

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Edgefield County

Honorable George M. McFaddin, Circuit Court Judge

MAURICE ANTHONY ODOM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000517

APPENDIX

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S.C. SUPREME COURT

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proceeding”).

B. Conclusion and Action Requested

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

V. RESPONSE TO ALLEGATIONS OF PROSECUTORIAL MISCONDUCT

Applicant further raises multiple claims of prosecutorial misconduct, and includes citations to statements the solicitor made that Applicant simply does not like. Applicant does not present any facts indicating any of these remarks deprived him of a fair trial. *See generally State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997) (“A new trial will not be granted unless the prosecutor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.”). Moreover, “considerable latitude is generally allowed in matters of drawing and arguing inferences and deductions from evidence.” *Johnson v. Life Ins. Co. of Ga.*, 227 S.C. 351, 369, 88 S.E.2d 260, 269 (1955).

Applicant has failed to present any evidence tending to establish bad faith or intent on the part of the prosecution. *See Alabama v. Smith*, 490 U.S. 794 (1989) (finding that, with regard to prosecutorial misconduct, the burden is on the defendant to prove actual vindictiveness). However, the record likely does not refute or disprove Applicant’s allegations of prosecutorial misconduct; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper*, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR

application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

VI. RESPONSE TO ALLEGATION REGARDING SUBJECT MATTER JURISDICTION

Furthermore, an applicant’s contention of lack of subject matter jurisdiction is without merit. An applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499. *See also* S.C. Const. Art. V, § 7. The regularity of proceedings in a court of general jurisdiction “will be assumed” absent evidence to the contrary. *Pringle v. State*, 287 S.C. 409, 410-411, 339 S.E.2d 127, 128 (1986). Thus, Applicant must present evidence his case is of some class over which the circuit court does not have the authority to preside.

The Edgefield County Grand Jury indicted Applicant for second-degree burglary, which alleges the criminal offense occurred in Edgefield County. Moreover, Applicant was tried and sentenced in the Edgefield County Court of General Sessions. Therefore, Applicant’s allegations regarding jurisdiction are baseless and offer him no relief.

VII. MOTION FOR A MORE DEFINITE STATEMENT

The State submits Applicant’s claims are without merit. However, it is impossible for the State to adequately respond to all of Applicant’s allegations because Applicant has failed to provide any specific facts to support such claims. “[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the [applicant] that he was deprived of adequate and effective assistance of counsel is insufficient.” *Coardes v. State*, 262 S.C. 493, 497, 206 S.E.2d

264, 265 (1974); *see* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to “specifically set forth the grounds upon which the application is based”); *see also* Rule 8(a)(2), SCRCP (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRCP (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”).

Accordingly, the State moves for Applicant, through counsel, to amend his application to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRCP and the Post-Conviction Procedure Act.

VIII. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because

of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

IX. GENERAL DENIAL

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

[Conclusion and signature on following page]

XI. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its partial motion to dismiss as set forth in section III; grant its motion for a more definite statement as set forth in section VII, and thereafter convene an evidentiary hearing on the allegation of ineffective assistance of counsel.

Respectfully submitted,

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November 17, 2020

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL
STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2022 OCT 13 PM 2:09) FOR THE 11TH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD) Case No.: 2020-CP-19-071

Maurice Odom, #199677)

Applicant,)

v.)

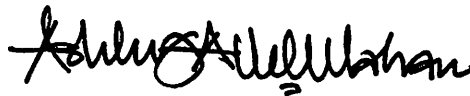
State of South Carolina.)

**AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on March 3, 2020 to add the following:

Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006); *see also Love v. State of South Carolina*, 428 S.C. 231, 834 S.E.2d 196 (2019); SCRCP Rule 15(b).

Respectfully submitted,



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ATTORNEY FOR APPLICANT

October 4, 2022

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

CERTIFICATE OF SERVICE

2022 OCT 13 PM 2:09

I certify that I have served this document via email to:

Lillian L. Meadows
Assistant Attorney General
LillyMeadows@scag.gov

This 4th Day of October, 2022.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

1 State of South Carolina) Court of Common Pleas
2 County of Lexington) Eleventh Judicial Circuit
3
4 Maurice Anthony Odom,) Transcript of Record
5 Petitioner/Applicant,) 2020-CP-19-00071
6 vs.)
7 State of South Carolina,)
8 Respondent.)

9

10 October 10, 2022

11 Lexington, South Carolina

12

13 B E F O R E:

14 The Honorable George M. McFaddin, Jr., Judge

15

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

17 Ashley A. McMahan, Esquire
18 On behalf of the Petitioner/Applicant19 Taylor Z. Smith, Assistant Attorney General
20 On behalf of the State of South Carolina

21

22

23

24 Reported by: Stacy S. Johnson, RPR
25 Circuit Court Reporter

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E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held October 10,
2 2022, beginning at 11:06 AM.)

3 MR. SMITH: Your Honor, this is the case of
4 Maurice Odom v. State. Also I have handed up a box to
5 Your Honor that includes all the direct appeal records
6 from the Court of Appeals and Supreme Court, application
7 and amendment, that sort of stuff, and the transcripts.

8 THE COURT: Yes, sir.

9 MR. SMITH: Mr. Odom is serving a life sentence in
10 the South Carolina Department of Corrections. It stems
11 from a burglary of an IGA in Johnston, South Carolina.
12 He was indicted for second degree burglary. He was
13 first tried back in 2013, and that ended in a mistrial
14 when there was a hung jury, was retried in June of 2015.
15 Mr. Bennett Casto was one of his lawyers. Mr. Erik
16 Drylie was the second.

17 I had lined up Mr. Drylie to be a witness today,
18 but he informed me this morning that he is sick with a
19 fever, so he's not here and we're gonna try to push on
20 without him just to make that known on the record.

21 And his conviction and the sentence were affirmed
22 on appeal, and I'll draw Your Honor's attention to the
23 Court of Appeal's opinion affirming its per curium
24 opinion. That first issue was whether Judge McMahon
25 had erred in issuing a life sentence and the second was

1 whether Judge McMahon erred in not dismissing the case
2 due to a speedy trial issue, and so both of those issues
3 I think are settled as a matter of law in case they arise
4 today.

5 And Ms. McMahan said that she'd be happy to put on
6 the record the issues today.

7 THE COURT: All right.

8 MR. SMITH: Thank you.

9 THE COURT: Ms. McMahan.

10 MS. McMAHAN: Judge, right now having not heard
11 otherwise from my client, I believe the issue with the
12 juror -- are you planning on bringing that up?

13 THE APPLICANT: Yes, ma'am.

14 MS. McMAHAN: I believe we are. And we're gonna
15 just go through the PCR application while he's on the
16 stand and go through all the issues that way.

17 THE COURT: Yes, ma'am. Okay.

18 MS. McMAHAN: So at this time we call Mr. Odom.

19 (Whereupon, Maurice Anthony Odom was duly sworn by
20 the Clerk of Court.)

21 CLERK: Thank you.

22 MAURICE ANTHONY ODOM,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. McMAHAN:

1 Q. Mr. Odom, state your name for the record.

2 A. Maurice Anthony Odom.

3 Q. And did you file this PCR application?

4 A. Yes, ma'am.

5 Q. Okay. And just before we get into all the issues,
6 just so we have the -- sort of the time period right, you
7 had charges pending in several different counties at once;
8 is that correct?

9 A. That's correct.

10 Q. So at one point you had charges in Barnwell, correct?

11 A. Yes, ma'am.

12 Q. Edgefield?

13 A. Yes, ma'am.

14 Q. Lexington?

15 A. Yes, ma'am.

16 Q. Laurens and Newberry?

17 A. Yes, ma'am.

18 Q. Okay. So you went to trial first on the Laurens
19 charges?

20 A. Yes, ma'am.

21 Q. Well, actually you went to trial on the Edgefield one
22 first, but it was a mistrial and then you went to trial in
23 Laurens?

24 A. Yes, ma'am. That's correct.

25 Q. And then you pled guilty in Newberry?

1 A. Yes, ma'am.

2 Q. And then you had this trial in Edgefield?

3 A. Yes, ma'am.

4 Q. And so between Laurens and Newberry, you'd gotten
5 like, what, fifteen years or so?

6 A. Yes, ma'am. Fifteen.

7 Q. And then you got life without parole on this one?

8 A. Yes, ma'am.

9 Q. And then ultimately the Barnwell and the Lexington
10 charges were dismissed?

11 A. That's correct.

12 Q. Okay. Just so that everybody has that straight.

13 Okay. And you wrote this application, so let's --
14 let's start with your first issue.

15 A. Yes, ma'am.

16 Q. So tell the Court today what your first issue is with
17 Mr. Casto.

18 A. Excuse me?

19 Q. Just start with what your first issue is that you
20 wanted to raise in your application.

21 A. Well, one of my first issues that I wanted to raise
22 were like when I had the jury trial they stated that I
23 had fingerprints that were on my car and I felt that the
24 attorney should object to that because the fingerprints
25 are supposed to be on my car because it is my car. I felt

1 that he was supposed to object to that issue right there.

2 Q. And so because the solicitor brought up that your
3 fingerprints were all over the white Cadillac?

4 A. That's correct.

5 Q. And so you felt Mr. Casto should object or something?

6 A. Yes.

7 Q. Did you feel like Mr. Casto should also have addressed
8 that in closing, that the reason why your fingerprints were
9 on there is because it was your car?

10 A. Yes, that's correct. That's correct.

11 Q. Okay. Anything else on that issue that we need to
12 talk about?

13 A. Well, about the issue right there as well, there was
14 some clothing found in my car that was unrelated to the
15 burglary, which was a white and black stripped button
16 shirt. They stated in the jury trial that they found DNA
17 on the shirt and a baseball cap and I believe that when
18 they mentioned that to the jury, the jury I believe -- and
19 they had -- that they found DNA that was related to me in
20 the burglary from these clothes that were inside of my car
21 that was unrelated to the burglary charge. The clothes
22 that they found that they didn't mention in the jury trial
23 I felt that he should have that was on the video, which was
24 like approximately eight, nine, ten pieces of clothing that
25 were a mask, a shirt, shoes, belt and pants, they found

1 some sweat glands on these items. They did a -- and which
2 I thought he should have mentioned as well. That they did
3 a DNA on me three times. They did a DNA three times on me
4 for these clothing items that they found and the DNA didn't
5 match me either three times. The DNA didn't match me
6 neither three times that they did a DNA and then it was
7 that clothing that was used according to the burglary and
8 according to my half-brother that were used in the
9 burglary.

10 Q. Okay. So the -- so the basic facts were there were
11 two individuals that approached the IGA and threw a brick
12 through the window?

13 A. Yes, ma'am.

14 Q. And stole some cigarettes?

15 A. Yes, ma'am.

16 Q. And then sped off according to the video in a white
17 Cadillac?

18 A. Yes, ma'am. That's correct.

19 Q. Okay. And in the white Cadillac they found all the
20 clothes you just mentioned --

21 A. Yes, ma'am.

22 Q. -- but they also found the dark colored clothes --

23 A. Yes, ma'am.

24 Q. -- related to the crime?

25 A. That's correct.

1 Q. So your assertion is that the other clothes that were
2 in there, the striped shirt and all that stuff --

3 A. Yes, ma'am.

4 Q. -- just happened to be in the car because it was your
5 car?

6 A. And they were my clothes. They were mine.

7 Q. But the rest of them weren't?

8 A. Yes, ma'am.

9 Q. And that ultimately when they did some DNA test on
10 them they never found your DNA?

11 A. That's correct.

12 Q. So you felt Mr. Casto should have addressed that
13 further?

14 A. Yes. That's correct.

15 Q. All right. Anything else related to like the car or
16 the clothes or anything?

17 A. No, that was about it. With that being said as well,
18 as far as that's concerned, I felt Casto should have
19 objected as well. He stated that the Saluda officer rode
20 through -- the Saluda officer rode through and he stated
21 that he saw two individuals running from the car, which
22 none of them was positively identified. The only
23 identification that was led was from Brandon, my brother,
24 my half-brother, stating that it was him and he stated that
25 it was me as well.

1 Okay. I went to jail. I went to jail. I bonded out
2 of jail. I had a jury trial. I had a jury -- excuse me,
3 not a jury trial, I had a preliminary hearing. At my
4 preliminary hearing, Judge Parkman, he dropped my charges.
5 He dropped my charges. He stated there was enough evidence
6 because they caught my brother in bunch of falsehoods,
7 false tales, lies, excuse me, they dropped my charges, I
8 was released, but by the time that I made it out of the
9 judge's office, the -- the office -- the judge's room after
10 the preliminary hearing, Lamar Robinson, the police officer
11 at the time, he's the chief now -- was the chief, he
12 stopped me outside. He stated that -- he stated that look,
13 Odom, if you didn't do this, you need to tell me --

14 MR. SMITH: Objection to hearsay, Your Honor.

15 THE COURT: Sustained.

16 BY MS. McMAHAN:

17 Q. So you can't testify to what someone else told you.

18 A. Okay.

19 Q. You can obviously testify to what you learned, but not
20 what someone specifically told you.

21 A. Okay.

22 Q. So based on -- so your charges were initially
23 dismissed at a preliminary hearing?

24 A. That's correct.

25 Q. And then ultimately the solicitor ended up indicting

1 you later on for the same changes?

2 A. Yes. They indicted me because out of -- excuse me --
3 out of anger. He said I'm gonna show you.

4 Q. Okay. So we'll get into all that in just a minute.

5 A. Yes, ma'am.

6 Q. But just, you know, for history's sake here --

7 A. Yes, ma'am.

8 Q. -- so obviously the chief --

9 MR. SMITH: Motion to strike the hearsay again, Your
10 Honor.

11 MS. McMAHAN: I didn't think I said anything yet.

12 MR. SMITH: He -- he testified what the solicitor
13 told him at the preliminary hearing.

14 THE COURT: Okay. Sustained.

15 MS. McMAHAN: I think we already hit that part.

16 THE COURT: We already hit it.

17 BY MS. McMAHAN:

18 Q. So after the -- so you had the preliminary, your
19 charges were indicted --

20 A. Yes, ma'am.

21 Q. -- you went back for a bond hearing and all that kind
22 of stuff, right?

23 A. Yes, ma'am. That's correct.

24 Q. So you felt because of all the things that had been
25 said at the prelim and that the charges were dismissed that

1 you should not have been able to be indicted again?

2 A. Yes.

3 Q. Okay.

4 A. And -- and for the record -- for the record, my
5 attorney, which I'm sure -- at the time was Mr. Greg
6 Seigler, he can admit -- he can tell you this right here,
7 that -- he stated that the reason why my charges was picked
8 back up was because -- he stated there was new evidence and
9 the new evidence was that my brother told them that I was
10 with him; however, it wasn't new evidence. It was the same
11 evidence used at the preliminary hearing that got them
12 dropped the first time.

13 Q. Okay. So your brother did end up admitting to doing
14 all this?

15 A. Yes, he did.

16 Q. And he testified at the trial, didn't he?

17 A. Yes.

18 Q. Okay. And so it was your understanding that the
19 reason why you were ultimately indicted again was based on
20 what they were claiming as Brandon's confession?

21 A. Yes, ma'am. He was the star witness, which he's free
22 today. A star witness and free.

23 Q. Okay. So -- I'm sorry. Continue on with your issue
24 -- with your issues.

25 A. Yes, ma'am. However, I had the jury trial which

1 resulted in a mistrial. I had jury trial that resulted in
2 a mistrial. I -- and from the very beginning --

3 Q. Well, let's talk about that for a minute.

4 A. Okay.

5 Q. So the first trial you had was a mistrial, but you had
6 a different attorney for that one, right?

7 A. Yes, ma'am. It was -- I had --

8 Q. You had Screen.

9 A. I had Mr. Jerry Screen.

10 Q. Okay.

11 A. I had Mr. Jerry Screen.

12 Q. But then after that trial -- well, that's when you had
13 the Laurens trial, but in between all of that the public
14 defender was reappointed to your case in Edgefield; isn't
15 that right?

16 A. Yes, ma'am, which was Bennett Casto.

17 Q. But Mr. Casto had -- he wasn't the first public
18 defender on it, was he? You had --

19 A. Greg Seigler until I hired a private attorney. Greg
20 Seigler.

21 Q. Okay.

22 MS. McMAHAN: And, you know, ultimately Mr. Seigler
23 is not an active attorney, Judge.

24 THE COURT: Yes.

25 MS. McMAHAN: I'm sure you're aware he's on the

1 bench.

2 BY MS. McMAHAN:

3 Q. So anyway. Okay. So then we go back on your second
4 trial and you have Mr. Casto.

5 A. Yes.

6 Q. So how many -- do you remember how many times you
7 might have met with him?

8 A. I don't want to really guess, but I'm gonna say like
9 once or twice I think in Saluda County jail. I was in
10 Saluda County. In fact, I got him later there. Before I
11 was trying to get another private attorney and I ended up
12 getting him.

13 Q. Okay. And so you were in jail because of the charges
14 in the other counties?

15 A. Yes, ma'am. That's correct.

16 Q. And the Eighth Circuit was keeping you in Saluda
17 County?

18 A. Yes, in Saluda County. The judge ordered me to come
19 to -- they said -- ordered me to -- I had an order to come
20 to Saluda County to face the charges right here, which was
21 in 2012.

22 Q. Okay.

23 A. I'd been here since then.

24 Q. Yeah.

25 Okay. So then you said Mr. Casto came to the jail at

1 least one or two times?

2 A. Yes.

3 Q. Do you remember what you guys talked about?

4 A. Not exactly. It's been so long ago.

5 Q. Okay. So at some point I guess there was a plea offer
6 in this case, right?

7 A. Yes, ma'am.

8 Q. In this Lexington -- in this Edgefield case?

9 A. Yes, ma'am.

10 Q. And what was the plea offer to your understanding?

11 A. The first plea -- I think at first they -- well, I
12 think it was five to seven years. Five to seven years.
13 It was five to seven years.

