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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Darlington County

Honorable George M. McFaddin, Circuit Court Judge

ANGELO HAM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000550

APPENDIX

LARA M. CAUDY
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

D. RUSSELL BARLOW
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-3737

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit
1 Public Square, Room 410
Darlington, SC 29532
(843) 479-6516

ATTORNEYS FOR RESPONDENT

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
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STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF: DARLINGTON) FILED) FOURTH JUDICIAL CIRCUIT
)
IN THE INTREST OF: 2004 SEP 14 AM 9:38) 04-JU-16-~~23~~, 233, 234
Angelo Ham) 235
A Minor Under the Age of Seventeen (17) Years) CLERK OF COURT/RMC DARLINGTON COUNTY, S.C.

Comes before the Court Sherrie Baugh, Assistant Solicitor, who would respectfully show that:

1. The State is requesting the Petitions be transferred to the Court of General Sessions pursuant to 20-7-7605 and such request in writing is attached to and incorporated in this motion.

2. The defendant, Angelo Ham, born on [redacted] 1988, is fifteen (15) years old.

   The defendant, Angelo Ham, has been charged with the crimes of Armed Robbery, Murder, and Possession of a Weapon During the Commission of a Violent Crime. The alleged offenses occurred when the defendant was fifteen (15) years old.

3. The Petitions were filed in Family Court on September 14, 2004.

4. There is probable cause to believe the defendant committed the crimes for which he/she is charged.

5. The seriousness of the alleged offenses is of such gravity as to require waiver of the said charges to the Court of General Sessions in the interest of the community.

6. The alleged offenses are of a willful, malicious and dangerous nature.

7. There is sufficient merit to warrant the grand jury returning a true bill in the said offense against the defendant.

8. The prospect for the adequate protection of the public would best be had by the defendant's incarceration in a facility other than those maintained by the South Carolina Department of Juvenile Justice.

9. The offenses for which the defendant is charged are felonies if committed by an adult.

TRUE CERTIFIED COPY,
CLERK OF COURT/ RMC
DARLINGTON COUNTY

Darlington, South Carolina
September 14, 2004

Respectfully Submitted:

Sherrie Baugh
Assistant Solicitor



STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON)	DOCKET NO.: 05-JU-16-233
	234,235
THE STATE,)	
)	
PLAINTIFF,)	
)	
VERSUS)	TRANSCRIPT OF RECORD
)	
ANGELO HAM,)	
)	
DEFENDANT.)	
: : : : : : : : : : : : :)	

DARLINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ROGER E. HENDERSON

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

KENARD REDMOND, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

HANK ANDERSON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

LISA CARTER
FAMILY COURT REPORTER

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EXHIBITS

NO.	DESCRIPTION	EV.

(NO EXHIBITS WERE INTRODUCED)

THE COURT: All right, solicitor.

MR. REDMOND: May it please the Court, Your Honor? Before you at this time seated at the defense table is Angelo Ham. He's here before you under 2005-JU-16-233 that being for 233, 234, 235 being for murder, armed robbery, and possession of a weapon during the commission of a violet crime. He's represented by Mr. Anderson, Hank Anderson of the Florence County Bar who was appointed. The state has made a Waiver Petition, Waiver Motion to the court and at this time, with the court in hand we are ready to proceed with the Waiver earing. Your Honor, just briefly, it's the state's position that based upon *Kent versus Ohio* factors further outline in the *State v. Miller* case, specific site being *611 SEd 309,* that would be respectively ask that this case be waived to general sessions court for prosecution on the state charges.

THE COURT: Thanks. Anything from you Mr. Anderson before we proceed?

MR. ANDERSON: No, sir, Your Honor.

THE COURT: All right, solicitor.

MR. REDMOND: Thank you, Your Honor. I'd first call, I don't know if Dr. Heffler is in the courtroom . I'd call Dr. Joel Heffler to the stand.

THE COURT: If you'll step up here, please, sir. Place your left hand on the Bible and raise your right. Do you

swear or affirm the testimony you're about to give will the truth so help you God?

DR. HEFFLER: I do.

THE COURT: Have a seat, please, sir. And for everybody's information the public address system is down not working. So, I'm going to ask everyone to speak loudly and clearly and distinctly when you're testifying or addressing the court.

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

THE COURT: Yes, sir.

DR. JOEL HEFFLER, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. REDMOND:

Q. Dr. Heffler, why whom are you employed?

A. I'm the chief psychologist for the South Carolina Department of Juvenile Justice for the Pee Dee Region.

Q. How long have you been so employed?

A. I've been at that position for a year and half. I've been at the Department of Juvenile Justice for three years.

Q. How long have you been working in the field of psychology?

A. Thirty four years.

Q. Thirty four years. Could you briefly give us your educational background, unless, the defense is willing to consent that Dr. Heffler is an expert in this field?

MR. ANDERSON: I'll consent.

MR. REDMOND: Thank you. Your Honor, the state would move with the defense's consent that Dr. Heffler be qualified as an expert in this field of psychology?

THE COURT: All right, sir. I'll find him to be so qualified.

Q. Thank you, Your Honor. Dr. Heffler, were you ask to evaluate Angelo Ham regarding the charges that were read just a moment ago?

A. Yes, I was ask to a waiver evaluation. I saw him in November, twice in November and once in December.

Q. Could you briefly explain to the court as far as the waiver evaluation? What do you do and look for in that particular evaluation?

A. We gather a lot of critical information, historical information, school record information and we do psychological testing to determine to what extent he knew what he was doing. If he knew right from wrong. If he was able to process the information. It's a little bit different than a competency evaluation. It has to do with is his ability, is more on judgments, the relationship between his intellectuals capabilities and his moral judgment.

Q. Dr. Heffler, where were these interviews conducted?

A. At the detention center in Columbia.

Q. At the time that you did these evaluations, could you

tell the court specifically as it relates to Angelo Ham what your particular findings were and then I'll ask you some more questions based on your answer?

A. Angelo certainly knew right from wrong. He knew what he should do, what he shouldn't do. He was able to accurately portray that he's easily influenced by other people and the way he hangs out with the wrong people. He often does things he shouldn't do. He has capabilities at a certain level but sometimes his behavior, his ability to implement certain things is not quite as well developed as his ability to actually understand those kinds of things. Seems like he would make a decision that would not be the best decision he could have made and then he would implement that verily well was based behavior that's somewhat how adapted.

Q. Let me just ask you something. The decision to kill somebody or participate in killing somebody even with someone of intelligent such as your. We would you classify that as a bad decision?

A. I certainly would.

Q. Of course, if it was implemented well, then you have made a bad decision and it's been implemented well. Is that a fair statement?

A. I would agree.

Q. And, I'll move on now. As part of your evaluation, did you have access to the defendant's criminal history?

A. The DJJ charges?
Q. Yes?
A. Yes.
Q. Yes, as prior to DJJ charges and I think those are indicated on Page 2, Section B of your particular report, is that correct?
A. Yes.
Q. So, then you were aware of the fact that he had actually been incarcerated with the Department of Juvenile Justice prior to this incident that we're here on today?
A. Yes, he had.
Q. Firming your evaluation, if you would take us through your evaluation as it relates to Mr. Ham and I had interrupted you, if you could continue with your evaluation. What you did, specifically, Mr. Ham?
A. Well, I gave him a series of test that measured various aspects of his psychological functioning. One test had to with depression. One had to do with intellectual capability. One was academic achievement. One was personality. One about substances abuse. You want me to go into the results of each of the test?
Q. If you could, yes, sir.
A. Okay. If you are looking at the report on Page 7, psychological test results. The largest test that I gave him was the test of intellectual capability. And, with his

overall score was in the low average range which was some what in the range which would be expected given his academic performance at school and things of that nature. However, there was a big difference in some of sub test. His verbal ability, is the ability to understand verbal kinds of things, was not nearly as well developed as his implementations, of course, his non-verbal skills. This is some what typical of many people in the Department of Juvenile Justice although it's not exclusive. But it also showed that he had miss a lot of easier items and then correctly answered more difficult items. This indicates that he has not, he's not using all of the potentials that he has. He's not using all the capabilities that he has. We compared that then to his academic capabilities and we find that his arithmetic skills are very high compared to his intellectual potentials but, his reading skills are some what limited. His reading skills not only are lagging behind his potentials but, his understanding of the reading is even at a lower level. Sometimes at school children are ask to stand up and the teacher ask them to read out loud and their ability to read is often what the teacher will judge on but, that does not mean that he understands everything that he reads. And, Angelo scores, his reading, his word reading score is six grade level but his understand, his comprehension was only for third grade level, almost to the fourth grade level.

While his derivative scores were quite high. They were in the twelfth grade level. This is not uncommon given that verbal performance split that I just mention, that when it's a specific hands on kind of task, like arithmetic usually is, he kind of excels and does very well.

Q. Let me stop you there and I apologize and we'll pick up from there. But, would you agree with me that there are people in the work force based upon your experience, that there's people in the work force who, in fact, can't read or write. In fact, one of the jury questions that we have in South Carolina regards to a juror being able to read and write. My questions is, wouldn't you agree me that just the fact that he can't read and comprehend would not by itself make him a, by itself, in of itself, make him unable to participate willingly in such acts as he is charged?

A. No, he understands most of things that happen around him. He may not be able to explain them very well. But, yes, there's certain many people in the work force whose jobs do not require verbal, reading, and spelling kinds of task, mechanical kinds of things but, though, they don't require those kinds of skills really.

