.

15 Q So he pled on the 17 May, 2010. The preliminary was
16 set for the 25, and you said you'd been noticed for trial
17 the following week?

18 A That was correct.

19 Q Okay.

20 A Of the following term of court.

21 Q So he would have gone to trial without having a
22 preliminary hearing, under that time line; do you agree?

23 A Yes.

24 Q Okay.

25 A That's possible.

Spigner v. State 5/22/12

27

1 Q At the end of the guilty plea proceeding you made some
2 commits on the record that you didn't have any doubts about
3 Mr. Spigner's competency as his attorney, but you
4 nonetheless requested that part of his sentence included a
5 mental health evaluation. What was the concern there?

6 A Mr. Spigner expressed concern about being depressed
7 that day, actually, when we were in the middle of the guilty
8 plea. So based on that just asked the judge to have an
9 evaluation once he was at department of corrections.

10 Q Do you think any other motion would have been
11 appropriate at that point that would have given rise to some
12 concern that he may not be doing this voluntarily?

13 A At that time I had met with him extensively that day,
14 along with Ms. Hinds. I also met with him and his
15 grandmother. I had met with him that week before at least
16 three times. There was never any question, in my opinion,
17 as to his competency nor his understanding about what was
18 going on and what decisions he was making.

19 Q Okay. So, again, the request on the record for a
20 mental health evaluation was --

21 A Mr. Spigner's.

22 Q -- was his request of yours?

23 A I requested it on his behalf. He expressed to me during
24 the plea that he was feeling depressed about basically
25 looking at 15 years, and certainly wanted to make sure that

1 he would get any assistance that he needs.

2 Q Understood. I know you had commented on his apparent
3 intelligence. Did you make any determination of his degree
4 of literacy?

5 A Obviously, sent letters to him. He sent letters to me.
6 So I had, you know, the letters were pretty well written and
7 had no question that he could certainly read and write and
8 was fairly intelligent.

9 Q And prior to standing him up here on May 17, 2010 for a
10 guilty plea, did you go over any kind of list or check list
11 that advised him of his constitutional rights, right to
12 trial or right to -- against self-incrimination, everything
13 basically the judge went over?

14 A I did. I explained about the indictments. We talked
15 about the fact witnesses and circumstances. I can go
16 through the traditional guilty plea check list.

17 Q Is that the standard form in your office used at the
18 time?

19 A Yes.

20 Q Okay.

21 MR. PALMER: Just a moment, please.

22 BY MR. PALMER:

23 Q Just a few more questions, Ms. Ford. Did you meet with
24 Mr. Spigner on May 13, 2010; does your file reflect that?

25 A Yes, I did.

Spigner v. State 5/22/12

29

1 Q Okay. And is there a reason you did not move to
2 challenge or suppress the photographic line up?

3 A That would have been appropriate pre-trial. We were
4 not at that point. So --

5 Q Did you ever specifically question him to determine
6 whether or not he was under the influence of any control
7 substance or intoxicants prior to him pleading guilty?

8 A We talked during the -- in the guilty plea check list,
9 we talk about -- there's a question we ask about an
10 individual being under the influence of drugs or alcohol,
11 and then ask if they've ever been institutionalized for
12 drugs, alcohol abuse or mental illness.

13 Q And did he respond to those questions?

14 A Yes, sir, and that would be no. I believe, and I don't
15 have the transcript in front of me, but Judge Dickson would
16 ask an individual, a defendant, if he was under the
17 influence of drugs or alcohol. And I would imagine if we
18 proceeded with the guilty plea as we did, he would have
19 answered no.

20 MR. PALMER: Just one moment, please.

21 Those are all my questions, Your Honor.

22 THE COURT: Anything else for Ms. Ford?

23 MR. SPENCER: Judge, just quickly.

24 SARA FORD - RE-DIRECT EXAMINATION

25 BY MR. SPENCER:

1 Q Had you gone to trial you would have moved pre-trial an
2 attempt to suppress the photo identification?

3 A Yes, as well as a number of other motions, but
4 obviously, traditionally we don't do pre-trial motions a
5 week or two ahead of time. We do it a week or two before
6 trial. That would have been the appropriate time to make
7 that and any other motions.