14 Q. That was before the first mistrial, right?

15 A. Yes, ma'am. It was non -- all my charges were
16 nonviolent. It was nonviolent. The plea, it ended up
17 being violent however, it was nonviolent, and so -- but it
18 ended up being a mistrial. I didn't take the plea. It
19 ended up being a mistrial. They offered me five to
20 seven years.

21 Q. Okay. So then you get tried in Laurens and you get
22 fifteen years, right?

23 A. Yes, ma'am.

24 Q. Okay. So then -- then you have the guilty plea in
25 Newberry where you also get fifteen years?

1 A. Yes, ma'am.

2 Q. Was that fifteen years concurrent to what you were
3 already serving in Laurens or was it consecutive?

4 A. Concurrent.

5 Q. Okay. So then you go in front of the Edgefield jury
6 for this trial and for this Edgefield case prior to that
7 second jury trial, were there any plea offers that you were
8 aware of?

9 A. Yes.

10 Q. What was it?

11 A. The solicitor -- the solicitor out of Newberry County
12 -- I can't think of his name offhand.

13 Q. Mr. Scott? Dale Scott?

14 A. Yes, Mr. Scott. Mr. Scott, he came to me, and the
15 attorney at the time, he come to me, and actually at
16 the preliminary hearing -- not the preliminary, at the
17 post-conviction, another post-conviction, but he come to
18 me and he said that Ervin Maye and them -- and Frank Young.
19 Ervin Maye and them said if I take these fifteen years in
20 Newberry County that they were going to drop the charges
21 there in Edgefield County.

22 MR. SMITH: Objection. That's hearsay and hearsay.

23 THE APPLICANT: No, it's not -- it's not hearsay.

24 THE COURT: Sustained.

25 BY MS. McMAHAN:

1 Q. So you -- it was your understanding that you learned
2 from Mr. Scott and your attorney in Newberry --

3 A. Yes.

4 Q. -- that if you had pled to the Newberry charges that
5 the Edgefield ones were gonna get dismissed?

6 A. Yes, that's correct.

7 Q. Okay. And that did not happen?

8 A. It did not happen.

9 Q. Okay. And so you ended up going to trial obviously?

10 A. Yes, ma'am.

11 Q. So prior to starting the trial in Edgefield, say, like
12 the week before --

13 A. Yes, ma'am.

14 Q. -- were there any offers that Mr. Casto had told you
15 about?

16 A. He mentioned something about -- at first because
17 before Casto, right, before Casto I had -- keep this in
18 mind, keep this in mind, I had Jerry Screen, which
19 Mr. Jerry Screen in Columbia, right here in Columbia, he
20 come to me in the county jail and he stated that he had a
21 whole 45 minutes to an hour conversation with Mr. Frank
22 Young. He say he came to his office -- excuse me -- and he
23 had agreed to drop all charges; however -- which I have his
24 documentation in here that you could have that you
25 presented to the judge, the evidence, I wrote -- I did a

1 disciplinary counsel on both of them. I did a disciplinary
2 counsel on both of them.

3 Q. So you filed it on both of them. You mean Mr. Maye
4 and who else?

5 A. And Frank Young.

6 Q. Okay.

7 A. Now so he came back to me after they made a deal.
8 He said did you do a disciplinary counsel on them, I said
9 yes, sir, I did, and so he slammed his file down. He
10 stated that now they're not gonna drop the charges. You
11 made them upset. Those exact words. You made them upset.
12 Now they are not going to drop the charges. And even after
13 that, like I said, they made the 15-year deal to me. If I
14 take fifteen years in Newberry, they were gonna drop the
15 charges. And I wanted to take a jury trial, which I were
16 gonna do, but when he said that if I didn't want to deal
17 with Edgefield anymore, because my brother got his charges
18 dropped, and I figured I should be right to get mine
19 dropped, and he admitted that he did it, so. However, I
20 took those fifteen years in Newberry County and I'm
21 thinking that they're gonna drop the charges, the promise
22 that they made me -- they made to me. And keep this in
23 mind --

24 Q. So -- so you took the plea in Newberry based on the
25 fact that you were told somehow or another --

1 A. Yes.

2 Q. -- that the charges in Edgefield were gonna be
3 dropped?

4 A. That's correct.

5 Q. Okay.

6 A. And they asked Mr. -- Mr. Scott the question did they
7 tell him that and Mr. Scott had admitted, he said yes, they
8 did tell him that, but he said that -- he stated they told
9 him that, but he also said that he just don't remember all
10 the details.

11 Q. Okay. So when did Mr. -- is that on the record?

12 A. This is on the record. It's on the record.

13 Q. Was that in a PCR hearing?

14 A. A PCR hearing. That's correct.

15 Q. So the Newberry PCR hearing?

16 A. That's correct. He said -- he agreed that yes, they
17 did tell him that.

18 MS. McMAHAN: Judge, again, just under Rule 201, if
19 you get on C-track public access, you can find a copy of
20 that PCR hearing transcript.

21 BY MS. McMAHAN:

22 Q. Okay. So we talked about all of that. We talked
23 about the plea offer.

24 Okay. So why -- so you were offered something before
25 the second plea, wasn't it -- weren't you? Mr. Maye had

1 offered you, what, ten consecutive or something?

2 A. Yes. First they said ten years or something like
3 that, right?

4 Q. Yes.

5 A. However, now if I would have known that I can get
6 a life sentence, you know, because there was some
7 discrepancies. There was some discrepancies about the
8 life sentence. For the record they served me with a life
9 sentence paper. They served me like two or three different
10 life sentence papers.

11 Q. Okay. Let's back up for a second.

12 A. Okay.

13 Q. So you were served with the life without parole notice
14 on the Edgefield charges?

15 A. Yes. That's correct.

16 Q. But that was before the first trial, right?

17 A. Yes, ma'am.

18 Q. Okay. So then ultimately there was some issue with
19 the charges they were trying to use to say they could get
20 life without parole against you?

21 A. Yes, ma'am. Yes, ma'am.

22 Q. Okay. And then it was determined they couldn't at
23 that time?

24 A. Yes, ma'am. I wrote to the Clerk of Court in Barnwell
25 County and they sent me copies of the -- the charges that

1 they tried to use -- they sent me copies of the charges
2 that they tried used and said no, this is nonviolent, so
3 I took those charges and I sent them to my attorney and
4 that's when they changed the charges up on me and come up
5 with another charge.

6 Q. Okay. Well, let's talk about that for a second.

7 A. Okay.

8 Q. So -- so then you have the trial in Laurens and you're
9 found guilty?

10 A. Yes, ma'am.

11 Q. And then you have the guilty plea in Newberry?

12 A. Yes, ma'am.

13 Q. And so -- but in the meantime they have served you
14 again with another life without parole notice?

15 A. Yes, ma'am.

16 Q. Okay. And so in that situation they're using the
17 Newberry and the Laurens charges, right, as the
18 enhancement?

19 A. Yes, ma'am.

20 Q. And so your assertion is that because those charges
21 were nonviolent they couldn't be used to enhance to a life
22 without parole; is that correct?

23 A. The one in Barnwell?

24 Q. Yes.

25 A. Yes, ma'am.

1 Q. Okay. So -- and so because of the other two -- the
2 Laurens and the Newberry charges occurred after this
3 incident, but you were convicted prior to this conviction
4 so because that incident occurred first --

5 A. Yes, ma'am.

6 Q. -- it's your understanding they shouldn't have been
7 able to use those to give you life here in Edgefield?

8 A. Yes, that's correct. Because the two strike, three
9 strike, it's a prior conviction, and my charge that I
10 received this as to the charge happened in 2006 or 2007
11 and prior to anything before that date; however, the
12 Edgefield solicitors used my 2015 conviction to enhance
13 the 2006 conviction, which was after the fact, it's not
14 prior, which was wrong.

15 Q. Okay. So did you and Mr. Casto have any conversations
16 about that?

17 A. Yes. No, no -- about that particular incident right
18 there?

19 Q. Yes.

20 A. He wrote me a letter. He had wrote me a letter.
21 Now before the fact -- before the fact -- he never even
22 discussed it before the fact, but he wrote me a letter
23 and he said that because, you know, since I was already
24 convicted he said that he believed that there's issues
25 that's gonna be preserved for appeal or something --

1 something like that of that nature, he wrote me a letter,
2 but there was no conversation about that right there
3 because we were all in question about if they can do it
4 or not and if I would have known that they could have done
5 it before the jury trial, I would never have took a jury
6 trial. Although I still maintain my innocence, I would
7 never have took that jury trial knowing that they could
8 give me a life sentence. Instead they wait until after I
9 got convicted to determine whether or not they can give it
10 to me or not.

11 Q. So -- but they did give you a piece of paper that said
12 that's what they wanted, right?

13 A. Yes, but it was a discrepancy. That's correct.

14 Q. Okay.

15 A. Because of the first discrepancy that's what made me
16 sceptical about the second one.

17 Q. I got you.

18 A. Yes, ma'am.

19 Q. So had you known that for real could have used it --

20 A. Yes, ma'am.

21 Q. -- then you would have gone ahead and taken the plea?

22 A. Yes, ma'am. I would have. I would have.

23 Q. Okay.

24 A. I would have took the five to seven years, whichever
25 it was.

1 Q. Or would you have taken the other -- the secondary
2 plea that Mr. Maye had given you, the one that was about
3 ten years?

4 A. I would have took it, yes. I would have took it
5 versus my life behind -- the rest of my life knowing I
6 have kids, grand kids. I lost my mother. I lost my
7 father. I lost two of my grandparents the same day and I
8 believe my grandparents died worrying about me.

9 Q. I got you. So let's talk about at the start of the
10 trial you moved to have Mr. Casto relieved. Do you
11 remember that?

12 A. Repeat that again, ma'am.

13 Q. At the start of this trial you moved to have Mr. Casto
14 relieved as your attorney. Do you remember that?

15 A. I think so.

16 Q. Do you remember why you wanted him relieved?

17 A. Probably because of some of these issues that I'm
18 speaking about right now.

19 Q. Okay.

20 A. And then I asked -- I asked -- another thing. I even
21 addressed the Court. I addressed the Court. They asked me
22 do I want to get on the stand and I stated to them that no,
23 I didn't want to get on the stand. I wanted to get on the
24 stand to testify on my own behalf, but they stated that --
25 the State stated that they were gonna bring up my past

1 prior convictions against me, it was gonna make me look
2 bad, and come to find out that they couldn't have brought
3 up my past and that was the only reason why I didn't get
4 on the stand to testify on my own behalf because I didn't
5 want it to look bad because of my past history, but then
6 I found out later that they couldn't have brought it up.

7 Q. So how did you find out later they couldn't have
8 brought it up?

9 A. Because my attorney, Mr. Henderson, and all of them,
10 they brought it up and they explained it to me with my
11 charges in Laurens County.

12 Q. You mean Mr. Carson Henderson, your PCR attorney on
13 your Laurens case, right?

14 A. Yes, ma'am.

15 Q. Okay.

16 MR. SMITH: Objection, again, to hearsay, Your Honor.

17 THE COURT: Response, ma'am.

18 MS. McMAHAN: Judge, I believe I just asked him what
19 he learned from Mr. Henderson, so I think -- I concede
20 that part of it was hearsay and part of it was not.

21 THE COURT: Overruled.

22 BY MS. McMAHAN:

23 Q. Okay. What else did you want Judge McFaddin to know
24 about your PCR? Anything else?

25 A. Okay. During the PCR Mr. Ervin Maye and them they

1 mentioned two, which is in the transcript --

2 Q. Okay. Well, you mean during the trial?

3 A. Yes, during the trial.

4 Q. You said during the PCR. So during this trial, you
5 mean --

6 A. During my trial --

7 Q. -- Mr. Maye --

8 A. -- made mentioned to the jury --

9 Q. Well, wait. Let's back up. Is Mr. Maye still alive?

10 A. Yes, ma'am.

11 Q. Ervin Maye is still alive?

12 A. Yes. Yes, ma'am.

13 Q. Mr. Maye is no longer alive.

14 A. Yes, ma'am.

15 Q. Okay.

16 MS. McMAHAN: So, again, Your Honor, it's
17 well-settled Mr. Maye is no longer living.

18 BY MS. McMAHAN:

19 Q. Okay. Continue. I'm sorry. So during your trial --

20 A. Okay. During the trial he mentioned, which I -- I
21 feel like what he mentioned to the jury and the lawyer
22 should object to that, he mentioned that -- that I was not
23 from around the area and this is your-all's town. He told
24 the jury this is your-all's stores, places that your-all's
25 kids got to go through, don't let him come up here --

1 through here -- I don't want to use the word, but I'm
2 gonna use it -- I guess, terrorizing your town through the
3 stores, which I think that was like manipulating the jury
4 by making that statement right there.

5 Q. Okay. Do you remember -- do you have a page number or
6 anything for that or was it in his closing or his opening?

7 A. That I don't remember.

8 Q. You don't remember if it was at the beginning or the
9 end?

10 A. No, ma'am.

11 Q. Okay. But at some point he said this either in
12 opening or closing and Mr. Casto did not object to it?

13 A. Yes, ma'am.

14 Q. Okay. Continue.

15 A. When he made those statements right there, you know,
16 we all know through experience that, you know, people who's
17 been involved with the court system that, you know, they
18 watch your expressions and your movements and everything
19 and -- but, you know, I'm watching and when -- you know,
20 it's about who's convincing the jury the most and when he
21 stated that and if I'm on the jury and you're telling me
22 that, I'm gonna think about my kids, et cetera, you know,
23 I'm gonna think about my kids as well, you know, and that
24 these are the stores they got to go through and I'm not
25 from the area, that's a form of manipulating or trying to

1 convince the jury, you know, which is --

2 Q. You felt like he was trying to appease the emotions
3 of the jurors to try to -- just based on emotional matters,
4 not facts, get them to convict you; is that correct?

5 A. Yes. That's correct.

6 Q. Okay. And did Mr. Casto say anything during that
7 closing?

8 A. No, not at all.

9 Q. Okay. What else do you want Judge McFaddin to know?

10 A. I'm gonna flip the boat for a minute.

11 Q. Okay.

12 A. I'm gonna flip the boat. My brother, he's my
13 half-brother, we didn't really get involved with each
14 other until later on in life, you know. He's -- you
15 know, my father had -- you know, my mother and my father
16 divorced, separated, and that's when he came along, so we
17 weren't really raised with each other at the time like
18 that. My brother -- this is my brother. He's been in and
19 out of the mental health. He's been out of the mental
20 health. My brother had charges in Barnwell County that he
21 got dropped in Barnwell County. Not competent to stand
22 trial. My brother was not competent to stand trial. He's
23 also been to the mental health ward for trying to kill his
24 kids, which is facts. I read the paperwork and I was there
25 when it happened, he was trying to kill his kids, and they

1 know he's been getting -- he's getting mental health checks
2 every month all his life. The charges in Barnwell County,
3 he was not competent to stand trial, and so --

4 MR. SMITH: Objection, Your Honor. That's referring
5 to something not in evidence. That's also hearsay
6 referring to --

7 THE APPLICANT: No, it's not hearsay.

8 THE COURT: Hold on. Shush. Shush.

9 MS. McMAHAN: Judge, actually --

10 THE COURT: I'll make the calls with all respect.
11 You may proceed.

12 Where is the relevance we're going with this?

13 MS. McMAHAN: Your Honor, the issue is that Ms. --
14 his brother testified against him at this trial. His
15 brother did have mental health issues. That is in the
16 record actually, like in the pre-trial motions. I
17 believe Mr. Casto was asked about that. But his brother,
18 you know, allegedly at the time was stable, but that is
19 in the trial transcript that -- you know, that his brother
20 had had some mental health issues on and off, had been --
21 you know, had been, you know, kind of committed briefly,
22 that kind of thing.

23 THE COURT: All right. Proceed.

24 BY MS. McMAHAN:

25 Q. Okay. So you felt like Mr. Casto didn't bring up the

1 fact that Brandon had testified against you, but also at
2 the same time had had these mental health problems in the
3 past that that made him not qualified to testify about any
4 of this?

5 A. Yes. And he was not competent in Barnwell County to
6 stand trial.

7 Q. Okay. And so because of that Brandon was allowed to
8 testify to without being objected to or being able to note
9 his mental health history and competence level throughout
10 your trial?

11 A. Yes. Yes, that's correct.

12 THE COURT: Thank you, ma'am.

13 BY MS. McMAHAN:

14 Q. Anything else you want the judge --

15 A. Okay. I mentioned the part about -- I want to be
16 clear about the part that -- about the three-strike law
17 that they put me up under. I want to be clear about that
18 again and make sure anything -- priors before 2006/2007.
19 Keep in mind that they use used my 2015 conviction to
20 enhance the 2016 and, you know, charged me with the
21 three-strike law, which that's not prior, it happened
22 after the fact. Prior is anything before.