Q. Now, and I had interrupted you and you were going through the rest of your scores. You were talking about his reading comprehension.

A. Next, it has to do with vision motor perception. Can he

see things normally or is his perception distorted in some ways and he got a normal score on that. He obtained a very high score on the substance abuse screening inventory. That's what we would anticipate given the types of information that he described in terms of his past use. On depression test, he got a score that would indicate a mild level of depression which would not be uncommon for somebody who was in the detention center setting and being detained. On the other hand, it was not a high clinical score that would require psychiatric treatment and intervention. Personality testing showed that he was often dependent and dependent on other people to give him feedback about his self imagine and his, the positive aspect of his functioning. That made him somewhat dependent on other people. He ask questions similar to often highly influenced by other people especially negative peers. And lastly, on a test that compares him to the juvenile delinquent population, he again had a high score on dimension that indicates that he looks at things in terms of power and control, kind of dimension that other people might be able to influence him unduly and some people he might try to do the same to them. On another test looking at thoughts, sort kinds of things, there was no evidence of any kind thought disorder, unusual thinking, and I don't know at the bottom indicated at all, this is very similar to the testing that had been done when he was the

Midlands Evaluation Center back in 2001. It was all very similar. There a few changes, but nothing major.

Q. Now, getting to Page 9 as it relates to your summary of things that had occurred and before I ask you to explain that, there's only on question I want to point out on Page 9 in the second paragraph under summary, it indicates that you talked with his mother, I believe, and at that time she believed that Angelo knew right from wrong, but had always done work he wanted to do, not what he knew was right. And, was that information given to you by his own mother?

A. Yes, it was. And it's very consistent with the test information that we just went over. She was quite clear on the fact that she knew he was capable of doing better than he was doing, but he had a history of not doing as well as she knew he could do, that she knew he had capabilities. As I indicated earlier he had not fully implemented and used his own benefit.

Q. And, by the fact that he had done what he wanted to do with, wouldn't that suggest to you Dr. Heffler, that, in fact, this was a willful disregard of what was right and wrong, given that he knew the difference between right and wrong?

A. Well, when we talk about teenagers, we're not talking about adults and their kind of thinking is a little bit different. When we say that he did what he wanted to do, I

mean, he made a decision to follow certain people, but once he made a decision to follow certain people, he might do whatever they did even if he knew it was wrong. So, I think we have to be careful with the words, doing what he wanted to do. I mean, he made choices, yes, he made bad choices, yes. He was easily influenced, yes. But, that's not to say that he would come up with the ideas on his own.

Q. Now, and again I interrupted you, if you would continue and I think we've pretty much covered the summary aspect, unless, there's something that you would want to express to the court that I'd neglected to bring out. Otherwise, I would ask you about your recommendations. What are you recommendations based on the conclusion you drew of this particular matter?

A. Well, the recommendations which come right out of the test data and information that we have already looked at, is that Angelo, and I think Angelo said the same thing when talking to me, when he's in a highly structured environment with a positive influence, he tends to do very well. When he was at the Marine Institute educationally he did very well. He completed the program without difficulty. And, when he as a good male role model and the right kind of environment, like on educational activities, he can do very well. On the other hand, when he is left to the vulnerability of people who have influenced him a negative direction, he tends to go

into a negative direction. So, if he could be in a stable, positive, goal directed circumstance, he tends to do very well, and I think that's certainly what he would need to be.

Q. Now, let me ask you this. And this goes back to the fact that he had been in DJJ, I think, almost two years prior to this incident. Isn't that, and I think based upon your report, isn't that a structured environment that would supposedly rehabilitate in the manner that you've indicated?

A. Yes. And by most reports he did very well.

Q. Would you agree with me that despite that, we find ourselves here today on the murder, armed robbery, possession of a weapon during a crime of violence. My point being is, even though he had been through that structured environment before, he's still charged with his offense. Of course, his guilt is to be determined later, but if he is found guilty of this charge, that means that structured environment as he was before, did not successfully rehabilitate him. Would that be a fair assessment?

A. But the job had not been finished yet.

Q. I'm sorry.

A. But the job had not been finished yet. It doesn't mean he couldn't be.

Q. And what do you mean, when you say that the job had not been finished, what ---

A. Well, while he was in structured environment, he did

very well and if he could continue in that long, remember we're talking about a teenager now, we're not talking about a thirty five year old adult, that he's in a developmental process, and if he were allowed to continue in that process, he might make further gains.

Q. He might make further gains?

A. He might, yes.

Q. Again, isn't part of the reason for the rehabilitation programs he went through prior in almost two years, I might add, at DJJ, would be to prevent him from finding himself in the position that he finds himself in today?

A. Yes.

Q. At least that's---

A. Doesn't mean it's finished product.

Q. At least that's what you would hope would happen?

A. We hope to move in that direction but, never know for sure when the job is completed.

Q. And, speaking on that let's move to Page 10 with the negative factors. You list several positive factors which I'm sure Mr. Anderson will try to address but I'm looking at the negative factors, right now. Part of which being is the second negatives -- Well could you just briefly go through each of the factors and then I may ask you some follow up questions. But those factors, were they considered in your overall recommendations?

A. Yes, they were. There are five negative factors and, of course, we look at children, and adolescents of various ages who have committed different kinds of crimes and the factors would be true of everybody not just a major event like this. He was charged with a serious offense that involved the death of an individual. And the more serious the offense is, the more disregard, the lack of a welfare of other people that was actually present. Now, the more severe the offense, the less likely it is in some ways that the individual can be rehabilitated in a relative short period of time. The second one would be the long history. If somebody is committing their first offense they would have a much higher probability of rehabilitation as somebody who has committed their third, fourth, tenth, twentieth or one hundredth offense. If somebody comes from a family that has high structure and successful family kind of environment, that's a positive factor. Angelo's mother clearly portrayed that he lived in a family that was less than stable. They were negative factors there. So, that would be a negative factor in terms of rehabilitation. That really doesn't actually rule positive rehabilitation out, they're just positive/negative factors. Angelo maintain that he was innocent. If, in fact, somebody is guilty and they maintain innocence that would be a negative factor as opposed to appropriate remorse. And, lastly, when somebody is influenced by other people to a

large degree, then we have to always look at the environment that they're going to be in. I believe, I actually quoted in there a place where Angelo said, if he went back to the environment that he was in when this happened, not times out of ten, he'd end up doing it again. He needs to be in a different kind of environment. So, those would be the negative factors and, of course, then we would look at all the kids to look at the positive factors. Did you say you wanted me to go through those also?

Q. Well, since you've gone on through it, they'll be gotten into, so we might as well do it now.

A. Okay. Positive factors are that he demonstrated intellectual capabilities to understand and benefit from both counseling and education and as I indicated in the test results, we had some evidence to show that he has higher capabilities than these test actually show. He wasn't using all the things he might be able to use. During the evaluation he was able to sustain his attention and his motivation. He functioned reasonably well. He was able to participate and answer questions in a very reasonable adolescent kind of a way. And if he could, lastly, if he could be helped to make his own decisions as he was saying and not the influence by other people. If he could be in a different kind of setting where he would get training and counseling then all of those would be positive factors.

Q. And, again, I point to the fact and going back briefly to the negative factors. Number two, he has a long history of infractions, I think, we see starting in 1999. But, yet again here in 2005, we still find ourselves here today. Isn't that correct, Dr. Heffler?

A. It's true that he has a long history and we're today, yes.

Q. Yes, sir, exactly. He had actually done, I think, it was about two years in the Department of Juvenile Justice prior to this incident.

A. I believe, he was at one of the wilderness camps for a while, at the Marine Institute for a while. I believe, two years sounds about right that he was away from home with DJJ's estate.

Q. Also you indicated that he maintained that he was innocent. Now, obviously you had the chance to talk with Angelo regarding this and I think you expressing some of the things that he stated. However, based on your last sentence, if evidence was proper and shown that, in fact, Angelo was not be truthful and was, in fact, guilty, wouldn't that had effect your recommendation, in fact, you say that people who don't admit wrongdoing are less likely to rehabilitate, is that correct?

A. Well, as I said in number four, negative factor number four, that persons who are guilty, but do not admit their

wrongdoing, that just enhances number four as a factor. So it would be a negative factor towards rehabilitation.

Q. Now, and moving on toward the end of your evaluation, you talk about adequate protection of the public, I don't think we need to spend much time on that because obviously these are serious offenses, would you agree with that?

A. Serious offenses, yes, I would agree with that.

Q. All right. Now, you talk about the services available to the juvenile court if he were to be remained as a juvenile. Could you explain that and, I guess, the bases for it, you wanting Mr. Ham, the defendant, to remain in family court and be adjudicated as a juvenile?

A. Could you repeat the last-- I can't hear you real well. Can you speak up.

Q. I'm sorry. What is the bases for your conclusion, your recommendation that he remain in juvenile court?

A. In my work I have spent a lot of time looking at the juvenile facilities that DJJ provides and I have been to the adult facilities and the youthful offender program comparing things and I talked with the people at the youthful offender program and adult probation officers who work right across the hall from me. And, in general if somebody is going to be rehabilitated, if somebody is going to offer rehabilitation services, we want to look at the kind of services that they can receive based on where they are, and everybody seems to

agree, that the juvenile justice system provides more intensive services of a more intensive nature over a wider range of difficulties than the adult facilities. Even the youthful offender program which offers more than the general population services. It doesn't offer the extensive nature of the services that DJJ offers.

Q. That is based upon and premised upon the hope that he can be rehabilitated better in that environment, is that correct?