8 MR. SPENCER: Thank you. I have no further questions.

9 MR. PALMER: One more, Your Honor, please?

10 THE COURT: Yes.

11 SARA FORD - RECROSS EXAMINATION

12 BY MR. PALMER:

13 Q Did you interview any witnesses in this case?

14 A I actually spoke with the victim in this case.

15 Q Mr. Glover?

16 A Correct.

17 Q All right.

18 MR. PALMER: Thank you.

19 THE COURT: You may step down.

20 MR. SPENCER: I'd ask that Ms. Ford be excused.

21 MR. PALMER: No objection.

22 THE COURT: All right. You're excused.

23 MR. SPENCER: The State wouldn't have any witnesses.

24 Just want to make a brief closing if that will be all right.

25 THE COURT: Yes, sir.

1 MR. SPENCER: And, Your Honor, basically, someone who is
2 pleading guilty on advice of counsel has to show both a
3 deficiency and prejudice and I think Ms. Ford made it pretty
4 clear that she had gone over this case pretty closely with
5 Mr. Spigner and discussed defenses. There just wasn't any
6 good defense. That's just the way it is sometimes, there's
7 no good defenses, and, of course, we know the reason we know
8 there's no good defenses is Mr. Spigner has agreed that the
9 facts in the plea were correct, that he did do that.. He
10 still can go to trial even if you're factually guilty. You
11 have a right to trial no matter what, but unfortunately your
12 likelihood of success is going to be greatly diminished. So
13 he made an intelligent decision to plead guilty and avoid a
14 harsher punishment. That's why we have guilty please.

15 He hasn't shown any deficiency of counsel. He sure
16 hadn't shown any prejudice because there hasn't been any
17 evidence to show that any defense would have had even a
18 chance of success in this case.

19 Your Honor, I would ask that this application be
20 denied.

21 Thank you very much.

22 THE COURT: Yes, sir.

23 MR. PALMER: Briefly, Your Honor.

24 Your Honor, we simply ask the Court to consider several
25 factors. Although, his application really only spells out a

1 cause of action for ineffective assistance, I think it can
2 be inferred, especially from his statement that he is saying
3 he didn't plead guilty voluntarily.

4 Your Honor, I would just point out that his age, his
5 lack of a high school education, his allegations about being
6 on street drugs and under the influence while
7 institutionalized, and the sort of -- his effort to get
8 other counsel, which was denied, clearly had some concerns
9 before he showed up to plea all add up to an involuntary
10 guilty plea.

11 Your Honor, we would ask that the application be
12 granted.

13 Thank you.

14 THE COURT: All right. I'll take this one under
15 advisement. I want to look at the transcript again, and I'll
16 get back to you all shortly.

17 MR. PALMER: Thank you, Your Honor.

18 (This proceeding was concluded.)
19
20
21
22
23
24
25

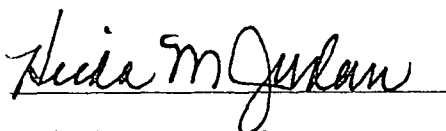
Spigner v. State 5/22/12

33

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT
REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
HEARING IN THE ABOVE CAPTIONED CAUSE, IN THE COURT OF COMMON
PLEAS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 22 DAY
OF MAY, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
NOR INTEREST IN ANY PARTY HERETO.



Hilda M. Jordan, CVR-M

March 14, 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG)

C.A. NO. 2010-CP-38-1611

Patrick Spigner,
S.C.D.C. No. 340898,

Applicant,

ORDER OF DISMISSAL

VS.

State of South Carolina,

Respondent.

ATTEST: TRUE COPY

CLERK OF COURT

ORANGEBURG COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 8, 2010. The State made its return on February 17, 2011. A hearing was convened at the Orangeburg County Courthouse on May 22, 2012, at which time Applicant was present in court and represented by W. Scott Palmer, Esquire. Respondent was represented by David Spencer of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf. This Court also heard testimony from his plea counsel, Sara Ford, Esquire. This Court also had before it the PCR application, the State's return, the Clerk of Court's records regarding the subject conviction, the Applicant's records from the Department of Corrections, and the transcript from Applicant's guilty plea hearing.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections pursuant to the orders of commitment of the Orangeburg County Clerk of Court. Applicant waived presentment and pled guilty to armed robbery and kidnaping. Applicant was represented by Sara Ford, Esquire. The

Honorable Edgar W. Dickson sentenced Applicant to negotiated concurrent sentences of fifteen years imprisonment for each charge. Applicant did not appeal his conviction or sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

Ineffective Assistance of Counsel and Involuntary Plea

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

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective

assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

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

Applicant complains his attorney talked him into pleading guilty and failed to adequately investigate his case. Applicant testified that he never had a bond hearing or preliminary hearing. He did appear before Judge Dickson prior to the plea and advised the judge he wanted a new defense attorney, but his request was denied. Applicant claimed he was on drugs while in court. Applicant admitted on cross-examination that he pled guilty to avoid a harsher punishment.