23 But I'm gonna move on. The next thing I wanted to
24 state, my charges have been nonviolent all of this time.
25 They've been nonviolent. They didn't try to -- this is

1 prosecution misconduct or malicious prosecution. My first
2 jury trial they was no way in sight trying to give me a
3 life sentence. Nothing changed. Nothing changed. My
4 charges was nonviolent. I have my warrants right here,
5 my indictments, which is the 0080 CDR code, which is
6 nonviolent. Now, out of anger, now all of a sudden my
7 second jury trial they decide to make my charges violent.
8 They've been nonviolent all this time and then they used
9 again the -- the Laurens County conviction to enhance that.
10 What changed? Nothing changed from the time because I
11 stayed in jail the whole time. It's been like eleven years
12 now. I stayed in jail the whole time, so what changed to
13 make them want to give me a life sentence? What changed?
14 And changed my nonviolent to violent on the time of my
15 first jury trial. Even if you look at my conviction sheet,
16 I was always told and understand that they go by the CDR
17 code. 16-11-312, which is the burglary statute, and 0080
18 is nonviolent and 0086 is violent. But, however, if you
19 look at my conviction sheet, you look at my conviction
20 sheet, my warrant, and if you look at my -- my convict --
21 Q. Your indictment?
22 A. My indictment. It's still 0080, which is the
23 nonviolent one. They was trying to be, I don't know, out
24 of -- malicious, trying to get me so bad that they still
25 left the 0080 there, which is nonviolent, and what -- and

1 I'm trying to figure out what chained to make them want to
2 give me a life sentence. I didn't do anything different
3 and all of a sudden I'm fighting for my rights. I'm
4 practicing, -- I'm practicing the rights that I am allowed
5 and that I have, which is to fight for my rights and
6 maintain my innocence, and so they used the tactic well,
7 we're gonna give you a life sentence if you don't do this,
8 you know, and that's what led me to where I'm at right here
9 right now, you know. They even went down to third degree
10 burglary and now all of a sudden the second jury trial
11 we're gonna give you a life sentence. What would make them
12 do that? What changed in my sentence? What changed in my
13 case? Nothing changed. So, I mean, then you use these
14 scare tactics and nobody wants a life sentence, you know,
15 these scare tactics, and that's what they did, used scare
16 tactics, you know, whatever, used my Laurens County --
17 you-all waited -- I've been trying to get a speedy trial.
18 I'd been trying to get a speedy trial forever and I even
19 told them that it was my two brothers that committed this
20 crime and I gave them the car. I let them use my car. You
21 know, not -- I let them use it not knowing what they was
22 gonna do, I didn't. That I was aware, I didn't. And now
23 my brother ended up getting killed. I told this from the
24 beginning of the time. Now they couldn't talk to him
25 because he got killed. My other brother got killed. And

1 that's because they violated my speedy trial rights and
2 they told the people that I was nowhere to be found and
3 you-all knew where I was because I was in jail. You-all
4 come to get me to come to go to trial. Then, Your Honor,
5 they put -- they put -- they put a bench warrant on me and
6 they said I'm nowhere to be found and said I was running.
7 If I was running -- I have a copy of this as well right
8 here, Your Honor, in my files right here. If I was
9 running, why did you-all drop the bench warrant on me if
10 you-all felt like I was running? It was some malicious
11 prosecution they was doing. They've been terrorizing me
12 the whole time and that's not right. Terrorizing me,
13 malicious prosecution.

14 I live two hours away from Edgefield and they knew I
15 was going to trial and every single day, Your Honor, they
16 had me come up here every single day driving every day
17 until I lost my job. And I told Ervin Maye, then Frank
18 Young. I said I've got a job and then I've got to get my
19 kids off the school bus. He told me I've got a job to do,
20 too. If I've got to be here, you're gonna be here. So I
21 called to the solicitor's office, Donnie Myers' office. I
22 spoke to him and told him what was going on.

23 Q. Okay. Well, remember you can't talk about what he may
24 have said. You can only talk about what you learned.

25 A. Okay.

1 Q. So you said you called up here. As a result of when
2 you called up here, what did you learn? That you had a
3 bench warrant out for you or --

4 A. I didn't know about the bench warrant until later, but
5 then I had David Mauldin -- David Mauldin, which is the
6 public defender, he knew the situation and he said no, I'm
7 gonna take care of that right there. You know, they put it
8 on me knowing I was --

9 Q. So the bench warrant? He said he was gonna try to get
10 the bench warrant taken care of for you?

11 A. Yes. They got -- they put two of them on me and they
12 took them off.

13 Q. Okay.

14 A. They took them off, but yet they said I'd been
15 running. And, again, like I said, if you-all felt like I
16 was running, why would you-all take the bench warrant off
17 of me?

18 Q. But some of this time while you were waiting for your
19 trial you were in jail in other counties, right?

20 A. Yes, ma'am.

21 Q. Okay. So there's obviously a chance at some point
22 then maybe you couldn't show up for your appearance because
23 you might have been in a different detention center?

24 A. No, they knew that because they'd come and get me.
25 That's the part I didn't understand.

1 Q. Okay.

2 A. They knew that. They come and get me. That's why I
3 knew it was a plot. And they just -- actually it just
4 really made me look bad like I'm just a terrible guy, you
5 know. Again, the only thing -- and this is for the Court.
6 The only thing -- the only thing that can pinpoint me to
7 a crime is my brother saying that I was there with him.
8 That's the only thing, that I was with him right there, and
9 that was just his word. However, he was scared for his
10 life. This is my brother, my half brother. He's scared
11 for his life and --

12 Q. And you just felt like Mr. Casto just did not
13 adequately address Brandon's mental state at all?

14 A. Yes, ma'am. Exactly. He didn't at all.

15 Q. Okay. And that had he done that the outcome of your
16 trial would have been different?

17 A. I know it would have. I know it would have.

18 Q. Okay. Anything else you want the Court to know today
19 about your case?

20 A. As far as my indictments as well.

21 Q. Uh-huh.

22 A. I still can't understand why would they change my
23 indictments about four or five times. They changed it four
24 for five times until, again, it ended up being, you know --
25 and still the CDR code was 0080 to a violent charge, but

1 then what was the purpose of them changing it four or five
2 times? And I had all of them as well. I think I sent them
3 to you.

4 Q. Uh-huh. So they amended your indictment -- well, the
5 first charge, the warrants -- the original warrants got
6 tossed in the prelim, right?

7 A. Yes, ma'am.

8 Q. So then you get indicted -- directly indicted --

9 A. Yes, ma'am.

10 Q. -- and you have an arraignment and all that jazz? Do
11 you remember doing that?

12 A. Yes, ma'am.

13 Q. Okay. And then from there they amended your
14 indictments a couple of more times?

15 A. Yes, ma'am. And then also another thing. Also yes,
16 they did. They modified -- they gave me an order from the
17 judge, which is Frank Young and them and Ervin Maye and
18 them, put in to them. I think I have a copy of that as
19 well. They're saying that I can't have any contact with
20 Brandon, you know, because he's my co-defendant and against
21 me in the case, I can't have any contact with him, and so
22 I asked them, I said well, we have the same father, so I
23 can't contact my father, and so for years they said no, you
24 cannot contact your father or a third-party or anything
25 because it's linked back to Brandon and everything right

1 there, right, and so for years they say if I do my bond
2 will be revoked. And this is my family, so I couldn't even
3 talk to them for years because we have the same family
4 members in all of this, so I think it was entirely too
5 much. This is how they terrorized me. This is how they --

6 Q. So you felt they were -- they were just basically
7 harassing you --

8 A. Yes.

9 Q. -- when they said you couldn't contact your dad?

10 A. Yes.

11 Q. Okay. And by "they" you mean Ervin and Mr. Young and
12 all them?

13 A. Yes, that's correct. That's correct.

14 Q. Okay. What else did want Judge McFaddin to know?

15 A. About -- okay. As I mentioned -- I mentioned the part
16 about my brother Brandon and -- and Nicholas. I gave them
17 -- I told them who it was because I realized that they were
18 really trying to pinpoint it on me, I realized this right
19 here, but they didn't act on it until Nicholas got killed
20 and it was too late then. He's dead now. He's deceased.

21 Q. Uh-huh. So because of the time that was spent
22 waiting --

23 A. Yes.

24 Q. -- obviously your ability to defend yourself was
25 decreasing?

1 A. Yes, that's correct.

2 Q. Okay.

3 A. And as far as -- again, as in the DNA, if they would
4 have -- they did DNA on the other -- like my brother and
5 all of them and everything. They only did the DNA on me
6 three times and it didn't match me all three times. They
7 have evidence of that.

8 Q. Yeah, we talked about that already.

9 A. Yes, ma'am. Okay. They should have did the DNA on
10 them as well on the clothing and other people in my car and
11 they would have saw, but they didn't take that precaution.
12 They didn't do that.

13 Q. So you're saying they should have done DNA tests and
14 compared it on different people?

15 A. Yes. Yes. There was sweat glands all in there, so
16 the sweat glands -- DNA do not lie. DNA tell the truth
17 about everything. DNA do not lie and that's why it didn't
18 match to me with the sweat glands. Everything was in
19 there. It didn't match to me. Out of all the ten items
20 none of it matched to me.

21 Q. Okay. Well, let's move on because we've talked about
22 all this already.

23 A. Okay.

24 Q. So is there anything new that you want to talk about
25 that you haven't already talked about?

1 A. Well, I think I mentioned the part about they caught
2 him in several lies, but they still -- it didn't matter to
3 them.

4 Q. Yeah, we talked about that. Anything -- any other
5 issue you have not talked about yet?

6 A. Let me make sure. I don't want to --

7 Q. Take your time.

8 A. Okay. That's pretty much --

9 Q. Okay.

10 A. Yeah, that's pretty much what I have right there. I
11 don't know what all -- I don't have my -- my --

12 Q. Do you want to look at your application?

13 A. Yes. I don't have my full application right here.

14 Q. Here's where your notes start. Right there.

15 A. Okay. Yeah, that's another thing about how they tell
16 you not to -- I think this is it. When members of the
17 jury, how they speak to you and tell you not to speak to
18 anyone about the case, no pre-deliberation, et cetera, no
19 reading newspapers about the case, that's -- I received a
20 copy of -- one of the jurors, I think, they were reading
21 the newspaper and there was something about -- not only the
22 fact that they read a newspaper, the newspaper was talking
23 about my prior convictions, et cetera, and I think by the
24 newspaper talking about my prior convictions that the
25 jurors read and they brought it up to their attention, I

1 might as well have got on the stand, and that was --

2 Q. Well, that juror ended up getting relieved, right, and
3 the alternate got put in place?

4 A. That's what I don't know.

5 Q. Because there was a juror that got replaced.

6 A. It was for that reason?

7 Q. You know, issues like that get brought up on the -- at
8 the bench, so they're not on the record because the reason
9 why is obviously you wouldn't want the other jurors to hear
10 that, but there was an issue related to a juror reading the
11 newspaper?

12 A. I know there was an issue about the newspaper. I know
13 there was an issue, but --

14 Q. Okay.

15 A. -- and they spoke. I read the paper, I have the clip
16 right here as well, and they spoke about my prior -- you
17 know, prior history, and I don't know who all read it. I
18 know it was one in particular and I feel like that deprived
19 me as well because --

20 Q. Okay. You felt like that deprived you of a fair and
21 impartial trial, right?

22 A. Yes, because -- regardless of what the judge may say,
23 et cetera, if they want to look at the news or TV or a
24 newspaper, they're gonna do it. They wouldn't ever know,
25 but they just happened to find out that this one did

1 though.

2 Q. Did you think the jurors should have been sequestered
3 the whole time or did you have a conversation with
4 Mr. Casto about that?

5 A. It's been so long ago I really don't remember about
6 that part right there, but I do know -- I know the case --
7 there was no more said about it though, you know. I think
8 the trial just proceeded. I think the trial just
9 proceeded. I know it did. As a matter of fact, I know it
10 did because they didn't stop the trial. They kept going.

11 Q. So what else did you want to tell Judge McFaddin
12 about?

13 A. Okay. That's another thing. Although the judge --
14 and it's been highlighted in the transcript as well, I
15 can't remember who the judge was at the time, however, he
16 stated that -- before I received the sentence, he stated
17 that he don't think that he can do this. This is what the
18 judge say. He don't think that he can do this, however,
19 he's gonna go with the recommendation of the State and all,
20 which tells me that there were doubt that it could be done
21 or not, et cetera.

22 Q. When you say he couldn't do this, you mean give you
23 life without parole?

24 A. Yes.

25 MS. McMAHAN: Judge, also just for the record, his

1 trial judge was Knox McMahon. We are not related in any
2 way, shape or form. He actually spells his name wrong
3 compared to the way I spell my name. So just to let
4 everybody know, we are, in fact, not related, all right?

5 THE COURT: Uh-huh.

6 THE APPLICANT: I don't want to take up too much
7 time.

8 And another quick thing that I wanted to bring on
9 the record that's also in the transcript as well, the
10 solicitor, Ervin Maye, he stated that -- while my
11 brother was on the trial, he stated that although
12 Mr. Brandon Donaldson is a little -- we know that he's a
13 little slow, but he's here to tell the truth.

14 BY MS. McMAHAN:

15 Q. But he said that in his closing?

16 A. Yes. Yes. He said we know that he's a little slow,
17 he has mental, but he's here to tell the truth. He -- he
18 basically admitted that he had mental, but he's here to
19 tell the truth. That's on the transcript as well, Your
20 Honor. You know, he stated it, so basically he
21 acknowledged that he has mental health issues and things
22 going on.

23 Q. So did you feel like because Mr. Maye had addressed
24 that that your attorney should have addressed it as well
25 in his closing?

1 A. Yes. Yes. Exactly. Exactly. But in the transcript
2 he didn't address it.

3 Q. Okay.

4 A. Yes, ma'am.

5 Okay. He also made a statement -- the prosecution
6 made the statement that -- that -- something about I think
7 that I'm -- which is on line 16.

8 Q. Of what page?

9 A. Page 404. Which is line 16, page 404, he stated that
10 -- he stated to the jury that I think that I'm smarter than
11 the jurors, I'm smarter than --

12 Q. Okay. Wait. You said page 44 or 404?

13 A. Page 404, line 16.

14 Q. Okay.

15 A. He stated to the jury --

16 Q. Who's "he"?

17 A. Ervin Maye.

18 Q. Okay.

19 A. That I think that I'm smarter than the jury and that's
20 another form of manipulation, you know.

21 Q. Okay. And Mr. Casto didn't say anything?

22 A. Not at all. Not at all.

23 He stated that he -- and he's not -- he said I think
24 that I'm smarter than the jury, but he's not, and he's not
25 smarter than the twelve of you-all, the twelve of you,

1 which is on page 409.

2 Q. Okay.

3 A. Line 9 and 10.

4 Q. And that's in your PCR application, right? That's the
5 amendments that you added on there?

6 A. Yes, ma'am.

7 Q. Okay.

8 A. And he stated that -- which is on the same page,
9 409, line 12, that you-all -- he told the jury that
10 you-all are from Edgefield, you-all are from Edgefield,
11 after he already had told them I'm not from there, so
12 I'm confident that you-all will come back with the same
13 verdict, basically doing injustice against me, which is
14 on page 409.

15 Q. Did Mr. Maye say something about your ID being from
16 Graniteville in closing and that -- but this occurred in
17 Edgefield County? Do you recall that?

18 A. I really can't remember that part. That part I can't
19 remember.

20 Q. Okay. Did we cover everything else already?

21 A. Ma'am?

22 Q. I said have we covered everything else already?

23 A. I think so. Let me check one more thing.

24 Q. Okay.

25 A. Again, but for the record though, I read something

1 when he speaks about this -- the same thing as being
2 equivalent to exoneration, which is -- which my charges
3 was dropped at the preliminary hearing, about a judge
4 who's been around for many years and I think he's well --
5 professional, you know, and equipped, well-knowledgeable,
6 Judge Parkman, who he dropped my charge.

7 Q. Did Bennett ever explain to you the difference between
8 magistrate judges and circuit court judges?

9 A. Yes, he explained. I understand the difference, you
10 know, but I was just -- you know, the fact that he was a
11 judge and -- and, you know, he saw it was fit to drop my
12 charges although they direct indicted me still.

13 Okay. I think that's pretty much about it right
14 there.

15 Q. Okay.

16 MS. McMAHAN: Well, answer any questions that the
17 Attorney General may have for you, okay?

18 THE APPLICANT: Yes. Sure.

19 THE COURT: All right, sir.

20 MR. SMITH: Thank you.

21 CROSS-EXAMINATION

22 BY MR. SMITH:

23 Q. Mr. Odom, you testified that you would not have gone
24 to trial if you could have -- if you had known you could
25 get the life sentence, but you knew you were facing life

1 without parole, didn't you?

2 A. Yes, sir. That's correct.

3 Q. You'd gotten the notice?

4 A. Yes, sir, but there was a discrepancy.

5 Q. Okay. So you knew that was a potential outcome of
6 your trial, right?

7 A. Yes, sir, but -- but, however, though they served me
8 -- they served me in a well-timed notice. They served me
9 -- this I know from the conversation between me and my
10 attorney and others as well. That's why I wrote to the
11 Clerk of Court in Barnwell County because they couldn't do
12 it and that's when I got the letter from them, as well as
13 a copy of my warrants, and they changed up -- you know,
14 they changed up, and so, like I say, if I had -- when they
15 changed up to the second notice, if I knew that they could
16 have done it like for a fact, I would not have took the
17 jury trial.

18 Q. Well, I'm not asking you if you disagreed with the
19 technicalities of it. You knew that that was what they
20 were seeking, right?

21 A. Yes, I knew what they were seeking, but --

22 Q. And you had talked about that with Mr. Casto, right?

23 A. Yes. I just didn't know it was -- it was actually --
24 you know, they didn't know -- I knew that they served it to
25 me, I received it, and you're right about that, I received

1 that, however, there was a question. That's why they
2 brought the motion up, but they did that after the fact,
3 but I talked about it, me and my attorney, as far as if
4 they could actually do it or not, you know, because of the
5 first one that they couldn't have done it and about the
6 second one that was in question, but, yes, that's correct.
7 The answer is yes.