A. That's correct.

Q. And, however, he has been in that environment and, in fact, spent two in that environment previous to this hearing today?

A. I'm not sure exactly ---

Q. In other words, he's spent two years in DJJ, despite what you just said, he spent two years in DJJ prior to us being in court today on these current charges?

A. That's correct.

MR. REDMOND: Your Honor, that would be all that I have of this witness.

THE COURT: Mr. Anderson?

CROSS EXAMINATION BY MR. ANDERSON:

Q. Following up with that last question, Dr. Heffler, and I think that just relates to what you put in your report as far as under the psychological test results, you know,

specifically on Page 7, you know, you indicated earlier that he reads at, you know, a little bit less than a fourth grade, excuse me, his reading comprehension is a little bit less than a fourth grade level. I mean, wouldn't that have a lot of bases on why he may find himself back where he is today?

A. Well, statistically speaking when somebody does not have the academic skills to compete, if you would, with their peers then they are more likely to get involved in anti-social instead of pro-social behavior.

Q. And, based upon your knowledge at the juvenile system, can he be more readily taught, more easily taught in the DJJ system than he could in an adult system?

A. Yes, I believe that DJJ provides much more typical school related circumstances. For example, every DJJ Institution has certified, state certified teachers and DJJ is it's own school district. And when kids are you in DJJ, they're not losing school time. Everything they do counts toward their regular public school. The adult prisons offer educational experiences but they're not their own school district in that way, at least I don't think they are.

Q. On the bottom of Page 6 and the top of Page 7, where it says, starting off with Paragraph E, talks about empathy, remorse and responsibilities, one of the questions you ask him was, "was it ever right to kill anybody," and what was his response to that on, I think, it's on the top of Page 7?

A. He said, "it was never acceptable to kill anybody except in war but never on the street."

Q. What did he say about how he was effected by peer pressure?

A. Well, as I said, he recognized that he has been overly influenced by other people, negative peers. I think, he said, "If people do it," meaning when you're there, "if people do it, you've got to do it." "If friends keep it up and you follow around with them, you'll end up doing it. You ain't got to but you will." I think that's a clear statement of how so many children, you know, unstructured kind of situation, will in fact latch on to the structure that the wrong person they provide.

Q. What type of training could a juvenile facility offer him as far as getting his reading comprehension up to a more acceptable level?

A. Well, we do have in the Department of Juvenile Justice every facility does have state certified teachers. They would work with just in a regular classroom on a continual bases working towards either graduation or GED. There's a verily high ratio of successful completion of the GED right now at the part of the complex in Columbia for example.

Q. One of the test you said that you completed on him was measuring what the personality dimension are as far as the juvenile delinquent population and that's I guess next to the

last paragraph on Page 8. What exactly does that test measure?

A. Well, psychological test are always developed by giving the test to known populations and seeing which population answers the questions this way, which population answers the questions that way. If a question doesn't differentiate then it's no longer included, it's left out. So, it's always statistically just comparing him to known groups, just like the IQ test and the achievement test. He's compared to known groups, this is children who have been involved, adolescents mainly but some children, who have been involved in the legal system for offenses of one type or another. He answered the questions in a way that with similar to people that have a tendency to blame others but had negative self concept and that's why they often did that. They did not have a very high opinion of themselves and often looked at others to provide information of what they should do in order to be part of a group, to be liked, to be socially excepted. This dependent informing behavior this could be anticipated in Angelo's case, both by his history and from the test scores that he would look to other people to make some of those decisions.

Q. Angelo, he's the type of person that if he could control somebody, he would control them?

A. He does seem to use that as a dimension that he might.

Q. And, vice versa ---

A. I can't say that he will because we don't have any history to demonstrate that but it is a possibility.

Q. And, vice versa, he would also be easily controlled by someone that was smarter than him or someone ---

A. We have behavioral and test data to support that, yes.

Q. Do you think that based upon his age and based upon the series of test that you gave him Dr. Heffler, that he could be more easily rehabilitated at a juvenile system.

A. I think when we look at rehabilitation services and treatment services there is a wider array of services and a more intensive level of services available in the Department of Juvenile Justice, yes.

Q. I mean, I think there's no doubt that he behaves well in a structured environment, White Pines, the Marine Institute ---

A. Correct.

Q. And, while he's there, I guess, based on your level of experience with DJJ system and let me just back up for a second, do you have any experience as far as adults facilities are concerned or what they offer at SCDC?

A. Not with SCDC, but with adult facilities, yes.

Q. Do you think that someone such as Angelo with his reading level and his comprehension right now, would he be more easily influenced in an adult facility or would he be

better controlled in a DJJ facility?

A. Given the staff ratio at SCDC facilities versus juvenile justices facilities, yes, there would be a lot more supervision at a DJJ facility than at an adult facility.

Q. I mean, from what I could see, correct me if I'm wrong, Dr. Heffler, he definitely needs some structure in his life and needs some guidance?

A. Correct.

Q. And, at this point in time based on what I'm hearing from you, it appears that DJJ can give him a better chance at rehabilitating than SCDC could?

A. DJJ have more of those services, yes.

MR. ANDERSON: Thank you. That's all the questions I have right now, Judge.

MR. REDMOND: One quick redirect question, Your Honor.

THE COURT: Mr. Redmond, yes, sir.

REDIRECT EXAMINATION BY MR. REDMOND:

Q. Once he finishes, let's assume that he were to remain in juvenile court, go through the DJJ services, when he completes his time under the guidelines, could you tell us what happens at that point with him? In other words, is he released?

A. If he were sentenced as a juvenile?

Q. Yes.

A. Then typically he would stay in the system until he's 21

years old.

Q. Until he's 21 years old and then at that point he would be released, correct?

A. There are some provisions beyond that would be with probation and parole but, yes. In general the answer is, yes.

Q. And, in fact, if he has not been rehabilitated, what safe guards are there to ensure that the public itself would be protected, which is one of the guidelines under the *Kent case?*

A. I'm not sure what the answer to that is.

Q. I'll take that as I don't know.

MR. REDMOND: Nothing further, Your Honor.

THE COURT: Anything else, Mr. Anderson?

MR. ANDERSON: No, sir, Your Honor.

THE COURT: You can step down, Dr. Heffler. Thank you.

MR. REDMOND: My next witness would be -- My last witness for the state would be Calvin Jackson with the Darlington County Sheriff's Department.

THE COURT: If you would place your left hand on the Bible and raise your right. Do you swear or affirm the testimony you're about to give will the truth so help you God?

MR. JACKSON: Yes, I do.

THE COURT: Have a seat, please.

MR. REDMOND: Your Honor, I think since Dr. Heffler has to go back to Horry County and I talked with Mr. Anderson, we have no objection to Dr. Heffler being excused.

MR. ANDERSON: No, objection, Your Honor.

THE COURT: You may be excused, sir. Thank you.

CALVIN JACKSON, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. REDMOND:

Q. Deputy Jackson, could you tell us -- by whom are you employed first of all?

A. The Darlington County Sheriff's office.

Q. How long have you been so employed?

A. I've been employed there for three and half years.

Q. How long have you been in law enforcement?

A. Going on my twelfth year.

Q. What is your position with the Darlington County Sheriff's Department?

A. I'm a criminal investigator.

Q. And, I say Department of Sheriff's office, I think, officially. How long have you been a criminal investigator with the sheriff's office?

A. Three years.

Q. Were you called to a murder involving one Richard Griggs at his store out in Byrd Town Community in Darlington County?

A. Yes, I was.

Q. What date were you made aware and called to particular scene?

A. I was called on September 9th ---

Q. At what time?

A. ---2004. I received a call from my central dispatch somewhere in the neighborhood around 11:00.

Q. Did you go to the scene of the incident?

A. That's correct. Yes, I did.

Q. Could you tell us what you observed and what you did briefly at the scene of the incident?

A. Well, I responded to the scene which is the Griggs Thrift way store located in Hartsville, Darlington County. Upon my arrival, I met the scene officer who was Deputy Nelson there. Upon my arrival also the sergeant who was on patrol that day, Investigator Craig Braddock had the scene secured with yellow tape. As a result preliminary investigation started. Went to right next door with the victim where the store is adjacent to his residence. Went there, received information that the store had a video camera system and the recording system was located inside his house which was adjacent to the store. Went there to see if any evidence or any possible, I guess, action were recorded on a video recorder that was located inside the store. As a result the tape itself, I guess, had already absorbed from the time of closing. At that point, I was able to see a

sheet in front of the door of the business itself to conceal victim, Mr. Richard Griggs, there in the store lying on the floor there.

Q. And, at that time was Mr. Griggs deceased at the time you arrived?

A. That's correct. Yes, sir.

Q. In fact, my apologies but I think, back to the court, I'd have to get in this. Based upon your investigation, was it true that approximately ten shots were fired and struck Mr. Griggs?

A. Yes, sir. From the preliminary report from the pathologist approximately about ten shots were ---

Q. What caliber weapon was used in that?

A. A twenty two caliber, twenty two caliber semi-automatic.

Q. And, in fact, based on your investigation and review of the case file and the autopsy report, in fact, four of those bullet wounds were fatal, is that correct?

A. Yes, sir.

Q. In fact, four of those wounds struck Mr. Griggs in the head, three of which was fatal?

A. Yes, sir.

Q. Now, could you take us further and I'm sorry to interrupt but take us further into what you proceeded to do pursuant to your investigation?