Counsel testified that she was originally appointed to represent Applicant for drug charges that were dismissed pursuant to the plea. She testified that Applicant did not appear to have a good defense to the charges. She advised Applicant that he could go to trial, but that it was not in his best interests. She testified that the State had sufficient evidence to convict based on the victim identifying Applicant (and both of his co-defendants) in a photographic lineup. Both co-defendants gave incriminating statements. Counsel testified that she discussed potential defenses with

Applicant. Counsel testified that she did not think Applicant had a good defense to the charges. At the plea hearing, counsel advised the plea court that she went over discovery with applicant, his options of going to trial versus pleading guilty, and his constitutional rights. Tr. p. 12, lines 1-4. Counsel testified that Applicant did not appear to be under the influence of any drugs at the plea hearing.

This Court finds Applicant did not meet his burden of proof. Applicant has failed to show that Counsel's performance was deficient. In so finding, this Court finds counsel's testimony was highly credible and gives it great weight. This Court finds that counsel went over discovery and the evidence with Applicant and that her advice to Applicant to plead guilty was reasonable. This Court finds that her performance did not fall below professional norms. Further, this Court finds that Applicant has failed to meet his burden of proving prejudice. This Court finds that Applicant failed to show any benefits that might have accrued from further investigation. This Court further finds that Applicant made an informed decision to plead guilty in order to avoid a harsher punishment. This Court denies this Application with prejudice.

CONCLUSION

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

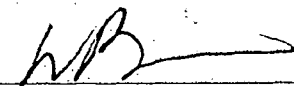
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of

a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 30 day of July, 2012.



DeAndrea G. Benjamin
Presiding Judge
First Judicial Circuit

Columbus, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Orangeburg
STATE

INDICTMENT/CASE#: 2010 GS 38 - 71

AKA: Patrick A. Spigner

ANW#: M 213050

Race: R Sex: M Age: 23

Date of Offense: 10-31-09

DOB: SS#

S.C. Code §: 16-11-330(A)

Address:

COR Code #: 0139

City, State, Zip:

SENTENCE SHEET

DL# SID#

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

☐ CONVICTED OF or ☐ PLEADS

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

TO: Armed Robbery

In violation of 16-11-330(A) of the S.C. Code of Laws, bearing COR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-28-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense,

☒ Defendant Waives Prosecution to Grand Jury, (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation,

☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

9512 SC Bar # 77029
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$, plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections, since 12/8/09

☐ 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 16-28-20 or 16-28-66 (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	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47-12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$28	\$ <u>28.00</u>
§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	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>132.90</u>

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

Other: Defendant shall be evaluated by Alcohol Monitor

☐ Appointed PD or appointed other counsel, §47-12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk He. Willard
Court Reporter: Harry D. Walker

Presiding Judge
Judge Code: 2153
Sentence Date: May 17, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEOrangeburg

AKA:

Patrick A. Spigner

Race:

B

Sex:

M

Age:

23

DOB:

8/8/86

Address:

City, State, Zip:

DL#

SID#

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

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

TO: Kidnapping

In violation of §

16-3-910

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

0095☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

This charge is:

☐ As indicted,☐ Lesser included offense,☒ Defendant Waives Presentment to Grand Jury,

(defendant's initials)

The plea is:

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

ATTEST:

[Signature]9512

SC Bar #

Defendant

Attorney for Defendant

77029

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 15 days/months/years or☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____ plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 12/8/09☐ 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 16-25-30 or 16-25-35 (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: _____

☐ Set by BCDPPPS _____Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)

\$100

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

§14-1-211 (A)(2)(DUI Surcharge)

\$100

§56-5-2098 (DUI Assessment)

\$12

§56-1-286 (DUI Breath Test)

\$25

§47-12 (Public Def/Prob)

\$500

§14-1-212 (Law Enforce. Funding)

\$28

§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(BCCJA Surcharge)

\$5

3% to County (If paid in installments)

TOTAL

\$ 137.90

Clerk of Court/Deputy Clerk [Signature]Court Reporter: Harry Dot WalkerPresiding Judge [Signature]Judge Code: 2153Sentence Date: May 17, 2010