8 Q. So they were gonna try to avoid that outcome, right,
9 your lawyers?

10 A. Yes.

11 Q. Okay. So you knew if the judge disagreed with you and
12 with your lawyers, you could get life, right?

13 A. I wasn't gonna take it. I was gonna just take a plea.

14 Q. Okay. But you knew that that was a possible outcome
15 if the judge disagreed with your legal position?

16 A. Yes.

17 Q. Okay.

18 A. I just didn't know -- yes.

19 Q. And that's what you knew when you turned down the plea
20 deal twice on the day of trial, right?

21 A. I think it was once though. The twice, when I tried
22 to go back, he wouldn't do it.

23 Q. Okay. Well, do you have a copy of the transcript up
24 there?

25 A. No, sir.

1 Q. Okay.

2 MS. McMAHAN: No, he doesn't.

3 THE APPLICANT: No, sir, I don't.

4 MR. SMITH: Okay. Do you have one you can --

5 MS. McMAHAN: He can use this.

6 THE APPLICANT: Yes, sir. He told me that you went
7 all the way, I'm gonna go all the way. That's what he
8 told me.

9 MS. McMAHAN: What page, Taylor?

10 MR. SMITH: Okay. I'm looking at page 25.

11 MS. McMAHAN: Okay. What lines?

12 BY MR. SMITH:

13 Q. Okay. Do you see on page 25 at about line 12 when
14 Mr. Maye says he offered the plea deal last week and you
15 rejected it, he offered it again this morning and you
16 rejected it again, and then the judge asked him is it on
17 the table now and Mr. Maye says yes, if you take it now,
18 and then you tell the judge -- and stop me if at any point
19 I say something that's incorrect.

20 A. Okay. Yes, sir.

21 Q. -- that you did not need time to talk with Mr. Casto
22 and then flipping onto the next page at about line 10
23 Judge McMahan says so you want a trial and you say yes,
24 sir.

25 So you did turn down the plea offer twice that day,

1 right?

2 A. Yes, sir. Yes, sir.

3 Q. All right. This juror you're talking about that you
4 say read a newspaper article --

5 A. Yes, sir.

6 Q. -- who -- who is that? I need to know who it is.

7 A. I don't have any knowledge. I remember the incident
8 happening, but I didn't know the name, sir.

9 Q. Well, tell me what's the incident that happened.

10 A. They brought up -- they brought it up in court, you
11 know, about the situation about one of the jurors, one or
12 two, I guess, or both, and I have a copy of the newspaper
13 article. I have it right here because, you know, we all
14 know the judge instructs -- he instructs the jurors not to
15 -- as I just stated, not to talk to anyone about the case,
16 pre-deliberation, media, newspapers, radio, et cetera.

17 Q. So when you -- just for clarification, when you say
18 struck a juror, was that during jury selection or was that
19 someone who was already seated on the jury that was removed
20 from the jury?

21 A. I don't know if they've been removed or not, but I
22 know they was members of the jury though.

23 Q. Of the twelve that were sitting in the jury box?

24 A. Yes, sir. Yes, sir.

25 Q. Okay. And you're as sure of that as anything else

1 you're testifying to today?

2 A. Say that again, sir.

3 Q. Are you as sure of that as you are of anything else
4 you're testifying to?

5 A. No, I'm not.

6 Q. Okay. So you're not -- you're not sure about that?

7 A. But I mean -- no, I'm sure -- I'm for certain of that
8 incident happening right there, I'm for certain of the
9 incident, but I don't remember it because that's been so
10 many years ago. I don't remember like the exact things
11 that happened with that, whatever the case may be. I don't
12 want a beef, you know, but I do remember the incident that
13 happened though, but anything outside of that I don't
14 remember. No, I don't. Yes, sir.

15 Q. Okay. And did you discuss the fact with Mr. Casto --
16 you talked to him about the fact that they could try -- try
17 you even though you had a preliminary hearing. You knew
18 you were going to trial, so that wasn't a mystery, right?

19 A. Yes, sir. Correct.

20 Q. Because you already had one?

21 A. Yes, sir, because they direct indicted me and -- they
22 had direct indicted me. After my first jury trial I'm --
23 honestly I'm thinking it's gonna be over with. I'm
24 thinking it's over with because, like I said, I never
25 expected them to go and change it to violent and try me

1 again, you know, but, yes.

2 Q. So whether you agreed with the fact that they should
3 be able to try you a second time not, you knew it was a
4 trial beforehand?

5 A. Yes, sir.

6 Q. It wasn't a surprise the day you showed up?

7 A. No, sir. No, sir.

8 Q. Okay. And Mr. Casto had talked to you about the
9 fact that at your second trial you were being tried for a
10 violent offense, right? Because your indictment says it's
11 a violent offense, right?

12 A. Yes. Well, I think -- okay. That was a discrepancy
13 again with me as well because I was always told and
14 understand like, you know, as far as the CDR -- the CDR
15 code and as far as the indictment, the CDR code is
16 nonviolent, which is 0080, and violent is 0086, which I
17 think you should know that as well, sir, you know.

18 Q. Did you look at the indictment?

19 A. Yes, sir, I did look at it. 0080.

20 Q. And it said that it's a violent offense, right?

21 A. Yes, but they go by the CDR code.

22 Q. Okay. All right. So you admit you saw on the
23 indictment that it says it's a violent offense, right?

24 A. Yes, sir, but I was going by the CDR code.

25 Q. Okay. You wanted to go by something different?

1 A. Well, that's part of the warrant. That's part of
2 the indictment. The CDR code, which determines whether
3 it's violent or nonviolent, and that's what determines it.
4 0086 is violent. 0080 is nonviolent.

5 Q. So when you were talking about Mr. Maye deciding he
6 wasn't gonna give you a plea deal because you'd filed a
7 grievance against him --

8 A. Yes, sir.

9 Q. -- that was before your first trial, right?

10 A. That was my first trial.

11 Q. Okay. That -- before your first trial was when that
12 stuff happened?

13 A. Yes, sir.

14 Q. Okay.

15 A. Yes, sir.

16 Q. All right. And that's something you had talked about
17 with Mr. Screen?

18 A. Yes, sir. Because they came -- like I said, I was
19 in -- I was in Laurens County and he told me him and
20 Ervin Maye had been in the office for forty-five minutes
21 to an hour and he had agreed to drop the charges -- they
22 had agreed to drop the charges, and because I wrote a
23 disciplinary counsel on him, which I have copies of that
24 right here, because I did a disciplinary counsel it made
25 him angry and he decided not to do it.

1 Q. Did you file a complaint against Mr. Casto?

2 A. I don't think so.

3 Q. Okay.

4 A. I don't think so, no.

5 And for the record, sir, please.

6 Q. I'm not asking a question right now, sir.

7 A. Okay. All right.

8 Q. Okay. So on the issue of the potential life sentence,
9 that's something that Mr. Casto had talked with you about,
10 that if the judge disagreed with his argument at sentencing
11 that you would get a life sentence, right?

12 A. That was after I got convicted.

13 Q. So you're saying you didn't discuss it beforehand?

14 A. Like I said, I knew -- like I said, because I was
15 served the life sentence papers, I was already served them
16 right there, so where -- like we just stated, we knew there
17 was a possible chance, right, but because of the first
18 conflict -- because of the first conflict that I -- that I
19 discovered and sent to them, you know, they stopped that,
20 you know, they stopped it. Now with the second -- you
21 know, the second one, that's what they come up with right
22 there, I figured I was -- in my head that we're gonna get
23 this resolved right now and not wait until after the jury
24 trial, after the conviction, but they went after the
25 conviction. Like I said, we didn't know -- if I would have

1 known that they can -- would a hundred percent certain do
2 this beforehand, I wouldn't have took the trial. I would
3 have took whatever sentence they would have gave me. I
4 would have took -- whatever sentence they would have give
5 me, I would have took that.

6 Q. So your decision of whether to plead guilty or not
7 depended on what the judge's ruling would be in your mind?

8 A. If it would have happened before trial, yes, I would
9 have. Even though that's -- most of us do that, believe
10 it or not, sir. Guilty or not guilty we would take that
11 because they don't want to take that chance. That's where
12 the North Carolina versus Alford become involved. You
13 don't want to take that chance of taking a jury trial.

14 Q. Except you did though, right? You knew you could be
15 facing life and you turned down the plea deal twice that
16 day, right?

17 A. Because I know that -- because I knew that I was
18 innocent and I wanted -- you know, I knew that I was
19 innocent and I felt that I had a mistrial the first time
20 that I'm gonna get justice the second time.

21 Q. Okay. And you -- and you were talking earlier about
22 Mr. Maye making you come to court every day.

23 A. Yes, he did.

24 Q. That was -- that was before -- was that on a previous
25 case or before your first trial?

1 A. When I was out in society, he was making me come every
2 single day. Every single day drive up there two hours
3 away. An hour and a half to two hours every single day he
4 made me drive up there for two weeks because the court goes
5 on for two weeks there and he knew I was going to trial and
6 I lost my job because of that right there. He say he had a
7 job to do and -- and --

8 Q. Well, I'm asking you --

9 A. Yes, he did.

10 Q. You had previous cases with Mr. Maye, right?

11 A. No, that's the only one.

12 Q. This is -- this is the only one?

13 A. Yes, sir.

14 Q. Okay. So the times when he made you --

15 A. I'm not even from the area, sir. That's the only
16 time.

17 Q. Okay. So the times when he'd make you come to the
18 courthouse, was that before the first trial?

19 A. Yes, that's correct. Yes, sir.

20 Q. Okay. You testified earlier that -- that someone had
21 given you reason to believe that the Newberry charges -- or
22 that the Edgefield charges would be dropped if you pled in
23 Newberry?

24 A. Yes, sir. That's correct.

25 Q. Who in Newberry told you that? What's that person's

1 name?

2 A. Okay. At the time it was Mr. Scott, the warden -- I
3 mean, excuse me, the assistant solicitor, Mr. Scott, and
4 Charles Verner.

5 Q. Okay.

6 A. That was -- we was actually in the courtroom. He came
7 to us. I guess he just got off the phone with Ervin Maye
8 and them and he said well, if you take these fifteen years,
9 they're gonna drop the charges there, and he has admitted
10 to this, sir, and it's on transcript.

11 Q. Okay. The brothers you say that are the ones that
12 actually committed the crime, was that Brandon and
13 Nicholas?

14 A. That's correct, sir.

15 Q. What's Nicholas's last name?

16 A. Sapp.

17 Q. S-A-P-P?

18 A. Yes, sir.

19 Q. Okay.

20 A. For the record, sir, I told them not to do it before
21 they did it. I said if you-all do anything crazy, don't --
22 don't do it because they're coming for me, so don't do
23 anything crazy.

24 Q. So you-all discussed the crime beforehand?

25 A. No, just the fact that we have -- I have been involved

1 with some crimes. I have. I have been involved with some
2 crimes and I have paid my debt to society. I have paid my
3 debt to society, right, but this was one of the ones that I
4 didn't do. Yes, I have. I'm not gonna lie to the Court.
5 I have done some crimes before in my life and -- and, you
6 know, I have broke the law, but I paid my debt to society
7 and I'm willing to pay my debt to society when I break the
8 law, but, however, they continued to do crazy things and I
9 have told them, which I have taken a jury trial for them
10 before and I know they had did it, but I told them don't do
11 that or they'll come and lock me up, but I got -- I got
12 exonerated for it, on this one right here, and I told them
13 if you-all want --

14 Q. Did you let them take your car?

15 A. Excuse me?

16 Q. They told you they were gonna rob an IGA and you let
17 them borrow your car?

18 A. No, they didn't tell me they wanted to do that, but,
19 I mean, I know how they do with something like that and
20 the reason why they had my car is because I had just got
21 dropped off to my baby mother's house in Aiken, South
22 Carolina.

23 Q. What's her name?

24 A. Her name's Cassandra Mozone.

25 Q. Okay. How do you spell her last name?

1 A. M-O-Z-O-N-E.

2 Q. Okay.

3 A. I had just got dropped off right there and everything
4 and when they didn't come back all I know is that they're
5 looking for me because of my car and looking for them, I
6 guess. And they contacted his mother because we've got the
7 same father. They contacted his mother and she said well,
8 he was with his half brother and that's what led back to
9 me.

10 Q. And you talked earlier about a no contact. Was that
11 something someone told you or was that written in a court
12 order?

13 A. It's a court order.

14 Q. Okay.

15 A. Yes, sir. Because it was an order that Ervin Maye and
16 them had written up and the judge signed off on it.

17 Q. Was that before the first trial or between the first
18 and second trial?

19 A. Before the first trial.

20 Q. Okay.

21 MR. SMITH: Okay. Thank you. No more questions.

22 REDIRECT EXAMINATION

23 BY MS. McMAHAN:

24 Q. Is there anything else you want the Court to know
25 today?

1 A. Yes, ma'am. Just -- just for the record because it's
2 bothering me really, right, I think Mr. Casto's a good
3 attorney, but, however, an attorney once told me before --
4 this is what an attorney once told me before. He stated
5 that we are human. He stated that we are human and we
6 make mistakes, you know, and so I -- I think he's a good
7 attorney, but there's just some things that could have went
8 in my favor and for my benefit that could have kept me
9 exonerated if it was done.

10 Q. Okay. Did Mr. Casto ever sit and explain to you the
11 difference between what a CDR code, which stands for Court
12 Docketing Record, what the difference is between a CDR code
13 and the statute and which is controlling?

14 A. I think I know what that is, but, like I said, the
15 -- the CDR code represents, like I said, the violent and
16 nonviolent.

17 Q. Okay. But did anybody sit and tell you that the
18 statute controls over a CDR code?

19 A. No, ma'am. No, ma'am, they didn't.

20 Q. So if the CDR is wrong, that the statute is the
21 controlling authority?

22 A. No, ma'am.

23 Q. Okay. So Mr. Casto never sat and explained that to
24 you?

25 A. No, ma'am. No, ma'am.

1 Q. Okay.

2 MS. McMAHAN: I have nothing further, Your Honor.

3 THE COURT: Sir?

4 MR. SMITH: Just one more thing.

5 RECROSS-EXAMINATION

6 BY MR. SMITH:

7 Q. Mr. Odom, did you read the indictment?

8 A. Yes, sir, I did.

9 Q. Okay. Did Mr. Casto talk with you about the
10 indictment?

11 A. No, sir. I don't think so. No, sir.

12 Q. He didn't talk to you about that at all?

13 A. No, sir.

14 Q. Okay. But you read it yourself? You read this and
15 saw the allegations in there saying what the State was
16 saying you did?

17 A. Yes, sir. I think so.

18 Q. Okay.

19 A. If I'm not mistaken, yes, sir.

20 MR. SMITH: All right. Thank you.

21 THE APPLICANT: Yes, sir.

22 THE COURT: Ma'am?

23 MS. McMAHAN: I have nothing further, Your Honor.

24 At this point the Applicant rests.

25 THE COURT: All right. Thank you, sir.

1 THE WITNESS: Thank you, sir.

2 (Witness excused.)

3 THE COURT: Any more witnesses, ma'am?

4 MS. McMAHAN: Nothing further. We rest.

5 THE COURT: Okay. How many witnesses does the State
6 wish to call?

7 MR. SMITH: Just one, Your Honor. Depending on what
8 he says, I may ask to leave the record open for more, but
9 I think I'm gonna try to do it with the one.

10 THE COURT: Okay.

11 (Recess taken at 12:11 PM.)

12 (Back on the record at 12:24 PM.)

13 BAILIFF: Keep your seat. Court will come back to
14 order.

15 THE COURT: All right, sir.

16 MR. SMITH: Your Honor, the State would call
17 Mr. Bennett Casto.

18 (Whereupon, Bennett Casto was duly sworn by the
19 Clerk of Court.)

20 THE CLERK: Thank you. Please be seated.

21 BENNETT CASTO,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. SMITH:

25 Q. Mr. Casto, when were you admitted to practice law in

1 South Carolina?

2 A. 2007.

3 Q. Can you summarize your legal career?

4 A. Sure. Right out of law school -- I went to the
5 Charleston School of Law, I was part of the first class
6 they ever had, and right out of law school I moved up to
7 this place called Lexington and started out there with
8 the public defender's office and was here in the Eleventh
9 Circuit for six or seven years and then I was promoted, if
10 you will, to be the -- the head public defender for the
11 counties of Saluda, Edgefield and McCormick, still here
12 in the Eleventh Circuit, once Mr. -- the Honorable Gregory
13 Seigler was elected to the family court bench. That would
14 have been in 2014 or '15 and I left the office about a year
15 and a half ago and to do personal injury work.

16 Q. Okay. How did you become to be involved in Mr. Odom's
17 case?

18 A. So what I recall is Mr. Odom had been tried as he
19 was saying by Mr. Jerry Screen that resulted in a mistrial
20 or a hung jury, then the -- Mr. Screen, you know, was
21 relieved off the case, the case was forwarded back to
22 Judge Seigler or Mr. Seigler at the time because he was
23 still the Tri-County Public Defender, but then soon after
24 that he was elected to the Family Court bench at which
25 time his files became my files.

1 Q. Okay. What different roles did you and Erik Drylie
2 play in Mr. Odom's case?

3 A. So in fairness, this was my case from the get-go and
4 Mr. Drylie was with the public defender's office at the
5 time, it was just me and him out there, and I recruited him
6 to sit with me at the trial. So essentially that looked
7 like I believe he would do the opening, maybe take a couple
8 of witnesses, but the lion's share of the witnesses were
9 mine, and I had the closing.

10 Q. Okay. Did Ervin Maye and Frank Young prosecute this
11 case the whole time or did Frank Young come in at the end;
12 do you know?

13 A. It was predominately Ervin's case. In those days,
14 what they would do is they did not have a clear system
15 of who the case was assigned to. Essentially they were
16 just prosecuting everything together, but predominately
17 it was Ervin's and Frank, Mr. Young, also tried the case
18 with Ervin when this went to trial. The trial that I was
19 involved in.

20 Q. Okay. Did you discuss this case at all with
21 Mr. Screen?

22 A. It was tried in 2015. I don't know. I don't have a
23 specific memory of that. It would surprise me that I would
24 not call someone that got a mistrial. The mistrial was a
25 result of a hung jury, so I believe that I would have

1 called Mr. Screen to talk things over with him. I don't
2 have any specific memory of it though.