A. Of course, the family was there on scene. We were able

to obtain some preliminary information in regards to time of closing and also who were the last people inside the store. They had an employee who comes by shortly or the time to assist Mr. Richard Griggs in closing, sweeping the parking lot. At that time, we spoke with, we located him off of East Old Camden Road at which time he observed a white color '90's model Cadillac with some front end damage earlier in the parking lot. Regards to that, he identified two of the individuals inside the car that he knew personally.

Q. And, which two were those?

A. Dennis Hunter and Angelo Ham. At that point, he also provided information of where Ms. Ham, the mother of Angelo, lived at whom I was also familiar with. At that point, myself and Sergeant Craig Braddock traveled to her residence. We spoke with Ms. Angelo Ham briefly and ask her where was Angelo located at this time and she advised that he was not home. She told us that normally he's usually home during the school hours and that he was in the company with a guy she did not know, driving a white colored Cadillac with some front end damage, that he came by earlier that day around 6:00 to get some gas to go to the store.

Q. Okay. So, let me stop you there. Angelo Ham was picked up at 6:00 and again you got the called and based in your investigation of this murder occurred around 10:00?

A. Yes, sir.

Q. You can proceed. So, then your investigation carried you where now?

A. At that time, if I recall, Ms. Ham advise me that she could not make contact with Mr. Angelo on his cell phone. She also indicated to us that Dennis, the co-defendant in this case, grandma lived, she gave direction where he lived at. We also, myself and several officers proceeded to the grandmother's house of Mr. Dennis Hunter. We were able to make contact with her. She advised that she had not seen Dennis earlier, but he was in company with a young man she did not know driving a white colored Cadillac, a '92 model, '90's model with some front end damage.

Q. So, once you got this information what was your next step?

A. Well, this information revealed and also the description of the vehicle was similar to the case I was working a day prior where Mr. Anthony Robinson was involved in with his girlfriend, whereas, that case was investigated by me, several witnesses indicated, identified him at the scene. At which time he had fired upon her, striking her in the leg. Warrants, through the investigation was obtained with several witnesses involving him with the indication of front end damage being clearly seen in a car was corroborated Ms. Angelo Ham and Dennis' grandmother with the same similarities. With that information, we clearly identified

that Mr. Anthony Robinson was the car owner of this vehicle. At that point, we did a, like, B.O.L.O. or be on a lookout through our central dispatch for the local law enforcement with Hartsville and Darlington City police inference to this vehicle.

Q. Was that car located by the Hartsville Police Department?

A. That's correct. It was located at the Hartsville Motel right off of South Fifth Street, North Fifth Street in Hartsville, parked at the motel.

Q. About what time was the car located at the Hartsville Motel?

A. We're talking now, going to the next day any where between 1:00 and 2:00, somewhere in that neighborhood.

Q. So, three to four hours after the murder?

A. Yes, sir.

Q. Were you dispatched, did you dispatch officers to that motel for the purposes of apprehending or attempting to apprehend the suspects?

A. That's correct. First we met at the Hartville detective division, due to the fact of the severity of the crime, to get a plan of action of how we were going to be able to make contact with the individual knowing that a firearm that was used.

Q. Did you subsequently go to the Hartville Motel and

encounter the suspect?

A. After the meeting for the safety precaution for law enforcement, we did subsequently went to the Hartsville Motel.

Q. Did you find the suspects there?

A. Yes. In fact, we found all three.

Q. Where did you find them?

A. We found them in the upstair level room, if you bare with me I can you the exact, Room 40 which is the upstair level.

Q. Who was in the room when y'all went in?

A. Mr. Anthony Robinson, Mr. Dennis Hunter and Mr. Angelo Ham.

Q. Angelo Ham, the defendant?

A. Yes, sir.

Q. And, y'all got this information between, I guess, y'all went to the hotel between 1:00 and 2:00 in the morning?

A. That's correct.

Q. Now, what else did y'all find in the room?

A. We found a large nomination of cash. We also found some marijuana in the room. Also we found some bullets of a twenty two caliber round. The marijuana was found somewhere in the neighborhood of almost 14 grams, 13 grams.

Q. And, the money, was the money total about $1,621.25 that was found in the room?

A. That's correct. Yes, sir.
Q. Was the pistol also found?
A. Yes, the pistol was also found under the bed as well.
Q. How did you get the information as to where the pistol was found?
A. After a Mirandaization for Mr. Anthony Robinson he clearly indicated where the pistol was located inside the room.
Q. Were these individuals subsequently taken into custody?
A. Yes, that's correct.
Q. Once they were taken into custody take me through the next step, well let me ask you this. After they were taken into custody did you get statements each of them?
A. Yes, that's correct. They were taken into custody. They were all transported down to the sheriff's office where they were separated.
Q. Okay. They were separated and did you video tape their statements?
A. That's correct. We also were assisted by State Law Enforcement Division. The on call agent that responded to the scene who assisted was, at that time, Benny Webb.
Q. Let me back up just briefly for a second. Did you get a statement from a Brian Willis Jackson who had, at some point, indicated that he was in that room with defendants?
A. Yes, that's correct. I apologize that's correct. Brian

Willis Jackson was there inside the room.

Q. In fact, in his statement does he not indicate Anthony Robinson was worried about getting caught and talking about it. Dennis and Angelo was telling him to think positive and relax. Is that reflected in Mr. Jackson statement?

A. Yes. Yes, sir.

Q. And I interrupted you. Now, let me move back forward with these video statements. Did each of these defendants give video statements?

A. That's correct. Yes, they did.

Q. Since we're talking about Mr. Ham, let me back up. What order did you take the statements from these individuals and if you could summarize what they told you?

A. Okay. We started with Mr. Robinson, due to the fact the gun, he told us where the gun was at and the indication of him being involved with one prior. We started with him. He was Mirandaized by myself and investigator agent Benny Webb, did a tape interview with him. He was Mirandaized on camera. He indicated that he was told the reason they tried to go to the store was he had to get some money so he could leave town. He knew was already in trouble for his case with his girlfriend, day prior. After resulting, that he received, the information was given to him between Mr. Angelo Ham and Dennis Hunter. They also indicated, he said that at that time, they knew that Mr. Griggs during closing hours, carried

a pistol or kept a pistol close by. As a result of that, he went into the store with Mr. Angelo Ham.

The store had already closed for that night. At which time, unless, Mr. Griggs knew who the individual was, he would not open the door after closing hours. He also indicated that he went in there to ask if he was to buy some items. When the register door open he was going to make his move.

Q. The statements that you took and I'm talking about Robinson and Hunter at this point, do they both indicate that -- who based on your evidence, who shot Mr. Griggs?

A. Anthony Robinson.

Q. Did he confess to that?

A. He confessed to it.

Q. Was Dennis Hunter remaining in the car?

A. He advised that Mr. Hunter was in the car, while he and Mr. Angelo entered the store.

Q. In fact, based upon your evidence and taking the statements in your investigation, Mr. Hunter actually saw, pointed his car in such a direction, that he saw when Mr. Griggs shot?

A. That's correct.

Q. But Mr. Hunter didn't immediately leave, in fact, he waited for the other defendants to come out of the store, correct?

A. Right. He was wanting to leave at one point, but he

stayed around to get both of the individuals.

Q. As it relates to what they both say, both being Robinson and Hunter, what do they indicate that the defendant did after Mr. Griggs was shot?

A. Well, they indicated after the shots were fired that Mr. Angelo Ham, he proceeded to grab some items and also some money from the store after the shots were fired by Mr. Robinson.

Q. In fact, don't both of them say that they, Dennis Hunter and Anthony Robinson, indicate that Angelo Ham was the last one out of the store?

A. That's correct.

Q. In fact, not only was he the last one out of store, they almost pulled off because he was taking to long?

A. Exactly. That's correct.

Q. That's reflected in both statements, in the statement from Hunter and Robinson?

A. That's correct.

Q. Now, back to Mr. Ham, did he give you video tape statement?

A. Yes, he did.

Q. What did he tell you in his video tape statement?

A. What he indicated in his statement that he and Mr. Robinson went to the store. That once they got inside, he ordered a little Debbie cake at which time Mr. Griggs then

gave him change, I think, two cents for change, at which time he, Mr. Griggs, opened the drawer and a shot rang out which now he did not see. He said after that several shots rang out, he saw that it was from Mr. Robinson. At which time he also that once Mr. Griggs fell backwards that Mr. Robinson continued on shooting while the victim was down. At that point, he indicated that Mr. Robinson then grabbed some items that he went over the counter and grabbed some items and some money and left the store.

Q. When you say he went over, who did Angelo Ham tell you went over?

A. Anthony Robinson.

Q. However, Anthony Robinson and Dennis Hunter contradict that?

A. That's correct.

Q. In fact, Anthony Robinson was very forthcoming in your opinion as an investigator as it relates to the events of this evening?

A. Yes, sir. And, also Mr. Hunter.

Q. And, Mr. Hunter. Based upon your experience as an investigator and I ask you this and concluded, was your theory of the case that-- Well what was your theory of the case, I'll just ask you that. With your experience as an investigator particularly as it's relates to the roles of this defendant?

A. Well, what I can say is that they knew that Mr. Robinson was going to clearly rob the store, there's no doubt in my mind. Also, in regards to Mr. Angelo Ham, his familiar face gain the advantage for Mr. Robinson to do that because the store was closed. That's mine, ah, clear advantage with my years of experience we can concluded that.

Q. In fact, isn't it also true that they had discussed robbing the store, based upon your evidence especially with the other two statements, they'd all discussed robbing the store and they knew Mr. Griggs had a gun?