3 Q. Okay. Do you know if Mr. Odom had a preliminary
4 hearing?

5 A. I don't recall if he did or not. He -- he said that
6 he did, but remember -- so I came in at the second trial
7 and I'm left to assume that he did, but I -- I was not
8 there at his preliminary hearing.

9 Q. Did you ever discuss with him at all about a
10 preliminary hearing? Did the topic come up?

11 A. I'm sure that we did based on the fact that it was
12 dismissed, but it was, I assume, direct indicted before I
13 was involved in the case.

14 Q. Okay. Did you go over the warrant -- the indictment
15 with Mr. Odom?

16 A. Yes.

17 Q. Okay. Did you read it with him, that sort of thing,
18 provide a copy to him?

19 A. Yes.

20 Q. Okay. Did you have any sort of discussion about
21 whether the offence was a violent or a nonviolent offense?

22 A. I'm sure that I did. I mean, I don't have a specific
23 memory of that, but my standard practice is to let a client
24 know, okay, well, how much time are they facing and then
25 any and all collateral consequences. In this case, the

1 stakes were high, so I would have gone through that with
2 him.

3 Q. So just assuming if there was a discrepancy between a
4 CDR code and the cited statute on a warrant, what would you
5 go by if you were discussing that with a client?

6 A. Well, you would -- you would go by the statute. And,
7 you know, we live in, I guess, a post-Gentry world where
8 the indictment is essentially a notice document, so it --
9 it was everyone's understanding that this was burglary in
10 the second degree violent.

11 Q. Okay. Did you feel that you had sufficient notice
12 from the indictment to be prepared for trial?

13 A. Yes.

14 Q. Okay. Tell me what you remember about the plea
15 negotiations in this case.

16 A. So as I recall -- now I can't speak to any plea offers
17 that were made before me showing up in the timeline of
18 events, but the offer that was conveyed to me in writing,
19 which was -- which was rare out there, was Mr. Odom could
20 plead to ten years, but it was to run consecutive to the
21 sentence that he was currently serving. There was some
22 language in there about, you know, no -- no time for
23 pre-trial credit or something -- something like that, but
24 -- but the heartbeat was it was ten years consecutive to
25 the sentence he was currently serving at that time.

1 Q. Do you know what -- out of what county that other
2 sentence was?

3 A. I think it was either Laurens or Newberry.

4 Q. Okay. Do you remember -- at the time was Mr. Odom
5 already in jail, prison? Was he out on the street?

6 A. I think -- well, he was incarcerated.

7 Q. Okay.

8 A. And I think that he was serving a prison sentence at
9 the time that I encountered him.

10 Q. Okay. Did Mr. Odom indicate to you that he was
11 interested in looking at plea deals or did he maintain his
12 innocence and saying he wanted a trial?

13 A. He was eager to go to trial on this. Of course, any
14 and all plea offers, my practice, you know, good, bad or
15 ugly, we're gonna go through that without question and --
16 but he wanted -- he had opted to go to trial.

17 Q. Okay. That ten-year plea offer, did you discuss that
18 with him?

19 A. Yes, sir.

20 Q. Okay. What did he say?

21 A. He rejected it on more than one occasion.

22 Q. Okay. Did you discuss with him the possibility that
23 he would receive a life sentence if he were convicted at
24 trial?

25 A. Yes.

1 Q. Okay. Tell me about -- how many times did you discuss
2 that topic?

3 A. Well, that was a -- a really -- obviously that was
4 -- the stakes were at their highest, so we discussed it
5 multiple times and, you know, per statute a life notice was
6 served on him and -- well-before in advance of the trial,
7 so we talked about that. How were they going to seek a
8 life sentence? Would we challenge it? Yes, but this is
9 very much in play in what they are seeking.

10 Q. Okay. How many times did you meet with Mr. Odom?

11 A. I'm not sure. I think that, you know, with a case
12 going to trial it would have been at least ten times, you
13 know, going back, especially getting close to the trial
14 date itself.

15 Q. Okay. Did you communicate with him outside of those
16 meetings by phone, letter or e-mail?

17 A. Letters. Unfortunately in those days there wasn't any
18 e-mail like I think they have now, but -- and it was -- it
19 was very difficult since he was in -- in prison to get to
20 the phone. It not like the local jail where they can call
21 more, but I would go -- make time to go to the prison to go
22 see him and especially when he was in a local jail to go
23 see him multiple times.

24 Q. How frequently did you communicate by letter?

25 A. I would say maybe once every three months, something

1 like that. So the original, as I recall, plan in place was
2 they were gonna seek life without parole on him in either
3 Laurens or Newberry and if that should happen they would
4 just dismiss what they had in Edgefield and initially, as
5 I understood it, the game plan was to try them in one of
6 those two places before Edgefield and that's not how it
7 shook out.

8 Q. Were you representing him on those other cases in
9 those counties?

10 A. I was not.

11 Q. Okay. When you met with Mr. Odom, did Mr. Drylie go
12 with you?

13 A. When we got closer to trial, Mr. Drylie did go -- did
14 go meet with him, too.

15 Q. Okay. So back to the life sentences, what did -- what
16 was Mr. Odom's response when you told him that you would
17 fight the imposition of the life sentence?

18 A. That, you know, he -- he understood that. That, yes,
19 this is what they're seeking, but, you know, that we -- we
20 had an argument to make and we were absolutely gonna make
21 it.

22 Q. Okay. Did he give you any reason to believe that he
23 did not understand the judge's ruling could go the other
24 way?

25 A. No.

1 Q. Okay. Did you make it clear to him that if that were
2 to happen, he would be in prison for the rest of his life?

3 A. Yes.

4 Q. Okay. Do you have any note or letter indicating that
5 you sent anything to Mr. Odom about that topic in writing?

6 A. I know that we corresponded. I would have to look
7 back at my file, too. I know that I sent letters to him.
8 Whether we addressed that topic, I -- I can't recall.

9 Q. Okay. At any time when you represented him did
10 Mr. -- that you represented Mr. Odom, did Mr. Maye withdraw
11 a plea offer?

12 A. So, you know, originally when he sent -- when he sent
13 that letter to me in writing, it said that this plea offer
14 will expire at a certain time, but what was talked about "
15 on direct was it was, you know, still extended the morning
16 of trial and it was rejected and then I believe the Court
17 asked Mr. Maye whether it was still on the table right now,
18 I'm paraphrasing, but I think it's on page 25 or 26 that we
19 were talking about, and the solicitor indicated it was, but
20 Mr. Odom rejected the plea offer at that time.

21 Q. Do you remember an issue of one of the twelve jurors
22 on the jury panel disclosing seeing a news article about
23 Mr. Odom?

24 A. That, I honestly -- that could have happened, but I do
25 not have a memory of that.

1 Q. Okay. If that sort of thing were to happen, what
2 would you do?

3 A. So if that was to happen, I think that -- you know,
4 Judge McMahon was one of our resident judges and took that
5 kind of thing very, very serious and he would at a minimum
6 question that juror outside the presence of the other
7 jurors in-camera.

8 Q. Okay. Would you let a -- would you waive an issue
9 if there were a juror on the jury panel who had read an
10 article discussing your client's criminal history?

11 A. No.

12 Q. Okay. At the time did you see any reason that you
13 could move to dismiss the charges on the basis that
14 Mr. Odom was being put at double jeopardy by being tried
15 a second time?

16 A. Ask -- ask me that again.

17 Q. Okay. At the time did you see a basis for a motion to
18 dismiss based upon the fact that Mr. Odom was being tried a
19 second time?

20 A. No, I did not.

21 Q. Why is that?

22 A. Ultimately, the first trial resulted in a -- in a hung
23 jury. You know, it's very unfortunate and very difficult
24 for clients to understand, but the -- the whole thing
25 starts right back over and, you know, that's a sticking

1 point for a lot of -- a lot of, you know, defendants in
2 that way, but that's just what happens.

3 Q. Okay. Do you recall knowing anything about Mr. Odom's
4 brother's state of mind or his mental health?

5 A. I remember that he did have some mental health
6 problems. In going back through my file, I believe that
7 he was evaluated in another county and found competent,
8 and that was dated in 2008.

9 Q. Did you see a reason to challenge his competency to
10 testify at trial?

11 A. I did not.

12 Q. Okay. What sorts of things do you evaluate and
13 consider when you're making a decision like that?

14 A. So, you know, a couple of things kind of -- in my
15 travel, I was with the public defender's office for
16 fourteen years, in order to be just not competent you
17 really have to be very, very, very low functioning in --
18 in my experience and so, you know, somebody's always
19 presumed to be competent, you have to kind of walk through
20 that gateway at first, and ultimately I recall that he
21 could intelligently answer questions that were asked to
22 him and it seemed like he was always giving answers, you
23 know, specifically to the questions that were asked of him
24 that were rational and directly linked to the questions
25 asked.

1 Q. Okay. If at any point during his testimony you would
2 start to question his competency, what would you have done?

3 A. Stood up, objected, say we have a matter of law. It
4 would have been Your Honor -- you know, some of the folks
5 I've had evaluate clients over the years would say hey, you
6 know, competency is fluid, especially if somebody is right
7 on the line. It might -- because the stakes are so high,
8 it might behove us to have somebody come and evaluate this
9 person to see if they're still competent.

10 Q. Okay. Do you recall how you used the DNA evidence at
11 trial?

12 A. Honestly, I don't. I think that the argument would
13 look like this. Well, hey, it's his car, so big deal that
14 they found DNA on items that were in -- you know, inside
15 his car. That doesn't link him to a crime. These things
16 were found, like I say, in his car. It's by no means
17 anything that is a smoking gun for the State to convict
18 him.

19 Q. Okay. Do you recall if there was any fingerprint
20 evidence admitted during trial?

21 A. I believe that there was, yeah. I don't have a
22 specific memory of that, but just listening to the
23 testimony before I --

24 Q. But if it was to say DNA evidence -- or, I'm sorry,
25 fingerprint evidence was found, would that surprise you if

1 it was Mr. Odom's car?

2 A. No. I mean, in other words, the same thing with the
3 DNA. It's his car. That's where his fingerprints would
4 naturally be found.

5 Q. So let me ask you what did Mr. Odom tell you about his
6 actions while the crime was being committed?

7 A. So as best I can recall, Mr. Odom and two brothers,
8 Mr. Donaldson and Mr. Sapp, were with him. They went in
9 Mr. Odom's car to, I think, the Aiken area, something to
10 that effect, and ultimately Mr. Odom was -- had gone into
11 his -- the mother of one of his children's house, but the
12 problem was, was that he had a wife that, you know, lived
13 back in -- at his home and he didn't want to be seen with
14 another woman essentially, even though it's the mother of
15 one of his kids. So he was in the house. The other two
16 brothers that he was with were outside. He, I believe, you
17 know, said he was there all night, came back out, saw that
18 his brothers -- the car was gone, I think, and he thought
19 it had been stolen and maybe he called to report that and
20 -- and ultimately -- he was saying that they ultimately
21 went and did this crime and he did not.

22 Q. Okay. Did you try to talk to the woman or the two
23 brothers?

24 A. Well, I believe the brother was facing his own charges
25 for this, so he was represented by counsel. The other

1 brother died in 2008. So I think this crime happened in
2 2007, that brother was killed in 2008, and this trial took
3 place -- so the one I was a part of was in about 2015.

4 Q. So that brother died before you ever began
5 representing Mr. Odom?

6 A. Yes, sir.

7 Q. Okay. What about the lady? Do you know her name?

8 A. Mozzone is maybe her last name and I couldn't remember
9 if we were ever able to track her down.

10 Q. Okay. Do you think you'd have any notes or anything
11 in your file about that?

12 A. I would think so. I know that what we did was based
13 on the -- we verified to see if there was anybody that
14 reported a car stolen to Aiken Public Safety during those
15 dates and there was not.

16 Q. Tell me about your conversation with Mr. Odom about
17 whether or not he should testify.

18 A. I don't specifically remember it, but basically my
19 standard practice is hey, if you take the stand, yes,
20 you have a record. Will the judge, you know, tell these
21 folks hey, you know, not to hold it against you, yes, but
22 sometimes it's very, very difficult for jurors to do and
23 they can -- they can ask you about some of these priors.

24 Q. Okay. What is your recollection of Mr. Odom's
25 criminal history?

1 A. I believe that he has a few burglaries on there and
2 then going back further there is a -- a CSC conviction, but
3 if memory serves that was rooted out of just age difference
4 as opposed to lack of consent.

5 Q. Okay. Do you remember giving an opinion to Mr. Odom
6 about whether he should testify or not?

7 A. Yes, and it was -- given that he had these type of
8 priors that he should not.

9 Q. Okay. Do you remember any amendments to the
10 indictments when you represented Mr. Odom?

11 A. Not specifically, but I -- it was something that would
12 happen when something really looked like it was going to
13 trial they may amend an indictment, resubmit it to the
14 grand jury. I'm not sure if they did that in this case,
15 but I'm inclined to think that they did, but I don't --
16 I'm not privy to when that occurred or if it even occurred
17 while I was representing him.

18 Q. Are you aware of a court order ordering that Mr. Odom
19 not have any contact with his brother, Brandon Donaldson?

20 A. I'm not.

21 Q. Do you remember taking any issue during the closing
22 argument when Mr. Maye argued that the IGA could be a
23 burglary victim and that people in town worked there?

24 A. That would not have been something I would have taken
25 issue with.

1 Q. Do you remember taking any issue with Mr. Maye's
2 argument that Mr. Odom had planned out the crime, but that
3 he was not smarter than the investigators or the jurors?

4 A. I wouldn't have taken any issue with that.

5 Q. Okay. Why not?

6 A. I think that, you know, that is -- at least in my
7 mind it struck me as in bounds as far as argument, which
8 was permitted during closing.

9 Q. Okay. Why didn't you find the IGA as a victim
10 argument objectionable?

11 A. Argument, which is permitted in closing.

12 Q. Do you remember taking issue if the solicitor referred
13 to Mr. Odom's driver's license as being one listing a
14 Graniteville address?

15 A. Yeah, I did not take any issue with that.

16 Q. Okay. Why is that not something you think would be
17 objectionable?

18 A. I just think that that was, you know, argument and in
19 bounds, you know, not anything that would prejudice members
20 of the jury.

21 Q. Okay.

22 MR. SMITH: Just one moment, please.

23 No more questions. Thank you.

24 THE COURT: Cross, ma'am?

25 MS. McMAHAN: Court's indulgence, Judge.

CROSS-EXAMINATION

BY MS. McMAHAN:

Q. Mr. Casto, going back to Brandon's mental state, do you recall anything about Brandon ever being found not competent but probably would likely to restore in Barnwell at any time?

A. No.

Q. But you knew he had had a competency evaluation at some point?

A. Yes, that's correct.

Q. And he ultimately testified. So when you were cross-examining him, did you see any issue with how he was answering or anything like that during the trial?

A. I did not.

Q. Okay. And then the car, saying it was his car, was there issue with the plates on the car? Was there a paper tag on there --

A. Now that you --

Q. -- from Duke Brothers Auto Sales or Duke Boys or something?

A. Yes. I remember something about that, but I don't remember the specifics. I'm sorry.

Q. Do you recall if the bill of sale that was found in the car actually went back to Demetrius Odom, not Maurice?

A. I think I do remember something about that now that

1 you mention that.

2 Q. Okay. That was actually brought up in the trial, but
3 did you see any need to kind of hammer that home? That,
4 you know, it was his car? That he -- you know, so his
5 stuff would be on it?

6 A. Yes, that would have been certainly a detail.

7 Q. And Ms. Mozone, was that Cassandra Mozone?

8 A. Yes.

9 Q. And you had tried to find her?

10 A. I don't have any -- I don't have any specific memory.
11 I would assume so, but hear me out. I don't have any
12 specific memory of that.

13 Q. Okay. And then the court order with no contact with
14 his brother, could that have possibly been a bond condition
15 of some kind?

16 A. That's what I was thinking, but I -- I just don't
17 remember Mr. Odom being out, you know, but it certainly
18 could and that type of language shows up most often in some
19 type of bond.

20 Q. Well, he was out on bond, I guess, on the Edgefield
21 charges, but he was detained in other counties; is that
22 correct?

23 A. Yes.

24 Q. Okay. And so while he wasn't actually necessarily
25 detained for the Edgefield charges, you would have seen

1 him in the detention centers of where he had been located?

2 A. Yes, that's right.

3 Q. And do you recall at any point if Mr. Maye had tried
4 to revoke his bond?

5 A. Well --

6 Q. If the record reflects he did and Judge Keesley denied
7 it, would you dispute that?

8 A. Not at all.

9 Q. Okay. And then in Mr. Maye's closing, and I believe
10 Mr. Smith had already referenced this, but it actually
11 begins on page 401 and he starts talking -- Mr. Maye starts
12 talking about the multiple identification cards that were
13 found in the car; one for Maurice Odom from North Carolina,
14 one from -- he references him being from down there in
15 Barnwell County and then he talks about how, you know, the
16 birth dates were drilled out of the ID's, but then he says,
17 you know, whatever this card is from Graniteville, South
18 Carolina, the same thing, that Maurice Odom that plans and
19 schemes and carries out conducting a burglary up here in
20 Edgefield County, you obviously didn't object. Would you
21 have seen that as objectionable?

22 A. I don't think so. Me hearing it again, I just don't
23 think so.

24 Q. Okay.

25 MS. McMAHAN: Court's indulgence, Your Honor.

1 THE COURT: Yes, ma'am.

2 BY MS. McMAHAN:

3 Q. The issue with the juror. In the transcript, it looks
4 like on page 52 or somewhere around there, there was a
5 juror that you guys had a bench conference about and that
6 person was ultimately relieved and an alternate put in.
7 Do you recall if that may have had anything to do with a
8 newspaper?

9 A. It -- it may have, but, like I say, I don't recall if
10 that person was relieved for that and, if so, I believe
11 that would have been the proper remedy.

12 Q. And earlier did you testify that you would have
13 reached out to Jerry Screen and asked him about the case?

14 A. Yes.

15 Q. Was there -- and you may not even remember this, but
16 do you remember if there was anybody called to testify in
17 this trial that wasn't included in the other trial or vice
18 versa?

19 A. I don't believe so. I believe I remember the same --
20 the same folks.

21 Q. And you did discuss the delay in his trial, correct?

22 A. Yes.

23 Q. And you actually brought that up and it was addressed
24 on appeal; do you recall that?

25 A. I do.

1 Q. And there was something else that was addressed on
2 appeal, but -- so your three main pre-trial arguments, I
3 believe, were the delay, the -- you asked to sequester the
4 witnesses, the speedy trial issue, and that he wanted you
5 to be relieved, and the issue about life without parole,
6 whether or not those two charges could have been used?

7 A. Yes. Those were the key issues that I recall.

8 MS. McMAHAN: I have nothing further, Your Honor.

9 THE COURT: Sir?

10 MR. SMITH: Your Honor, may we approach the bench
11 for a moment?

12 THE COURT: Certainly.

13 (Witness excused.)

14 (Proceedings held at the bench; not reported.)

15 MR. SMITH: Your Honor, I've discussed it with
16 Ms. McMahan. I think we are going to agree that the
17 PCR transcript from the Newberry hearing should be made
18 an exhibit about the issue of any plea offer or promises
19 that are discussed in that transcript.

20 MS. McMAHAN: I mean, Judge, I believe we can make
21 it an exhibit by reference because it's available for
22 viewing on C-track, so it's public record already.

23 THE COURT: Okay.

24 MR. SMITH: But I haven't read it and Ms. McMahan
25 has agreed if Your Honor would be fine with it to give

1 me ten days to read it and decided if I need to call
2 another witness to rebut anything related to that --

3 THE COURT: Okay.

4 MR. SMITH: -- and to leave the record open for
5 that purpose only.

6 THE COURT: I don't mind that. Where would -- I
7 guess you'd have to chase me down somewhere.

8 MS. McMAHAN: If needed, Your Honor, yeah, we would
9 coordinate that together.

10 THE COURT: I'm not hard to find.

11 MS. McMAHAN: We know where we can find you on
12 sccourts.org.

13 THE COURT: I'll make myself available, so don't
14 worry about that.

15 MR. SMITH: I don't think it will be a problem.
16 Just out of an abundance of caution I want to --

17 THE COURT: That's fine. We'll leave the record
18 open just for that.

19 MS. McMAHAN: Yes, Your Honor.

20 THE COURT: Okay. All right. And obviously if
21 you don't need that, just let me know because -- so I
22 can keep up with it.

23 MR. SMITH: I will, Your Honor.

24 THE COURT: So anything else today, folks?

25 MS. McMAHAN: Nothing further from the Applicant.

1 MR. SMITH: That's the State's case.

2 THE COURT: All right.

3 To the corrections officers over here, there's two
4 of you, right? Just know how much I appreciate you-all
5 helping us with these things. I think you-all are often
6 overlooked and just left alone and left out, but I do
7 appreciate it.

8 CORRECTIONS OFFICER: Thank you.

9 (Off the record discussion.)

10 THE COURT: Mr. Odom?

11 THE APPLICANT: Yes, sir.

12 THE COURT: I may or may not hear anymore about your
13 case. I don't know.

14 THE APPLICANT: Yes, sir.

15 THE COURT: I'm not gonna attempt to make any ruling
16 until I know for sure whether or not we might hear more
17 about your case.

18 THE APPLICANT: Yes, sir.

19 THE COURT: But rest assured even if I never see
20 you again, my ruling will be based on the way I see the
21 case.

22 THE APPLICANT: Yes, sir.

23 THE COURT: Not to favor you or condemn you. Do
24 you understand?

25 THE APPLICANT: Yes, sir. Thank you.

1 THE COURT: All right. To the lawyers, thank you
2 for your patience today. I appreciate it very much.

3 MR. SMITH: Thank you.

4 MS. McMAHAN: Thank you.

5 (Whereupon, the proceedings were concluded for
6 October 10, 2022, at 1:07 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official 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 case in Circuit Court
on the 10th day of October, 2022.

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

September 22, 2023

/s/ Stacy S. Johnson
STACY S. JOHNSON, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

IN THE COURT OF COMMON PLEAS)
FOR THE ELEVENTH JUDICIAL CIRCUIT)

Maurice Anthony Odom, SCDC #199677,)

Case No. 2020-CP-19-0071)

Applicant,)

v.)

ORDER OF DISMISSAL)

State of South Carolina,)

Respondent.)

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL
2024 MAR 18 PM 2:30

This matter comes before this Court by way of Applicant Maurice Anthony Odom's Application for Post-Conviction Relief and Amended Application for Post-Conviction Relief filed March 3, 2020 and October 4, 2022, challenging his conviction for second-degree burglary (violent). An evidentiary hearing on this action was convened October 10, 2022, before this Court. Applicant appeared with his counsel, Ashley A. McMahan. Respondent State of South Carolina was represented by Taylor Smith of the South Carolina Attorney General's Office. At the hearing, this Court heard testimony from Applicant and the primary of his two former trial counsel, Bennett Casto ("Counsel"). Following a review of the record and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below.

I. FACTUAL & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Edgefield County Clerk of Court. Applicant was arrested on October 30, 2007, following an investigation into a burglary of the IGA grocery store in Johnson,

South Carolina. During its August 2013 term, the Edgefield County Grand Jury indicted Applicant for second-degree burglary (violent) (2013-GS-19-0511).¹ Applicant's case was initially called for trial in August 2013, but ended in a mistrial with a hung jury.² On June 8, 2015, Applicant proceeded to a second jury trial before the Honorable R. Knox McMahon. Assistant Public Defenders Bennett E. Casto and Erik J. Drylie represented Applicant. Assistant Solicitors Ervin J. Maye and H. Franklin Young prosecuted the case.

A. Pre-Trial

On August 20, 2014, the State served Applicant with its notice of intent to seek life without parole (LWOP) under Section 17-25-45 of the South Carolina Code. (See Record on Appeal, pp. 448–449.) Applicant's prior convictions of second-degree criminal sexual conduct with a minor (1997-GS-06-365) and second-degree burglary (violent) (2012-GS-53-0311) were cited by the State as predicate offenses.

B. Summary of Trial Evidence

On October 17, 2007, Applicant and his half-brother, dressed in dark clothes, gloves, and masks, threw cinder blocks through the glass door of the Johnston IGA and stuffed ninety cartons of cigarettes in lawn bags before fleeing. This was captured on motion-activated video.

Investigator Lamaz Robinson described what the video depicted as follows:

¹ Applicant was first indicted for malicious injury to property (2008-GS-19-0105) and grand larceny (2008-GS-19-0106) in May 2008. (Tr. p. 67, l. 23 – p. 67, l. 14.) When Applicant failed to appear in February 2009, the solicitor removed the indictments from the docket until Applicant was apprehended. (Tr. p. 67.) Applicant was then indicted for second-degree burglary (violent) in August 2010 (2010-GS-19-0475). It is unclear from the record why Applicant was subsequently re-indicted in 2013. In the time leading up to the 2015 trial, however, Applicant picked up multiple charges in other counties at an alarming rate, and was ultimately convicted of the following: second-degree burglary (violent) (2012-GS-30-0311), criminal conspiracy (2012-GS-30-0314), and grand larceny (2012-GS-30-0317) in Laurens County; second-degree burglary (non-violent) (2012-GS-28-0206) and grand larceny (2012-GS-28-0207) in Kershaw County; second-degree burglary (violent) (2012-GS-36-0156) in Newberry County; and third-degree burglary (2015-GS-31-0054) in Lee County.

² Jerry Screen, Esquire, represented Applicant at his 2013 trial.

[T]wo individuals . . . entered the store by throwing a brick-like block towards the window. On the first attempt, it was not successful and the second attempt it was successful where the brick went through the window and then two individuals entered the store. At that point in time, one of the individuals had a blue in color shirt with like some blue in color pants and the other individual had on some black in color shirt like with a black in color pants.

Both individuals had what appeared to be ski masks over their face and gloves over their hands. The one in the black shirt entered the store first with the one in the blue shirt in pursuit behind him. They went into the store and then the next caption that comes out on the video is when they're exiting the store. During the time while they was in the store, they, when they was entering into the store you could see what appeared to be empty . . . black lawn trash bags When they [exited] the store, it appeared that those bags had been filled.

(Tr. p. 281, l. 8 – p. 282, l. 2.)

Tayla Barton, the store manager, received a phone call from the store's alarm company shortly before 2:00 a.m. on October 17, 2007. Law enforcement was already present when she arrived at the store. The glass in the double-door entrance was shattered and cinder blocks lay on the store floor. The shelves for cigarettes were empty – ninety cartons of cigarettes were missing. Barton showed law enforcement the surveillance footage from the action-activated surveillance camera. (Tr. pp. 156-160; p. 164.)

Deputy Chris Miller from the Saluda County Sheriff's Office was called into Edgefield County to help set up a perimeter in the vicinity of the Johnstown IGA. He located a white Cadillac backed into the woods off Highway 191. When Deputy Miller shined the spotlight on the car, he saw two people changing out of clothes. Upon being detected, they fled into the woods. Deputy Miller stayed by the Cadillac to wait for more law enforcement to arrive. (Tr. pp. 190-192.) Upon arrival, officers collected clothing left outside the Cadillac. (Tr. p. 284.) During a standard inventory search of the abandoned Cadillac prior to its removal, law enforcement found two cell



phones and a wallet. The wallet contained Applicant's South Carolina Driver's license, his North Carolina Sheriff's identification card, an employer's identification card, Applicant's birth certificate, and his social security card. (Tr. p. 213-217; see also Tr. p. 283.)

The Cadillac bore only paper dealer tags, so officers could not run a license plate check. However, the search yielded a bill of sale to Demetrius (sic) Odom on September 22, 2007, by Duke Boys Auto Sales. (Tr. pp. 224-226.) Jesse James Dukes, owner of Duke Boys Auto Sales, testified he sold the Cadillac to Temetrious Odom. Applicant was with her when he sold her the Cadillac. Dukes knew Temetrious because she was from his hometown. He also knew and identified Applicant. (Tr. pp. 313-314.)

Lamaz Robinson, the Chief of the Johnston Police Department at the time of Applicant's trial, was an investigator at the time of the burglary. (Tr. p. 278.) Chief (then Investigator) Robinson arrived at the scene of the crime and viewed the video with the store manager. (Tr. p. 279.) He then investigated the abandoned Cadillac. Chief Robinson noted clothes outside the car by the door. He also examined one of the cell phones. Chief Robinson discovered the phone was on because it lit up when he held it. The cell phone advised that it was owned by Maurice Odom. The other cell phone contained a contact list with a number for "Momma." The officers called the number, and co-conspirator Brandon Donaldson's mother answered, which is how Donaldson was initially identified as a co-conspirator and participant in the burglary. (Tr. p. 281; pp. 283-288.) The clothes found outside the Cadillac included a blue shirt, a black shirt, dark jeans, and one or two pairs of gloves. (Tr. p. 299.) DNA found on some other clothes discovered inside the Cadillac were a 1 in 140 quadrillion match to Applicant's DNA. (Tr. pp. 361-370.)

Donaldson is Applicant's half-brother. He testified that on the night of the robbery Applicant picked him up in Blackville (South Carolina) in a white Cadillac. (Tr. pp. 241-242.) At

the time he got in the car, (cinder) blocks were already in the trunk. (Tr. p. 245.) Donaldson did not know where they were going and rode with Applicant until they parked “in some bushes and some trees.” (Tr. p. 243.) Donaldson testified the pair was wearing dark clothes, and identified as the blue shirt that was State’s Exhibit 17 at trial. Donaldson further identified himself as the blue-shirted burglar in the store video. He testified that he and Applicant smashed the glass door to the grocery store with the blocks and then stuffed the garbage bags Applicant had full of cigarettes. They ran to the Cadillac and were taking off their burglary clothes when a light shined on them. Donaldson testified at that moment; they both ran away. Although not expressly stated, it seems they split up. Donaldson called a friend to pick him up. (Tr. pp. 244-255.)

C. Verdict & Subsequent non-PCR Proceedings

On June 10, 2015, the jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to life without parole (LWOP) as required under § 17-25-45.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins perfected Applicant’s appeal by filing a brief with the Court of Appeals on the following issues:

- I. Whether the trial judge erred in sentencing [Applicant] to life without parole, pursuant to S.C. Code §17-25-45, and for a burglary second degree conviction when a prior conviction for criminal sexual conduct with a minor second degree should not have been considered a most serious offense pursuant to the statute because there is evidence in the record that the conduct was consensual?
- II. Did the trial judge err in refusing to dismiss the indictment for burglary second degree when the State failed to call the case for trial until August 6, 2013, almost six years after the arrest in October of 2007, and then when the first trial ended in a mistrial, the State failed to call the case again for trial until June 8, 2015, almost eight years after arrest in violation of [Applicant]’s state and federal constitutional right to a speedy trial?

(Final brief of Appellant, case 2015-001294, December 6, 2016 at pg. 1.)

Following briefing and oral argument, the Court of Appeals affirmed Applicant's conviction and sentence. State v. Odom, 2018-UP-273 (S.C. Ct. App. filed June 27, 2018). Applicant's petition for rehearing was denied by Order dated August 16, 2018. Applicant then sought certiorari to the Supreme Court. Certiorari was denied as to Issue I and granted as to Issue II. On January 22, 2020, the Court dismissed the writ of certiorari as improvidently granted, settling the above issues, as a matter of law. State v. Odom, 2020-MO-001 (S.C. Sup. Ct. filed January 22, 2020). The case was remitted back to the circuit court that same day.

D. PCR Filings and Proceedings

Applicant commenced this PCR action on March 3, 2020 by filing an Application for Post-Conviction Relief. In the Application, he alleges he is being held in custody unlawfully based on the following (excerpted verbatim):

1. Ineffective assistance [of counsel]
 - a. Juror 16
 - b. Newspaper article
 - c. Did not know he could receive LWOP
2. Prosecutorial misconduct
3. Denied of [sic] due process

Applicant requests relief as follows: "vacate sentence or resentence." (Application for Post-Conviction Relief, March 3, 2020 at pp. 3, 6.)

Respondent State of South Carolina filed a return November 17, 2020, seeking summary dismissal of Applicant's allegations of trial court error, denial of due process, juror misconduct, and actual innocence for failure to state a cognizable claim under the Uniform Post-Conviction Relief Act (the Act). On the remaining claims, Respondent's return sought to require an amended application specifically setting forth the grounds upon which the Application was based.

An Amended Application for Post-Conviction Relief was filed on October 4, 2022. In his

Amended Application for Post-conviction Relief, Applicant added no additional grounds for the relief sought. The Amended Application did add the request that Applicant be permitted to amend the Application should any unaddressed or new issues arise during the course of the evidentiary hearing. (Amended Application, October 4, 2022.)

Materials before this Court and incorporated by reference are the Edgefield County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal; the trial transcript of Applicant's June 8-10, 2015 trial; and the records of the current PCR action.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Standard of Review

The ground for relief upon which Applicant proceeded at the evidentiary hearing pertains to alleged ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). It is common that post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient

to warrant relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. Strickland "does not guarantee perfect representation [—] only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved

unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” Id. The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Id.

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the trial attorney observed the relevant proceedings; knew of materials outside the record;

and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Id. at 668. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. Id. at 695.

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court need not determine whether counsel's performance was deficient before examining the prejudice suffered



by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

B. ALLEGATIONS BEFORE THE COURT

At the evidentiary hearing, Applicant proceeded on the following claims, which are individually addressed below:

1. Juror misconduct concerning Juror 16;
2. Juror misconduct regarding attention to media (newspaper);
3. A violation of Applicant's right to a speedy trial;
4. It was prosecutorial misconduct for the Solicitor to seek LWOP;
5. LWOP violates the sentencing range based on the nature of Applicant's prior crimes;
6. The Solicitor should have dropped the charges against Applicant;
7. If Applicant had known he could get LWOP, he would have pled guilty;
8. Counsel didn't object to statements by the Court regarding giving Applicant LWOP;
9. Because his charges were initially dismissed at the preliminary hearing, Applicant could not be indicted for the crime;
10. Applicant was told if he pled to charges in Newberry, this charge would be dropped;
11. The judge gave a no-contact order and that equates to harassment;
12. "They" should have DNA tested more people;
13. Counsel didn't make an appropriate argument regarding fingerprints on a car;
14. Counsel didn't object to DNA on clothing;
15. Counsel should have objected when the Solicitor noted he "wasn't from this town;"
16. Counsel should have objected when the Solicitor said Applicant thought he was smarter than the jury;
17. Applicant's brother should not have been allowed to testify against him at trial; and
18. Applicant thought his record would be admitted if he took the stand so he didn't and he now believes it would not have been admitted.

C. FINDINGS AS TO CLAIMS RAISED

In its return, the State moved that Applicant's allegations of trial court error, denial of due process, juror misconduct, and actual innocence should be summarily dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act³ (the Act). To the extent there is any question following the analysis below, the State's motion is granted and these claims

³ S.C. Code Ann. § 17-27-10 to -160.

are dismissed. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose the sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole, or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A). However, an application for post-conviction relief is not a substitute for any remedy incident to the proceedings of the trial court, or for direct review of the sentence or conviction. S.C. Code Ann. § 17-27-20(b).

Because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment to the Constitution of the United States. Though the majority of claims fall under ineffective assistance of counsel, not all claims do. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR); Stepney v. State, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel); State



v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494 499 (2005) ("Circuit courts obviously have subject matter jurisdiction to try criminal matters.").