A. That's correct. Mr. Robinson would not knew that information, unless, it was given by Mr. Ham or Mr. Hunter.

MR. REDMOND: Your Honor, at this time, I have nothing further.

THE COURT: Mr. Anderson?

CROSS EXAMINATION BY MR. ANDERSON:

Q. The time this incident happened Mr. Anthony Robinson was the oldest of three?

A. That's correct.

Q. And, then Dr. Hunter, I guess, was next?

A. That's correct.

Q. The youngest one was Angelo?

A. That's correct.

Q. Angelo was fifteen at the time this happened?

THE COURT: Mr. Anderson, excuse me just a minute. Do

we need to take a break.

MR. REDMOND: I beg the court's indulgence.

THE COURT: See if we need to take a break. We'll break for a few minutes. Didn't mean to interrupt you Mr. Anderson..

MR. ANDERSON: No, problem, Judge.

MR. REDMOND: Your Honor, if we could have about five minutes.

THE COURT: That will fine. That will be fine. Let's stand at ease for about five minutes or so.

(BROKE A FEW MINUTES FOR FAMILY)

THE COURT: All right, Mr. Anderson.

Q. I think the last question I ask you was, the time this incident happened my client was fifteen?

A. That's correct.

Q. He had not shot his girlfriend the day before this happened? My client hadn't shot anybody the day before this happened, had he?

A. That's correct.

Q. I mean, the shooter from the day before was Anthony Robinson?

A. Yes, sir, that's correct.

Q. He actually shot his girlfriend, not some unknown stranger but he actually shot somebody that he was romantically involved with?

A. That's correct.

Q. Do you know what kind of caliber weapon he used when he shot his girlfriend?

A. It's a twenty two.

Q. So probably the same gun he had on this night?

A. That's correct.

Q. Have your send ballistics off to see if they match?

A. Yes, sir. It's currently at the state lab in Columbia.

Q. All right. So, Sled's got it?

A. Yes, that's correct, and the weapon.

Q. Do you have any doubt in your mind based on your conversation with Mr. Hunter and Mr. Robinson and Mr. Ham that they knew about this incident from the night before.

A. That's correct.

Q. When I say they knew, I'm talking about Angelo Ham, knew that he had shot his girlfriend from the night before?

A. There's no doubt in my mind.

Q. Mr. Robinson, he was the nineteen year old?

A. That's correct. He was the oldest. He should have been around nineteen or twenty at the time.

Q. Finally, looking at your description, my client is may be 5, 5 feet tall, I mean, 5 feet, 5 inches maybe 5 and ½ feet tall, he's not a very big person?

A. That's correct.

Q. Mr. Robinson admitted that he is the one that shot the

victim in this case?

A. That's correct. He admitted it in the video tape statement.

Q. When you were talking with Brian Jackson, I think, you summarized your testimony that Brian Jackson gave you and I'm not trying to put words in your mouth, but he said that, he told Mr. Anthony Robinson he was a little bit down on his luck, is that right?

A. Well, in, actuality, he gave officer Steve Banister, if you'll look, he gave Steve Banister the statement. I didn't actually talk with him. I removed Mr. Robinson and also Mr. Hunter from the scene. Mr. Steve Banister, detective from Hartsville PD, actually took the statement.

Q. Have you reviewed that statement?

A. I looked at it.

Q. Sir?

A. Yes, sir.

Q. In that statement, he told, I guess, Steve Banister that he had advised Anthony Robinson that he was little bit down on his luck, needed a little bit of money, is that right?

A. Well, according in here. He just said he got into the car, he just got in the car with them. That, ah, that Dennis is his cousin. As far as the other information, I have ---

Q. I'm talking about on Page 3 of the incident report, three of seven?

A. Okay.
Q. Have you read that report?
A. Three of seven?
Q. Yes, sir. The supplemental incident report?
A. Of Steve Banister?
Q. I, yes, sir, I guess that's his report.
A. Because there's two different reports by different agencies. Give me a second to look at this thing. Yes, it's on the Hartsville PD, okay that's who it is. I have it.
MR. ANDERSON: I can approach the witness?
THE COURT: Yes, sir.
A. Right. Okay that's the Hartsville PD report.
Q. He actually told -- Mr. Jackson told him that he was little down on his luck and only had like five dollars, that's right?
A. Yes, that's correct. Mr. Jackson told that he stated to Anthony he needed some money.
Q. At that point in time, Anthony gave him fifty dollars?
A. That's correct. According to the police report.
Q. They ask him, you know, where did you get all that money from and he said well I robbed this store?
A. He said he robbed Griggs store, that's how I got so much money.
Q. That's when Brian Jackson said, "man you're crazy"?
A. That's correct. That's the term he used.

Q. Then they started talking about it little bit more and that's when Anthony Robinson actually got scared, is that right?

A. That's correct. It's indicated in the report.

Q. But it wasn't until he was confronted by the other young man, said, "hey, you crazy for doing that", that's when he started getting scared?

A. That's correct. That's the word that was used.

Q. Now, he's referring, he's telling the man he's crazy, this a man that had previously shot his girlfriend the day before and he killed somebody earlier that night. He's telling him, he's crazy?

A. That's correct.

Q. At that point in time, my client Angelo Ham who at that point in time, you don't know what's going on in Angelo's mind because obviously you weren't there and you don't know what Angelo was thinking.

A. That's correct.

Q. But he knows he's with a nineteen year old person that's older than him. He knows he's with somebody that just shot his girlfriend. He knows that he's with somebody who just shot someone or a man between seven and ten times?

A. That's correct.

Q. So, then my client says, "it's all right man, you've just got to think positive." Don't you think that statement

could have been made out of fear?

A. Well, I'm not a psychologist. I don't know how the statement was made. I don't know, I was not there.

Q. In the video tape sometime I think Mr. Griggs would video tape people coming in and out of store, evidently, that night it had been turned off?

A. That's correct. That was our preliminary investigation. That's one of the first avenues we checked that the video tape was inoperable of recording that particular incident.

Q. So, the only information you have about this incident is what's been gathered from independent witnesses or either the three young men that have been charged?

A. That's correct and also evidence received at the scene.

MR. ANDERSON: Okay. That's all the questions I have right now, Judge. Thank you.

THE COURT: Mr. Redmond, anything else?

MR. REDMOND: Nothing further, Your Honor.

THE COURT: All right, sir, you can step down, Mr. Jackson.

MR. REDMOND: That would be the state's case. I would just want to briefly put on the record, if I haven't already, that Mr. Anderson did have the opportunity to review Mr. Ham's statement prior to this proceeding.

THE COURT: Okay. Thank you, sir. You can step down. Thank you. Mr. Anderson, anything you'd like to present?

MR. ANDERSON: No, sir, Your Honor, not at this time.

MR. REDMOND: Your Honor, I would just quickly briefly state that I think in looking at the *Kent versus Ohio* test is outlined and *State v. Miller* that I've sited earlier. I think clearly the state has met it's threshold standard to have this case transferred to general sessions court. We would respectively ask that the court do take such action. Thank you, Your Honor.

THE COURT: Any statement Mr. Anderson?

MR. ANDERSON: Judge, I'm not familiar with *Kent versus Ohio*. I am familiar with *Kent versus United States* ---

MR. REDMOND: and, I said Ohio, I meant, thank you, United States. I appreciate Mr. Anderson correcting me. Hopefully it shall not happen to often.

MR. ANDERSON: Judge, I've talked with Angelo prior to today's hearing. Your Honor, he and I've actually talked about the *Kent* case and as Mr. Redmond said, Your Honor, and I'm sure you're aware that there's pretty much eight factors set out by the Supreme Court. Your Honor, based on the testimony today, I'm not going to belabor the point, Your Honor, I just would ask you to take into consideration Mr. Heffler's testimony.

THE COURT: All right, gentlemen after having heard the testimony, I am satisfied that the factors set forth in the *Kent* case and *Miller* case, have been met by the state and

that this matter should be waived to the Court of General Session. I will order that the juvenile petitions be transferred to the Court of General Sessions in this case. Thank you. You can prepare me an order, Mr. Redmond.

MR. REDMOND: I will prepare an order, Your Honor. Thank you.

THE COURT: Thank you, sir.

(CONCLUSION OF HEARING HELD ON JULY 18, 2005)

CERTIFICATE

I, THE UNDERSIGNED, LISA CARTER, OFFICIAL COURT REPORTER FOR THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE FAMILY COURT, DARLINGTON COUNTY, SOUTH CAROLINA, ON THE 18TH DAY OF JULY, 2005.

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

NOVEMBER 15, 2009

Lisa S Carter

COURT REPORTER

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF DARLINGTON	)	FOURTH JUDICIAL CIRCUIT
	)	
	)	
IN THE INTEREST OF:	)	ORDER
	)	
Angelo Ham	)	
A Minor Under the Age of 17 years	)	

This matter was before the Court on July 18, 2005 for a waiver hearing. Present were Kenard Redmond, Assistant Solicitor, the respondent, Patricia Ham, the Defendant's legal guardian, and the Defendant's attorney, Hank Anderson.

Based on the testimony presented by: Dr. Joel Heffler and Investigator Calvin Jackson of the Darlington County Sheriff's Office, the respondent's mother and the pre-waiver evaluation conducted by the Department of Juvenile Justice, as well as other evidence, the Court finds and Concludes:

1. The defendant, Angelo Ham was born [redacted], 1988 and is sixteen (16) years old.

2. The Defendant has been chargeD with Murder, Armed Robbery, and Possession of a Weapon During the Commission of a Violent Crime.

3. The alleged offenses occurred in Darlington County on or about September 9, 2004, when the Defendant was fifteen (15) years old.

(The following Findings are based on the criteria listed by the United States Supreme Court in Kent vs. United States 383 U.S. 541 (1966).)

4. There is probable cause to believe the Defendant committed the crimes for which he/she is charged.

5. The seriousness of the offenses is against persons and is of such gravity as to require waiver for the protection of the community.

6. The alleged offenses are of a premeditated nature.

7. There is sufficient merit to warrant the grand jury returning a true bill on the charges.

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

8. despite the pre-waiver evaluation report, the testimony of Dr. Heffler and Investigator Jackson indicated that the Defendant has been engaging in pseudo-adult activities and therefore has an enhanced level of sophistication and maturity.

9. The crimes for which the Defendant is charged are of a serious nature and if found guilty, would suggest he/she is capable of acting without regard for others.

10. It is the opinion of the Court that it is not likely the Defendant could be rehabilitated, in part due to prior attempts at rehabilitation by the Department of Juvenile Justice.

CONCLUSION OF LAW

1. The Court has jurisdiction over this matter pursuant to South Carolina Code of Laws 20-7-7605.

2. Based upon the factors outlined above, the Court concludes that there is little likelihood that Angelo Ham can be rehabilitated in the Juvenile Justice System.

3. It is in the best interest of Angelo Ham that he be waived to the Court of General Sessions for proceedings on the charge alleged in Petition Numbers 04-JU-16-232, 233, and 234.

IT IS THEREFORE ORDERED THAT bail be denied at this time and a Circuit Court Judge upon motion of the Defendant may reconsider that bail.

AND IT IS SO ORDERED!

Family Court Judge

Dillon, SC
August 3, 2005

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
COUNTY OF DARLINGTON	)	05-GS-16-1969, 05-GS-16-1970, 05-GS-16-1971, 04-GS-16-2183, 04-GS-16-2185, 04-GS-16-2186, 04-GS-16 2187
STATE OF SOUTH CAROLINA PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
ANGELO HAM DENNIS HUNTER DEFENDANTS	)	

April 17, 2006
Darlington, South Carolina

B E F O R E:

THE HONORABLE JOHN M. MILLING, JUDGE.

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

KERNARD REDMOND, ASSISTANT SOLICITOR
Attorney for the State

HENRY ANDERSON, ESQ.
Attorney for the Defendant, Ham

RALPH WILSON, ESQ.
Attorney for The Defendant, Hunter

CALVIN JACKSON,

HATTIE O. GORDON
Circuit Court Reporter

I N D E X

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E X H I B I T S

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

MR. REDMOND: May it please the Court. Your Honor, before you at this time are Dennis Hunter and Angelo Ham. Angelo Ham is represented by Hank Anderson.

MR. ANDERSON: The defendant to the immediate right.

THE COURT: Last name is Ham?

MR. REDMOND: H-A-M, Your Honor. And Dennis Hunter is represent by Mr. Ralph Wilson, and he is to my far right. He's the defendant to my far right. And as to Mr. Ham, Your Honor, is has before you on 2005-GS-16-1969; that being for murder.

1970 for armed robbery. And 1971 for criminal conspiracy. That's Mr. Ham.

Mr. Hunt is before you under 2004 -GS- 16-2183; that being for murder. 2185 for armed robbery. 2186 for criminal conspiracy. And also 2187; that being for possession with intent to distribute marijuana, Your Honor. Now as to Mr. Hunt.

THE COURT: Can I ask a question? 2183 then 2185?

MR. REDMOND: That is correct, Your Honor. I was going to explain that. Mr. Hunt actually has additional charges that we are not dealing with at this time. Those being burglary and larceny, cases that are unrepresented.

The reason we're not dealing with it at this time I have told Mr. Wilson that the State does not oppose

running those concurrent. I have had not a chance to talk to the victim. I was not handling that case before I handle these. Obviously, I want to talk to the victim in those cases as also as to 2178, possession of a weapon during the commission crime.

Mr. Hunt possession of a weapon as you hear the facts are borne out and 2188, proximity on the marijuana, those cases are being disposed of at this time by the State. We're not reaching the just from the record, Your Honor.

He has pending 2004-GS-16-1406, malicious injury to property. 1407, burglary second. 1408, burglary second. And 1409, petit larceny. Those cases are not being dealt with at this time.

DENNIS HUNTER AND ANGELO HAM, after being duly sworn, testified as follows:

MR. REDMOND: And I would fail to mention -- at the appropriate time I can tell you what the position or what the nature of the disposition that the State proposes at this particular time.

THE COURT: All right. If you will go ahead and state that for the record.

MR. REDMOND: Your Honor, please the Court. As to both defendants the State is recommending that or not recommending, but actually seeking to have the sentences withheld in those two cases because there is a codefendant

that we have.

THE COURT: You're speaking of those two for murder and armed robbery?

MR. REDMOND: Exactly. And on those two burglar cases, because the codefendant is, of course, the State seeks the death penalty. They are anticipating them testifying in those particular proceedings. So, however, as to the criminal conspiracy on both defendants and then as to the possession with intent to distribute marijuana as to Mr. Hunt, the State is actually recommending that they receive a five year sentence.

They have been in jail in Darlington County. In that way they would go into the Department of Corrections and then that would actually give us time to go ahead and dispose of Mr. Robinson's matter prior to them being released.

However, I can tell the Court I have talked with Mr. Lynch at the Darlington Jail and Johnny Sapp in Dillon. If for some reason they are released from South Carolina Department of Corrections prior to the case being brought against Mr. Robinson we made arrangements they not be housed here in Darlington County because that was, of course, where Mr. Robinson is being housed.

THE COURT: All right, gentlemen. Give me your attention and counsel as well. I had indicated previously

to everyone when we were back in chambers that you advised me this matter would be proceeding this afternoon; that there was a period of time when I practiced law with Judge Benny Griggs before he went on the bench as a Family Court Judge in 1988.

He and I were in practice along with Chief Justice from 1973 until 1988. At some point during the period of '76 to 1988 I think there was a period of time when Mr. Griggs would come by the office. He was also a member of the county council.

At that time, Judge Grier was school board attorney and there were times when we may have had some conversations about these types of facts. I may have been -- I do not have at this particular point in time one of the office files listing books that would indicate whether or not we actually did any legal work for Mr. Griggs or Mr. Grier did any legal work for Mr. Grier during that timeframe.

I know from the period of '88 to current or when I went on the bench in '99 I did no legal work for Mr. Griggs. Is that a problem in connection with my accepting the plea from Mr. Ham on behalf Mr. Anderson.

MR. ANDERSON: No, sir, Your Honor.

THE COURT: With respect to Mr. Hunt, is that a problem Mr. Wilson?

MR. WILSON: No, sir, Your Honor.

THE COURT: Very good. Gentlemen, you are before the Court prepared to plead to various charges. Mr. Ham I understand you will be pleading to murder, armed robbery, and conspiracy; is that correct?

MR. HAM: Yes, sir.

THE COURT: And, Mr. Hunt, you will be pleading to murder, armed robbery, conspiracy and possession with intent to distribute marijuana; is that correct?

MR. HUNTER: Yes, sir.

THE COURT: The State has told me that you -- the agreement that he has reached with you through your attorneys is that I sentence you in connection with the conspiracy charge. Mr. Ham, it carries a maximum five years. Is that your understanding?

MR. HAM: Yes, sir.

THE COURT: With respect to you, Mr. Hunter, the conspiracy charge and distribute marijuana, both of which carry five years. Is that your understanding?

MR. HUNTER: Yes, sir.

THE COURT: Each of you, the murder charge and the armed robbery charge, will plead guilty to today, but the sentence will not actually be imposed on you until at some point after the charges against your other codefendant has been disposed of and you have testified in those matters;

is that correct, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: And you, Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: Gentlemen, I have this occurred with respect to another case which this actually case arose in Marion and tried in Florence. And I was down in Georgetown at the time the sentencing was actually taking place because of the time that just passed.

So you may actually appear if I'm here in Darlington County and be sentenced in Greenville at the time the Solicitor takes the matter up to Greenville and the sentence takes place there. Do you understand that, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: Gentlemen, do each of you understand that when you come forward and you plead guilty in a matter you are admitting the truth of what it is you have been accused of. You understand that, Mr. Ham?

MR. HAM: Yes, sir.

MR. REDMOND: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: Gentlemen, do you understand that with

respect to the charge of murder that you face a minimum of 30 years in jail in connection with that matter and up to as much as life in prison without patrol. Do you understand, Mr. Ham?

MR. HAM: Yes, sir.

MR. REDMOND: Do you understand, Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: Gentlemen, it is my understanding that as to those two charges no recommendation has been made whatsoever as to whether to sentence you to 30 years or some period of between 30 years and life; is that correct as to you, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: As to you, Mr. Hunter?

MR. HUNTER: Yes.

THE COURT: And, likewise, there is no sentencing recommended as to whether I sentence on the armed robbery to a minimum of ten or maximum of the 30; is that correct, Mr. Ham?

MR. HAM: Yes.

MR. REDMOND: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: Mr. Ham, as to Indictment 05-GS-16-1969, it is alleged that while you were here in Darlington County on or about September 9, 2004 that you along with

your codefendants did feloniously, willfully and with malice aforethought did kill one Richard Griggs by means of shooting him with a .22 caliber and that he died as a result of that shooting.