A. Juror Misconduct, "the Verdict", Claim 1

Applicant first alleges he spoke to a friend or family member of Juror 16 and that "he told me his family is straight and he don't know why he convicted me, 'when I spoke to him on the phone and he said he wouldn't.'" (PCR Application, March 3, 2020, handwritten page 1) (internal parentheses added.) To the extent Applicant is alleging juror misconduct, post-conviction relief is not the proper forum to pursue this claim. See McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013) ("Juror misconduct discovered post-trial is not properly considered "newly discovered evidence, [for purposes of obtaining post-conviction relief]; rather, it is a separate basis for a new trial."). Further, this claim was abandoned by not being argued at the PCR hearing. Accordingly, it is denied and dismissed with prejudice.

B. Juror Misconduct, "the Paper", Claim 2

At the PCR hearing, Applicant testified that a juror allegedly reading a paper either was in the jury pool and excused or on the jury and excused. He could not recall which. (PCR, p. 39, l. 15-25; p. 40, l. 20-22.) Counsel remembered a juror being dismissed but could not recall if the dismissal occurred during jury selection or trial. (PCR, p. 49, l. 3- p. 50, l. 14). The trial transcript settles the debate. This transcript shows that immediately after the jury pool was selected, but before the pool left the courtroom, the trial court instructed the jury (among other things) not to discuss the case with anyone nor to read about it. Thereafter, a juror immediately raised her hand, a bench conference convened outside the hearing of the court reporter and the juror was excused. No reason for the excusal was put on the record. (Tr. p. 48, l. 3- p. 52, l. 13.) Because Applicant did not present evidence supporting his claims that "a juror was reading the paper after being told



not to” and that “the juror discussed his priors in the jury room,” and also did not raise an issue recognizable under the Act, this allegation is denied and dismissed with prejudice.

C. Due Process/Prosecutorial Misconduct regarding Speedy Trial, Claim 3

In Applicant’s PCR Application he alleges his due process rights were violated due to pre-trial delay. At the hearing, the due process claim was abandoned, and Applicant instead argued his speedy trial right was violated which “constitutes malicious prosecution.” (PCR, p. 32, l. 18- p. 33, l. 13.) The speedy trial claim was initially raised by Counsel, prior to Applicant’s trial, when Counsel moved for dismissal due to alleged excessive pretrial delay. (Tr. p. 56, l. 15-22 see also PCR, p. 80, l. 21 – p. 81, l. 7.) The speedy trial issue was raised again on appeal and decided by the Court on appeal. (See Petition for Writ of Certiorari to the Court of Appeals filed by Maurice Odom Petitioner, September 17, 2018 at p. 2; see also State v. Odom, 2020-MO-001 (S.C. Sup. Ct. filed January 22, 2020). I find this is not an appropriate topic for a PCR proceeding. Applicant’s attorney expressly raised the issue to the trial court and, following the Court’s decision, the issue was again raised on appeal. Thereafter, an appellate court decided the issue in the correct forum. Issues that were raised or could have been raised on direct appeal cannot be asserted or re-asserted in a post-conviction relief proceeding as a free-standing claim. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975); S.C. Code Ann. § 17-27-20(b). Accordingly, this allegation is denied and dismissed with prejudice.

D. Prosecutorial Misconduct for seeking LWOP, Claim 4

Applicant raises the claim of prosecutorial misconduct, alleging it was misconduct for the State to seek LWOP when his priors were (allegedly) nonviolent. (PCR, p. 30, l. 24- p. 32, l. 2.) The trial transcript is clear that Applicant was served Notice the State was seeking LWOP, what the prior crimes were, and that the State considered the prior crimes to be violent crimes entitling

it to seek LWOP. (Tr. pp. 118-121.) Then the issue (of whether the prior crimes were both violent crimes) was raised on appeal and decided by the Court on appeal. (See Petition for Writ of Certiorari to the Court of Appeals filed by Maurice Odom Petitioner, September 17, 2018 at p. 2; see also State v. Odom, 2020-MO-001 (S.C. Sup. Ct. filed January 22, 2020)). I find this is not an appropriate topic for a PCR proceeding. Applicant's Counsel expressly reviewed the convictions involved and considered the issue at trial, and an appellate court has decided the issue in the correct forum. Simmons v. State, *supra*. This allegation is denied and dismissed with prejudice.

E. LWOP violates the Sentencing Range because Applicant's underlying crimes were nonviolent, Claim 5

Applicant objected to getting a life sentence, claiming at least one charge that he had been previously convicted of was a nonviolent offense and couldn't be used to enhance the current charge to life without parole. (PCR, p. 21, l. 8-25.) The appropriate forum to raise this issue is on Appeal. The issue was raised on appeal and decided by the Court on appeal. (See Petition for Writ of Certiorari to the Court of Appeals filed by Maurice Odom Petitioner, September 17, 2018 at p. 2; see also State v. Odom, 2020-MO-001 (S.C. Sup. Ct. filed January 22, 2020)). It cannot be reasserted in these proceedings. Simmons. I find this is not an appropriate topic for a PCR proceeding. This allegation is denied and dismissed with prejudice.

F. The Solicitor wouldn't drop the charges against Applicant, Claim 6

Applicant claimed that the Solicitor wouldn't drop his charges because he had filed a grievance against the Solicitor. As support, Applicant claims that a prior Solicitor told Applicant's prior attorney that the Solicitor would drop all charges, but then, after Applicant filed a disciplinary proceeding against the Solicitor, the Solicitor declined to do so. (Tr. p. 17, l. 14 – p. 18, l. 21.) In his testimony, Applicant indicates this happened “before [Counsel], right, before [Counsel,



when]... I had Jerry Screen. ... he (Screen) stated he had a whole 45 minutes to an hour conversation with Mr. Frank Young... and he had agreed to drop all charges” (Tr. p. 17, l. 16-23.) This is not an appropriate topic for this proceeding. If such an offer to drop charges ever was made, it appears it was made prior to the first trial Applicant faced on the charge at issue in this case. That trial ended in a mistrial. There is no evidence any such offer was made in connection with the present case or conveyed to Counsel. The trial court had jurisdiction for the trial, conviction, and sentence. Since this is not an appropriate topic for this PCR proceeding, this allegation is denied and dismissed with prejudice.

G. If Applicant had known he could get LWOP, he would have pled guilty, Claim 7

Applicant claims that if he had known he could get a life sentence, he would have taken the plea offered. (PCR, p. 20; see also PCR, p. 23, l. 4-6.) I find no credible factual support for this allegation in the record. Applicant admits he had been served notice and knew prior to trial that he could face life without parole if convicted. (PCR, p. 45, l. 23 – p. 49, l. 2.) Having this knowledge, he turned down the State’s offer of a plea deal twice on the day of trial. (PCR, p. 45, l. 23 – p. 49, l. 2; see also PCR, p. 54, l. 14-20.) Applicant’s Counsel testified he covered the topic with Applicant “multiple times” and made it clear to him that if he rejected the plea offer and went forward to trial and lost at trial, the judge could sentence Applicant to prison for life. (PCR, p. 68, l. 15 – p. 69, l. 3; see also PCR, p. 66, l. 21 – p. 67, l. 9.) Applicant himself admitted “for the record, they served me with life sentence papers. They served me like two or three different life sentence papers.” (PCR, p. 20, l. 5-10; see also PCR, p. 21, l. 8-15.) At trial, Applicant put on the record that he would not accept the State’s offer. (Tr. p. 25, l. 6 – p. 26, l. 3.) To the extent this raises a claim of ineffective assistance of counsel, Counsel’s testimony on this point is credible and his actions reasonable. To satisfy the two prongs of Strickland, the Applicant must show that



counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The Applicant has not shown deficiency on the part of Counsel and, further, has not shown prejudice. Applicant was fully aware of the possibility of LWOP when he knowingly made his decision to reject the plea offer. This allegation is denied and dismissed with prejudice.

H. Applicant's attorney failed to object when the Court (allegedly) said he didn't think he could give Applicant a life sentence, Claim 8

Applicant claims ineffective assistance of counsel because his attorney did not object when the judge stated that "he don't think he can do this (give Applicant life without parole)." (PCR, p. 41, l. 13-24.) Applicant gives no support for this alleged statement by the trial judge. Further, Applicant's attorney objected strenuously and a number of times regarding whether the sentence could or should be imposed. (See Tr. p. 451, l. 19-24; p. 456, l. 7-15, p. 466, l. 16-19; ROA, pp. 471-474 ("Counsel's Memorandum in Support of Defense Counsel's Challenge to Sentence Under 17-25-45 (LWOP)" provided to trial judge and marked as Exhibit C-12); see also Tr. pp. 451-466 (Defense objections to LWOP sentencing generally.)) Despite Counsel's arguments, the trial judge imposed a LWOP sentence on Applicant. Finally, whether it was error to sentence Applicant to LWOP was addressed on appeal.

This claim is dismissed for failure of Applicant to provide credible proof of the allegation. Further, there was no proved ineffective assistance of counsel regarding this allegation and, given Counsel did both raise the LWOP issue orally and in writing, no prejudice to Applicant. The issue was raised on appeal and decided on the merits by the Court on appeal. (See Petition for Writ of Certiorari to the Court of Appeals filed by Maurice Odom Petitioner, September 17, 2018 at p. 2; see also State v. Odom, 2020-MO-001 (S.C. Sup. Ct. filed January

22, 2020)). The Applicant failed to show deficient performance or prejudice under Strickland. This allegation is denied and dismissed with prejudice.

I. Applicant claims that because his charges were dismissed at the preliminary hearing, he could not be indicted for the crime, Claim 9

Applicant claims that because the first charges for robbing the IGA were initially dismissed against him at the preliminary hearing, he shouldn't have been able to be indicted "again." (PCR, pp. 11-12.) At trial, Applicant (himself) raised this issue directly with the trial court, protesting "my charges—they got dropped at preliminary hearing and then picked back up. The charges were picked up on account of them saying there's some new evidence." (Tr. p. 9, l. 7-9; see also p. 16, l. 11-16.) This court does not know if Applicant's version of why he was indicted is accurate. The reason for the direct indictment is not material to this Court's decision.

Applicant admits that prior to trial he was aware of and had seen the charging indictment and admits Counsel discussed the direct indictment with him and covered that the State could directly indict and try Applicant for the crime. (PCR, p. 50, l. 15 -22; PCR, p. 47, l. 7-12.) Further, Applicant himself raised the issue with the court pre-trial. (Tr. pp. 9-10 (Applicant explains to the court his feelings regarding whether he should be able to be indicted (and tried) after his charges were originally dismissed at preliminary hearing.)) On this point, Applicant's allegation is not ineffective assistance of counsel, but rather, that the process should not be allowed. As a procedural issue, if Applicant desired to bring this claim, the appropriate forum to raise the issue is on Appeal. This Court concludes the trial court had jurisdiction based upon the true billed indictments. State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494 499 (2005) ("Circuit courts obviously have subject matter jurisdiction to try criminal matters."). This allegation is denied and dismissed with prejudice.

J. Applicant claims a different solicitor told him that if he pled guilty to a crime in

Newberry the charge in this case would be dropped, Claim 10

Applicant alleges prosecutorial misconduct, claiming that he was told by a prosecutor and his trial counsel in another proceeding (in Newberry) that if he pled to 15 years in Newberry County (on other charges) that the charge on which he was convicted in this proceeding would be dismissed, and that it was not. (PCR, pp. 17-19.) This Court does not find credible factual support for this assertion.

Counsel did not represent Applicant in Newberry and could not corroborate Applicant's version of the Newberry offer. To help resolve the issue, the PCR hearing transcript of Applicant's PCR hearing on the Newberry charge was made an exhibit to this court's proceeding, to the extent any prior offer or promises are referenced in the transcript. (PCR, p. 81, l. 15-19.) Reviewing the Newberry PCR proceeding, there is testimony regarding Applicant's plea in Newberry County in case 2016-CP-36-0057. The Newberry record shows that Applicant did have a grand larceny case dismissed in connection with his plea to the Newberry charges. (Newberry PCR, p. 4, l. 21- p. 5, l. 7.) However, the charge that was to be dropped, and which was dropped in connection with the Newberry plea, was a charge from Laurens County, not an Edgefield County charge. (Newberry PCR, p. 13, l. 1-14.) Neither the Solicitor in the present case nor Counsel were involved in the alleged discussions and the discussions did not relate to the charges in the present case. (PCR, p. 55, l. 20 – p. 56, l. 5 (Applicant testifies the attorneys involved were "the assistant solicitor, Mr. Scott, and Charles Verner".))

I find this is not an appropriate topic for this Edgefield County PCR proceeding. The evidence does not support Applicant's allegations regarding the Edgefield charges. This allegation is denied and dismissed with prejudice.

K. The judge issued a “no contact” order, which constituted harassment, Claim 11

Applicant alleges that the trial judge issued a “no contact” order because Applicant’s brother was a co-defendant and the judge’s not allowing Applicant to have contact equates to harassment by the solicitor and judge. (PCR, p. 36, l. 15- p. 37, l. 12.) This assertion is wholly frivolous as a ground for post-conviction relief. Applicant’s testimony at the PCR hearing was that a no contact order was signed by the Court before the first trial of Applicant’s case. (PCR, p. 58, l. 10-18.) Applicant was represented by a different attorney, Jerry Screen, at his first trial on the Edgefield charges. (Tr. p. 21, l. 21-25.) Trial counsel Casto and Drylie did not represent Applicant at that trial and could not be expected to object to such an order if an objection was appropriate.⁴ Further, the issue of such an order is within the discretion of the court. This is not an appropriate ground for a PCR proceeding since it had no impact on the trial under §17-27-20. Further, to satisfy the two prongs of Strickland, the Applicant must show that counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The Applicant has not met the burden of either prong. This allegation is denied and dismissed with prejudice.

L. “They” should have DNA tested more people, Claim 12

Applicant alleges “they” should have done more DNA tests and compared the DNA to more people. (PCR, p. 38, l. 9-20.) His claim is none of the DNA presented at trial matched him. (PCR, p. 38, l. 3-20 (“Out of all the ten items none of it matched to me”)) Counsel testified he did not argue more people should be tested because “...big deal that they found DNA on items that were in—you know, inside his car. That doesn’t link him to a crime. These things were found,

⁴ There is evidence in the record the Order may have been issued while Applicant was out on bond, as a condition of bond. (Tr. p. 64, l. 23 – p. 64, l. 3).



like I say, in his car.” (PCR, p. 72, l. 12-18.) Counsel saw no need to test more people. Instead, the argument was that Applicant was not in the car that night. (PCR, p. 73, l. 16-21.)

Testimony at trial was that there was a 1 in 140 quadrillion chance that the DNA was left on the items in the car by a random person instead of Applicant. (Tr. p. 367, l. 17-24; p. 370, l. 7-8.) Further, there was testimony about other items found in the car that identified Applicant, including his cell phone, identification card, work id and more. (Tr. p. 215, l. 12 – p. 217, l. 11.) Clothes found outside the car, which the State argued were the clothes shown on the video, as well as a pair of gloves and ski mask that may have been the gloves and mask on the store’s video were tested with the result no conclusive statement could be made regarding Applicant’s DNA and the items. (Tr. p. 364, l. 16 – p. 365, l. 20.) Counsel made a reasonable strategic decision to argue that Applicant wasn’t in the car at the time of the robbery and that the lack of his DNA on the clothing outside the car was proof Applicant wasn’t one of the robbers. (Tr. p. 372, l. 2- p. 373, l. 1.) This was a reasonable trial strategy, under prevailing professional norms.

To satisfy the two prongs of Strickland, the Applicant must show that counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The Applicant has not met the burden of either prong. This allegation is denied and dismissed with prejudice.

M. Counsel didn’t object regarding fingerprints (allegedly) found on the car, Claim 13

Applicant argued ineffective assistance of counsel indicating “they stated I had fingerprints that were on my car and I felt the attorney should object to that because the fingerprints are supposed to be on my car because it is my car.” (PCR, p. 6, l. 21- 25.) On this point, Counsel Casto indicated he could not remember if Applicant’s fingerprints had been found

in the car.⁵ When asked “if [I] was to say ... fingerprint evidence was found, would that surprise you...,” Counsel responded “No.” (PCR, p. 72, l. 24- p. 73, l. 2.) Counsel continued “It’s his car. That’s where his fingerprints would naturally be found.” (PCR, p. 72, l. 21- p. 73, l. 4.) Counsel testified his strategy regarding fingerprints in the car would have been the same as it was regarding the DNA claim directly above. Counsel’s argument was that Applicant was not present at the crime. The claim was someone borrowed or stole his car and, without telling him where they were going, went to rob the IGA. Counsel even went so far as to suggest a specific name for who might be the second person with Applicant’s brother. (PCR, p. 424, l. 16-18; p. 425, l. 24 – p. 426, l. 4 (“Bradley Cribb... there’s your second person”).)

This was a reasonable trial strategy, under prevailing professional norms. The testimony at trial was that when the car found in the woods was processed, law enforcement tried to obtain fingerprints but were unsuccessful. All they could get were smudges, like if someone was wearing gloves. (Tr. p. 149, l. 1-3; 283, l. 6-18; see also Tr. p. 289, l. 17-19.) Counsel pointed out the lack of fingerprint evidence, and used it to argue Applicant was not at the scene of the crime. (Tr. p. 297, l. 3-25; Tr. p. 295, l. 16-18; Tr. p. 406, l. 11-13.) Counsel’s strategic decision to argue Applicant wasn’t present for the crime was within the guidelines of acceptable representation. To satisfy the two prongs of Strickland, the Applicant must show that counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The Applicant has not met the burden of either prong. This allegation is denied and dismissed with prejudice.

N. Counsel didn’t object to Applicant’s DNA on clothing found in the car, Claim 14

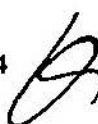
⁵ Counsel’s failure to recall is likely because, as will be discussed in the next paragraph, the testimony at trial was that no identifiable fingerprints were found inside or outside the car.

Applicant argued ineffective assistance of counsel because he felt Counsel “should have addressed further” the lack of finding conclusive DNA evidence implicating Applicant on the clothes found outside the car, and why DNA evidence identifying Applicant found on clothes inside the car was not significant since it was Applicant’s car and the clothing found in the car was not a match to the clothing worn on the video of the crime. (PCR, Tr. pp. 7-9.)

Counsel’s decision not to object to the introduction of the DNA evidence tying items in the car to Applicant was a reasonable trial strategy. As mentioned above, testimony at trial was that there was a 1 in 140 quadrillion chance that the DNA was left on the items in the car by a random person instead of Applicant. (Tr. p. 367, l. 17-24; p. 370, l. 7-8.) Further, there was testimony about other items found in the car that identified Applicant, including his cell phone, identification card, work ID and more. (Tr. p. 215, l. 12 – p. 217, l. 11.) Clothes found outside the car, which the State argued were the clothes on the store video, as well as a pair of gloves and ski mask that may have been the gloves and mask on the store video, were tested with the result no conclusive statement could be made regarding Applicant’s DNA and the items. (Tr. p. 364, l. 16 – p. 365, l. 20.)

Counsel made a strategic decision to argue that Applicant wasn’t in the car at the time of the robbery and that the lack of DNA on the clothing outside the car was proof. (Tr. p. 372, l. 2- p. 373, l. 1.) Counsel’s strategy is within the guidelines of reasonable representation, under prevailing professional norms. To satisfy the two prongs of Strickland, the Applicant must show that counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The Applicant has not met the burden of either prong. This allegation is denied and dismissed with prejudice.

O. Counsel should have objected in closing when the Solicitor noted Applicant wasn’t local



to Greenwood, Claim 15

Applicant argued ineffective assistance of counsel because Counsel did not object when, during the Solicitor's closing argument, he noted Applicant wasn't from the area. (PCR, p. 26, l. 20-24.) Applicant argued the Solicitor referring to his being from Barnwell County and coming to Edgefield to commit the crime was an objectionable emotional appeal to the jury to convict him and something Counsel should have objected to. (PCR, p. 28, l. 1-8; see also Tr. p. 390, l. 21-22.)

A solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). Improper comments do not automatically require reversal if they are not prejudicial to the defendant. On direct appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). (a solicitor's improper comments may be cured by the judge's instructions to the jury). The Applicant in a direct appeal has the burden of proving he did not receive a fair trial because of the alleged improper argument. Johnson v. State, *supra*. The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974); State v. Patterson, 324 S.C. 5, 482 S.E.2d 760, cert. denied, 522 U.S. 853, 118 S.Ct. 146, 139 L.Ed.2d 92 (1997).

At the PCR hearing, Counsel testified the brief comment is not something he would have objected to during closing argument. In his opinion, the comment was within the boundary of argument, which is permitted during closing. (PCR, p. 75, l. 21 – p. 76, l. 20; see also PCR, p. 79, l. 9-23.) Counsel's decision not to object to this portion of the Solicitor's close is within the guidelines of acceptable representation. To satisfy the two prongs of Strickland, the Applicant must show that counsel was deficient and also show the deficiency resulted in 6th Amendment prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). Clearly, the brief comment cannot be viewed to a reasonable probability to have undermined confidence in the verdict. The Applicant has not met the burden of either prong. This allegation is denied and dismissed with prejudice.

P. Counsel should have objected to "smarter than" comment in Solicitor's close, Claim 16

Applicant argued ineffective assistance of counsel because Counsel did not object when the Solicitor, in his closing statement, said Applicant thought he was smarter than the jury.⁶ (PCR, p. 43, l. 5-22.) At the PCR hearing, Counsel testified the comment is not something he would have objected to during close. In his opinion, the comment was within the boundary of argument, which is permitted during closing. (PCR, p. 76, l. 1-20.) Counsel's decision not to object to this portion of the Solicitor's closing is within the guidelines of acceptable representation of a lawyer

⁶ A search of the trial transcript doesn't support Applicant's statement that the Solicitor said Applicant thought he was smarter than the jury. The comment to which Applicant refers in the PCR proceeding is at page 404 of the trial transcript. (See PCR, p. 43, l. 5-13; Tr. p. 404, l. 8-20.) In context, in the closing argument the solicitor stated after a description of the steps the State claimed he took to avoid detection as the perpetrator: "I'm smarter than everybody else involved in this process and I'm going to scheme and wiggle my way out of this even if I get caught because I'm going to beat the security cameras, I'm going to beat any detectives, any attempt to detect that we committed this crime, because I'm smart and I know what I am doing. That's the kind of arrogance that we're talking about. But it ended up, he wasn't smarter than Investigator Robinson in this case and he's certainly not smarter than the twelve of you because you bring into this courtroom all of your wisdom."

practicing criminal law.

Even if this was deficient, the brief comment does not satisfy the burden to show a reasonable probability that absent the failure to object the result of the proceeding would have been different. To satisfy the two prongs of Strickland, the Applicant must show both that counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The Applicant has not met the burden of either prong. This allegation is denied and dismissed with prejudice.

Q. Counsel should have objected to his brother being allowed to testify, Claim 17

Applicant alleges ineffective assistance of counsel because of his belief that Counsel did not object sufficiently to his brother's being allowed to testify against him. (PCR, p. 29, l. 25- p. 30, l. 10.) Applicant claims Counsel should have objected sufficiently to keep the brother, who Applicant claims has mental issues and was found incompetent to stand trial in another case, off the stand in his trial. (PCR, 28, l. 18-21.) Applicant claims "the only evidence against him" was his brother's testimony and Counsel did not adequately address his brother's mental state. (PCR, p. 35, l. 6-14.)

Under Rule 601(a), SCRE, "[e]very person is competent to be a witness except as otherwise provided by statute or these rules." Accordingly, a witness is presumed competent and the party opposing the witness's competency has the burden of proving the witness is incompetent. State v. Needs, 333 S.C. 134, 142-43, 508 S.E.2d 857, 861 (1998), holding modified on other grounds by State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004); see State v. Pitts, 256 S.C. at 429, 182 S.E.2d at 743 ("In case of timely objection to the competency of a person offered as a witness, it is the duty of the court to make such examination as will satisfy it as to the competency or incompetency of the person to testify, and thereupon to rule on the

objection accordingly.”). Here, the Applicant has failed to present credible evidence that his brother lacked the threshold competency to testify under Rule 601.

On this point, Counsel Casto testified that he did not object to the brother’s testifying because he saw no reason to challenge the brother’s state of mental health. (PCR, p. 71, l. 3 – p. 72, l. 9.) He saw no issue with how the brother answered questions. (PCR, p. 77, l. 3-14.) Counsel noted “[i]t’s a high bar, he intelligently answered questions and his answers were rational and linked to the questions. (PCR, p. 71, l. 3-25.) Counsel noted that if he had not thought the brother was competent, he would have objected. (PCR, p. 72, l. 1-9.) Counsel chose to address the brother’s testimony, motivation, and mental health in his closing. In his closing, Counsel argued about the brother and the lack of credibility the jury should assign to his testimony when he talked about the brother saving himself and also when he brought out the brother’s mental health issues and noted he’s “infinitely better [now] than he was then... who knows what was going on in his mind.” (Tr. p. 426, l. 17- p. 427, l. 10; Tr. p. 409, l. 22- p. 410, l. 10; Tr. p. 411, l. 19-22.)

At the time of the trial, Counsel was an experienced criminal defense attorney. Either at the time of trial or shortly thereafter, Counsel was at the level where he served as head public defender over multiple counties. (PCR, p. 61, l. 25 – p. 62, l. 17.) The reasons given by Counsel, a full-time, experienced public defender with years of experience at the time of Applicant’s trial, relate to trial strategy. Counsel here acted within the guidelines of acceptable representation. To satisfy the two prongs of Strickland, the Applicant must show that counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The Applicant has not met the burden of proving either prong. This allegation is denied and dismissed with prejudice.



R. Applicant thought his record would come in if he took the stand so he didn't, Claim 18

Applicant alleges that, though he said he didn't want to take the stand at trial, it was because of his prior convictions, and he now believes the prior convictions would have been excluded if he took the stand. (PCR, pp. 20, 25.) Prior to his waiver of his right to testify, the solicitor indicated that he had prior convictions that would qualify as crimes of dishonesty and admissible to impeach the Applicant under Rule 609(a)(2). The initial was a 2015 conviction of burglary in the 2nd degree – violent, a 2014 conviction for burglary in the 2nd degree, and two prior convictions of burglary 3rd from 1992 and 1993. In addition, Counsel indicated that he had a criminal sexual conduct conviction that he was not going to seek to introduce. Tr.p. 377. The trial court held that the 2014 and 2015 burglary 2nd convictions would be introduced under State v. Colf, 337 S.C. 622, 627, 525 S.E.2d 246, 248 (2000). Tr.p. 378, l. 10 – p. 379, l. 5. The trial court advised the Applicant at that time the court would allow the State to question the Applicant if he testified whether he had two (2) prior felony convictions and then instruct the jury that its use would be limited to whether the Applicant's testimony was believable and not for any other purpose. Id. The Applicant then waived his right to testify and did not testify. (Tr.p. 375-383).

This Court notes that when this case was tried on June 8-10, 2015, the applicable decision was State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct.App.2003), which had held that armed robbery was a crime of dishonesty and admissible as impeachment under Rule 609(a)(2) and dicta in State v. Bryant, 369 S.C. 511, 517, 633 S.E.2d 152, 155–56 (2006). However, on July 29, 2015 **after the trial in this case**, the Supreme Court overruled Al-Amin in State v. Broadnax, 414 S.C. 468, 473–76, 779 S.E.2d 789, 791–93 (2015). In Broadnax, the Court noted:

Rule 609(a), SCRE, provides:
For the purpose of attacking the credibility of a witness,



(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

In State v. Al-Amin, the court of appeals considered the question of whether the appellant was entitled to a new trial after the trial court admitted his prior armed robbery conviction without first weighing the probative value and prejudicial effects of the admission. 353 S.C. at 408-09, 414, 578 S.E.2d at 34, 37. Noting that "[t]here is disagreement among federal circuit courts and state courts construing Rule 609(a)(2) as to which crimes are included," the court of appeals explained that "[t]he disagreement revolves around whether convictions for theft crimes, such as larceny, robbery, and shoplifting, should be admitted under the rule as involving dishonesty or false statement." *Id.* at 415, 578 S.E.2d at 37. The court of appeals acknowledged that a majority of federal courts has adopted a narrow approach to the question, but declined to follow federal precedent, instead adopting an expansive approach to determining what constitutes a "crime of dishonesty or false statement." *Id.* at 416, 578 S.E.2d at 38. The court of appeals reasoned:

"An essential element of robbery is that the perpetrator of the offense steals the goods and chattels of another or, in the case of an attempt to commit robbery, intends to steal the goods or chattels of the person assaulted. If this element is not present, the crime is not robbery or an attempted robbery. Stealing is defined in law as larceny. Larceny involves dishonesty. The fact that the perpetrator of the crime manifests or declares his dishonesty by brazenly committing the crime does not make him an honest person."

Id. at 421, 578 S.E.2d at 40-41 (quoting State v. Goad, 692 S.W.2d 32, 37 (Tenn.Crim.App.1985)). Thus, the court of appeals concluded, "It is the larcenous element of taking property of another which makes the action dishonest. Larceny is a lesser-included offense of armed robbery." *Id.* at 425, 578 S.E.2d at 43 (citations omitted). The court of appeals, citing several dictionary definitions, found further,

To restrict the application of Rule 609(a)(2) only to those offenses which evidence an element of affirmative misstatement or

misrepresentation of fact would be to ignore the plain meaning of the word “dishonesty.” “Dishonesty” is, by definition, a “‘disposition to lie, cheat, or steal.’” “To be dishonest means to deceive, defraud or steal.” “‘In common human experience[,] acts of deceit, fraud, cheating, or stealing ... are universally regarded as conduct which reflects adversely on a man's honesty and integrity.’”

Id. (internal citations omitted).

More recently, however, we decided State v. Bryant, in which we held that the trial court erroneously admitted the petitioner's prior firearms convictions under Rule 609 without weighing the probative value and prejudicial effects of their admission because the firearms offenses were not crimes involving dishonesty. 369 S.C. 511, 517, 633 S.E.2d 152, 155–56 (2006). In so holding, we stated:

Violations of narcotics laws are generally not probative of truthfulness. *See State v. Cheeseboro*, 346 S.C. 526, 552 S.E.2d 300 (2001) (citing State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000)). ***Furthermore, a conviction for robbery, burglary, theft, and drug possession, beyond the basic crime itself, is not probative of truthfulness.*** United States v. Smith, 181 F.Supp.2d 904 (N.D.Ill.2002).^[5] Likewise, firearms violations also are not generally probative of truthfulness. Accordingly, Petitioner's prior firearms convictions do not involve dishonesty and their probative value should have been weighed against their prejudicial effect prior to their admission pursuant to Rule 609(a)(1).

Id. (emphasis added).

Here, the State argues that because Bryant involved convictions for firearms offenses, and not explicitly a prior armed robbery conviction, the above language is merely dicta. Therefore, the State relies on earlier precedents from our courts—namely Al-Amin—and points to other states' precedents to support its argument that armed robbery is a crime of dishonesty, such that no balancing test is required.

We take this opportunity to overrule Al-Amin, and reaffirm the rule as formulated in Bryant that armed robbery is not a crime of dishonesty or false statement for purposes of impeachment under Rule 609(a)(2).

State v. Broadnax, 414 S.C. 468, 473–76, 779 S.E.2d 789, 791–93 (2015).

However, even if the burglary convictions after the trial may no longer be crime of dishonesty under Rule 609(2), they may have still been admissible under Rule 609(a)(1), they



may still have impeachment value if Odom's conduct involved deceit, fraud, a false statement, or anything reflecting on his credibility. See State v. Robinson, 426 S.C. 579, 599–600, 828 S.E.2d 203, 213–14 (2019). However, in the trial setting prior to Bryant, this specific showing was not made.

To the extent Applicant's argument focuses on what he now believes he knows about the admissibility of his prior record if he were to take the stand as a free-standing claim of trial error, that is not an appropriate ground on post-conviction relief and is not before properly this court. An application for post-conviction relief is not a substitute for an appeal. Errors which could have been reviewed on direct appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings. Miller v. State, 269 S.C. 113, 236 S.E.2d 422 (1977); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975); Peeler v. State, 277 S.C. 70, 71, 283 S.E.2d 826, 826 (1981). The ground as a free-standing or due process ground must be dismissed.

As an ineffective assistance of counsel claim, importantly, in this PCR setting, the Applicant had the burden of proof in showing deficient performance and prejudice. For an ineffective assistance claim, the PCR court must "determine whether counsel was ineffective at the time of the alleged error." Pantovich v. State, 427 S.C. 555, 562–63, 832 S.E.2d 596, 600 (2019), reh'g denied, (September 27, 2019). Thus, the court must consider the law as it existed at the time of trial and "not as it has evolved today" Id. at 564, 832 S.E.2d at 601. Accordingly, trial counsel will not be found deficient for failing "to be clairvoyant or anticipate changes in the law" Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). Chappell v. State, 429 S.C. 68, 79, 837 S.E.2d 496, 501–02 (Ct. App. 2019). In this setting, prior to Broadnax, this Court cannot find that counsel was deficient.

To the extent the claim is a claim his counsel failed in advising him or objecting to the court's admissibility conclusion on the burglary convictions, counsel's testimony on the topic at the PCR hearing is relevant as well as the trial record set out above at Tr.p. 377-384. At the time of the potential testimony, the trial court had resolved to admit the evidence of the burglaries as a felony that could only be used to impeach with a limiting instruction. Counsel testified that he recommended that, given Applicant's priors, he should not take the stand at trial. (PCR, p. 75, l. 5-8.) Counsel indicated he couldn't specifically remember his conversation with Applicant, but his general belief is "though the judge instructs the jury not to hold it against you, sometimes it is hard for jurors not to." (PCR, p. 74, l. 16-23.) The reasons given by Counsel, a full-time, experienced public defender with years of experience *at the time of Applicant's trial* are not outside the range of professional decision. (PCR, p. 61, l. 25 – p. 62, l. 17.)

Alternately, this Court must find that the Applicant failed to show prejudice. First, he failed to show that the two charges would not have been admitted under Rule 609(a)(1). ("that the probative value of admitting this evidence outweighs its prejudicial effect to the accused."). Second, he failed to show that the result would have been different to a reasonable probability if he had testified and the priors not been admitted.

To satisfy the two prongs of Strickland, the Applicant must show that counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The Applicant has not met the burden of either prong. This allegation is denied and dismissed with prejudice.

CONCLUSION

After careful consideration of Applicant's Amended Application for Post-Conviction Relief, the Record of the case, the arguments of Attorneys McMahan and Smith, and the testimony



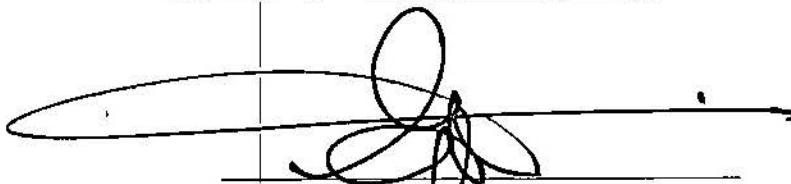
of witnesses, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. To satisfy the two prongs of Strickland, the Applicant must show that counsel was deficient and also show the deficiency resulted in prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The Applicant has not met this burden on any of the allegations made. Therefore, the Court denies Applicant's requested relief in this matter.

This Court notes if Applicant desires to appeal this Order, he must file and serve a notice of appeal within thirty days from the receipt of this Order through his counsel of record. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 6th day of March, 2024.



GEORGE M. MCFADDIN, JR.

Presiding Judge

Eleventh Judicial Circuit

Sumter, South Carolina