The State would be provide on the murder charge the hand of one is the hand of all, and that when people plan something in conspiracy you become responsible for the murder even if you were not the trigger man. You understand that, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: Likewise, Mr. Ham, on 1970 it is alleged that on or about September 9, 2004 here in Darlington County that while y'all, meaning you an the other defendants, were armed with a -- two pistols; that you took goods and/or moneys from Mr. Griggs feloniously and by means of force or intimidation. Do you understand that charge, Mr. Ham?

MR. HAM: Yes, sir.

MR. REDMOND: Mr. Hunter, for you that carries the Indictment Number 04-GS-16-2185, but you are charged in that same way. You understand that?

MR. HUNTER: Yes, sir.

THE COURT: And your murder indictment is

04-GS-16-2183 and it alleges that same language that I read in your presence describing the crime of Mr. Ham. You understand that?

MR. HUNTER: Yes, sir.

THE COURT: Basically, it's alleges that you were participating with the defendant who did the shooting. What is that defendant's name?

MR. REDMOND: It is Anthony Robinson.

THE COURT: You were participating with Mr. Anthony Robinson. It is alleged he was the shooter. Y'all conspired together for the purpose of committing these crimes. And, gentlemen, each of you are charged with criminal conspiracy.

Your indictment number is 05-GS-16-1971, Mr. Ham, and, Mr. Hunter, your indictment is 04-GS-16-2186. As to each of you gentlemen it is alleged that here in Darlington County on or about September 9, 2004 that each of you did unlawfully, wickedly and feloniously you at some point conspired, confederated between yourself and have an understanding with each other person for the purpose of committing the crime of armed robbery. Do each of you understand what you are charged with there, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: And you, Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: To you, Mr. Hunter, it is also alleged in 2004-GS-16-2187 that while you were in Darlington County on or about September 9, 2004 that your had possession with the intent to distribute a certain quantity of marijuana. Such distribution is -- and possession with intent to distribute drugs, not being authorized by law.

Do you understand what you are charged with on that indictment, Mr. Hunter?

MR. HUNTER: Yes.

THE COURT: Mr. Ham, you're represented by Mr. Anderson?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter, you're represented by Mr. Wilson?

MR. HUNTER: Yes, sir.

THE COURT: Gentlemen, have each of you had sufficient opportunity to sit down and discuss with your particular attorney all of the facts and circumstances concerning those charges that are pending against you and which you are pleading? To go over those matters from a factual detail and to go over these matters from a legal detail so that you fully understand today as you prepare to plea as to how it was that your activity on that occasion violated the law and the possible penalty that

you face as a result of your violation of law? Have you had a chance to fully discuss these plat matters we are here about, Mr. Hunter?

MR. HUNTER: Yes, sir.

MR. ANDERSON: Do you have a full understanding, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: And have you had a chance fully discuss matters and do you have a full understanding, Mr. Hunter with Mr. Wilson?

MR. HUNTER: Yes, sir.

THE COURT: Gentlemen, have you had a chance to discuss with your respective attorney any defenses if any that might exist with Mr. Anderson to the charges pertaining to Mr. Ham?

MR. HAM: Yes.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: Gentlemen, have you had chance to talk with your attorneys about matters in mitigation or good things they can tell me about your particular crime as I consider what would be an appropriate sentence to sentence you on with respect to this conspiracy and possession with intent to distribute marijuana, Mr. Ham? Have you had a full chance to talk with Mr. Anderson about that?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter, have you have a full chance to talk to Mr. Wilson?

MR. HUNTER: Yes, sir.

THE COURT: Gentlemen, have each of you had all of your questions answered by your attorneys? Have you had That opportunity with him, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes.

THE COURT: Have you fully understood the conversations that you have had with your respective attorney, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes.

THE COURT: Gentlemen, have your particular attorney done everything -- has your lawyer done everything that you've asked they do as part of their recommendation, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: And, gentlemen, are each of you fully satisfied with the services that have been provided by

your attorney, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: Gentlemen, has anything been promised to you? Have you been offered any hope, reward, or any inducement to come forward and plead guilty today other than been discussed with me, Mr. Ham?

MR. HAM: No, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: No, sir.

THE COURT: Have you been threatened, harassed or intimidate or coerced in any way to come forward and plead guilty, Mr. Ham.

MR. HAM: No, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: No, sir.

THE COURT: Gentlemen, as each of you plead guilty today are you doing so freely and voluntarily, Mr. Ham?

MR. HAM: Yes.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes.

THE COURT: And, gentlemen, as to each of those charges, the murder, the armed robbery, the conspiracy and the additional charge, Mr. Hunter, as it relates to you,

the marijuana charge, do each of you fully understand what you have been charged with? Do you fully understand what you have to do wrong to be guilty of that charge? And do you fully understand the penalty you face in connection with those charges, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: Are each of you pleading guilty to the charge you're pleading to because you are in fact guilty of that charge, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: And, gentlemen, you as all defendants are entitled to have a jury trial in connection with the charges that are pending against you. And as part of the process the State is required to come forward with witnesses and with exhibits. And through the sworn testimony of the witnesses and through the exhibits that maybe allow into the trial of the case the State must convince each and every member of your jury beyond a reasonable doubt that you are in fact guilty of each of those crimes.

Through you attorney you get to cross-examine the

witnesses who testify against you, confront them about their testimony, and if you have certain witnesses of your own who hesitate to come forward then you're entitled to have subpoenas issued to make these witnesses come to Court.

Do each of you gentlemen understand you have these trial rights, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: However, gentlemen, when you plead guilty you give up these trial rights. You give up your chance to contest these charges that are pending against you you give up your chance to raise any defenses if any you have. You give up these trial right in total. Do you understand, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: And do you want to give up those trial rights and go forward now with your guilty plea, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: Likewise, gentlemen, you have the right

to remain silent. No one can make you testify against yourself. You understand that, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: And you, Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: And, gentlemen, should a defendant choose to go forward with a jury trial and choose not to testify at their trial they are entitled to various jury instructions including one that tells the jury that their failure to testify; that their remaining silent is not any evidence of guilt, but that guilt must be affirmatively established by the State and that the jury cannot consider their silence as any evidence of guilt whatsoever.

Do you gentlemen understand that you would be entitled to various jury trials and one including one related to your right to remain silent, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: However, gentlemen, when you plead guilty you in essence give up the right to remain silent because you are here today telling me on the record that you're guilty. You understand that, Mr. Hunter?

MR. HUNTER: Yes.

THE COURT: Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Likewise, gentlemen, you give up your right to any and all jury instructions because the matter being disposed of by way of a guilty plea and not the trial. You understand, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: And do you gentlemen want stop give up these additional rights now and go forward with your guilty plea, Mr. Ham?

MR. HAM: Yes, sir.

MR. WILSON: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: Gentlemen, have either of you had anything to eat or drink or taken any substance in your body in the last 24 hours, medication or anything, that would affect your ability to understand what we are doing today, Mr. Ham?

MR. HAM: No, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: No, sir.

THE COURT: Gentlemen, each of you have kindly answered my questions today. Have these in fact been your own answers, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: You're not just telling me something somebody may have suggested to you, are you, Mr. Ham?

MR. HAM: No, sir.

THE COURT: Mr. Hunter?

MR. HUNTER: No, sir.

THE COURT: Gentlemen, before we go any further is there anything else you would like to talk with your attorney about or to have your attorney ask me about, Mr. Ham.

MR. HAM: Yes, sir.

THE COURT: If you will take just a minute and talk to Mr. Anderson. Are you prepared to go forward now, Mr. Ham.

MR. HAM: Yes, sir.

THE COURT: Anything else you would like to talk to your attorney about, Mr. Ham, or would like him to talk to me about?

MR. HAM: No, sir.

THE COURT: Gentlemen, the State is going to present me certain facts and information in order to support or provide a factual basis to support your plea. I'm going to ask you about what I'm told by the State. If you will

please as I'm getting this information listen carefully.

MR. REDMOND: Thank you, Your Honor. May it please the Court. Of course, this occur on the 9th of September 2004. It occur at Griggs Thriftway, 2542 Beathingham Way in Darlington County outside of Hartsville.

At this particular time the proprietor of that store, Mr. Richard Griggs, was preparing to close his bar/store. Previous to the store closing we discovered later through a witness that these three gentlemen -- when I say these three these two along with the other codefendant, Mr. Robinson, had actually been outside near a pay phone prior to the store closing, led to their ultimate capture to case the joint for lack of a better term.

The defendants also were aware -- these two defendants were aware Mr. Griggs would open his store even after it had closed for people he knew. That is exactly what happened here.

Mr. Ham approached the door. Mr. Hunter stayed in the car. Mr. Robinson was with Mr. Ham at which time Mr. Griggs opened the door and allowed them in at which time they began to bring items to the register and began to open fire.

And to say that it was actually Anthony Robinson who had the .22 pistol and opened fire and fired several shots and skilled Mr. Griggs in the store.

THE COURT: It was which one of those defendants and Mr. Robinson who went up to the store?

MR. REDMOND: It was Mr. Ham that went to the door. Mr. Hunter stayed in the car. They had already talked about it and to go back a little bit, Your Honor.

Or for the conspiracy they discussed the fact that Mr. Robinson went in the store. He knew about the fact that, one, they knew Mr. Griggs had a gun near the register. Two, they also knew about the fact that Mr. Griggs again would open door for people and Mr. Robinson was actually trying to leave town because of an incident that occurred the night before which is actually how they ended up catching them.

What happened, Your Honor, subsequent to the shooting when law enforcement arrived and started interviewing witnesses they didn't cover this area. The witness described the car they were in at this phone booth.

Calvin Jackson is aware of this because he actually had a warrant for Mr. Robinson from an incident that occurred the night before, shooting his girlfriend. So, of course, immediately put out a BOLO, be on the lookout, and Officer Banister of the Hartsville Police Department actually saw the car at the Hartsville Motel.

Law enforcement, Sheriff's Department, other law enforcement were called and they actually checked the

register and went and knocked on several doors in the hotel/motel, and they were discovered in room 40 at the Hartsville Motel these two defendants and Mr. Robinson.

The weapon was recovered and at that time there was -- there were ten bags of marijuana that were also found that were a total of 13.1 grams. Because of the way they were packaged they were charged with possession with intent to distribute marijuana.

Your Honor, for the record it was $1,622.25 that was taken and was recovered in that motel room which were the proceeds of that robbery, Your Honor.

Obviously, this is a very sad situation that goes without saying and again, this is a situation where Darlington County Sheriff's Department and Hartsville P.D. worked together and were able to quickly apprehend these suspects because, literately, it was one, three, four hours that they were apprehended after this heinous event.

Two hours, actually within two hours. So that obviously helped close the case quickly. I will tell the Court they each give videotape confessions. I do have videotape confessions that were taken of each defendant outlining their role in this incident.

I didn't mention the fact that Mr. Hunter jumped into the driver's seat. He was actually the one who drove away from the incident location.

THE COURT: What period of time was there between the robbery occurring and someone knowing that the robbery and the murder had occurred?

MR. REDMOND: It was within an hour before they actually got informed. Within an hour, Judge.

THE COURT: I did not know if somebody came upon the Thriftway and saw the door ajar or how it was determined that a robbery had occurred.

MR. JACKSON: Your Honor, please the Court. We initially found out about the victim being shot was simply -- normally, the victim's wife she usually checks and calls when he closes up and initially she discovered him, Your Honor.

THE COURT: Thank you. Mr. Ham, you have heard these facts that have been given to me; are they correct?

MR. HAM: Yes, sir.

THE COURT: Mr. Hunter, you have heard the facts that have been given to me; are they correct?

MR. HUNTER: Yes, sir.

THE COURT: Thank you. I find that there is a substantial, factual basis to support Mr. Ham's guilty plea as to the murder, armed robbery and conspiracy charge. His plea has been entered freely and voluntarily, knowing and intelligently and that he has had the advice of counsel with whom he states that he is satisfied and I

accordingly accept his plea as to each of those matters.

As to Mr. Hunter, I find there is a substantial, factual basis to support his guilty plea as to the murder, the armed robbery, the general conspiracy, and, Mr. Hunter you take responsibility for the marijuana?

MR. HUNTER: Yes, sir.

THE COURT: As to the marijuana that his plea has been entered freely, voluntarily and knowingly and intelligently entered and that he has had the advice of counsel with whom he states he is satisfied.

Accordingly, I accept the guilty plea that he has entered into as to each of those matters. Mr. Anderson, since we're omitting sentencing, I would be glad to hear from you briefly on Mr. Ham's behalf.

MR. ANDERSON: Your Honor, first of all just a housekeeping matter, Judge, and you may have said it. I was just looking out the window listening to the storm. It's my understanding that the Solicitor's Office is agreed that even though he's not make a recommendation on the sentence they are recommending that they be concurrent.

MR. REDMOND: That is correct, Your Honor.

MR. ANDERSON: I want to get that on the record.

THE COURT: It has not been previously placed on the record, but that will be fine.

MR. ANDERSON: Judge, Angelo is 17 now. 15 at the time it happened, Judge. It's my understanding his codefendant is here with him today who was 16 at the time. I think either 17 or 18 now.

The other gentlemen that is not here was a good bit older and as you heard, Your Honor, committed another shooting the night before. I say that, Your Honor, not to excuse anything that Angelo did. He certainly knows right from wrong.

I don't think Angelo was the mastermind of this. I don't think he planned it out. He certainly wasn't the driving force behind it. Judge, the truth of the matter is when, if you hear more about the case in later times, the other individual said, "I was looking for money to get out of town."

He knew some charges were getting ready to come down as far as shooting his girlfriend. He was the driving force behind this, Judge. Angelo was in high school at that time trying to get his high school education. Obviously, this is going to put a hold on that.

Judge, he would like for you to go ahead and sentence him on the conspiracy. He would like to get out of the detention center away from his codefendant. Also, Your Honor, to have a little bit more freedom and perhaps more importantly continue his education.

He wants to take advantage of any programs that have as far as up at S.C.D.C.

THE COURT: Was there any family relationship or some contact or some basis for Mr. Robinson having been involved with Mr. Hunter and Mr. Ham or are Mr. Hunter and Mr. Ham good friend? Cousins?

MR. ANDERSON: No, sir. But, Judge, since we're not going to sentence on other matters that's all I have at the time.

THE COURT: Okay, Mr. Wilson.

MR. WILSON: Yes, sir, Your Honor. Please the Court, Dennis is 19 years of age now, and, Your Honor, at the time he had no convictions. He had no pending charges, but no convictions at this time. He only has a ninth grade education, and during the time that this happened he was doing homebound instruction and was not in school cause he had been suspended from school.

Your Honor, in terms of the marijuana, obviously, the number of bags is what the reason he was ultimately charged with possession with intent to distribute. I think, clearly, he had it for his own use and I assume for the use of the other people in his group who participated.

And I would just ask the Court to accept the recommendation understanding we're not at the point

discussing the homicide and the murder and the armed robbery. I ask the Court to consider accepting the recommendation of the State in this burglar case for the five year concurrent.

MR. REDMOND: And, Your Honor, just for the record they were both arrested on the 10th. They were arrested after midnight on the 10th of September.

SENTENCE OF THE COURT

THE COURT: As to Mr. Ham, sentence of the Court on 2005-GS-16-1971 charging him with the crime of conspiracy, the sentence of the Court is that he be committed to the State Department of Corrections for a period of five years. I am giving you credit since September 10, 2004. I am having this one concurrent with his sentence on 05-GS-16-1970. And 1969 and 1970 is two armed robbery indictments.

1969 is the murder indictment. As to each of those I am deferring sentence until the charges of the codefendant, Anthony Robinson, are disposed of. However, I am providing that they will all be running concurrent and he will receive credit since September 10th on all of those charges from the year 2004.

And I am retaining jurisdiction as to the unsentenced charges at this time.

As to Mr. Hunter on Indictment 2004-GS-16-2186

charging him with conspiracy; 2187 charging possession with intent to distribute marijuana the sentence as to each of those is that he be committed to the State Department of Corrections for a period of five years.

I'll have those matters run concurrent with each other as well as concurrent with Indictments 04-GS-16-2183 charging him with murder and 2185 charging him with armed robbery.

All of those will run concurrent. He will get credit for all charges since he's been in jail, September 10, 2004.

As to the Indictments 2183 and 2185, I am deferring sentence until the charges of codefendant, Anthony Robinson, are disposed of. I retain jurisdiction. Thank you very much.

END OF TRANSCRIPT OF RECORD

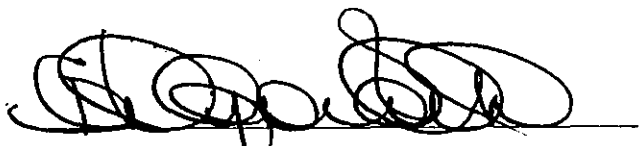
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

I, HATTIE O. GORDON, Official Court Reporter for the 4th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Darlington County, South Carolina, on the 17th day of April, 2006.

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

February 1, 2007



HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
COUNTY OF DARLINGTON	)	05-GS-16-1969
		05-GS-16-1970

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ANGELO B. HAM	)	
DEFENDANT	)	

September 14, 2007
Darlington, South Carolina

B E F O R E:

THE HONORABLE JOHN M. MILLING, JUDGE.

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

KERNARD REDMOND, ASSISTANT SOLICITOR
Attorney for the State

HENRY ANDERSON, ESQ.
Attorney for the Defendant

DENNIS HUNTER, Co-Defendant
RICHARD GRIGGS, Victim's Son
MIRIAM GRIGGS, Victim's Mother
TERESA HENDRICKS, Victim's Sister

HATTIE O. GORDON
Circuit Court Reporter

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E X H I B I T S

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

THE COURT: All right. Counselor, if you will have the defendants brought in the courtroom.

ANGELO HAM AND DENNIS HUNTER, after being duly sworn, testified as follows:

THE COURT: Solicitor, if I understand correctly we are back on the record with respect to Mr. Dennis Hunter represented by Mr. Ralph Wilson and Mr. Anglo Ham represented by Mr. Hank Anderson; that previously these gentlemen were before the Court on April 17, 2006; that at that time they each pled to conspiracy, murder and armed robbery.

On those occasions I accept those pleas and sentenced each of those gentlemen to terms of five years in the State Department of Corrections on the conspiracy charge and deferred the sentencing until the charges against the codefendant, Anthony Robinson, had been disposed of.

I had previously provided that these individuals would receive sentences that would run all concurrent with each other and that the sentencing date start time would be September 10, 2004. Is that information correct?

MR. REDMOND: That is correct, Judge.

THE COURT: Mr. Wilson, is that correct?

MR. WILSON: That's correct.

THE COURT: And, Mr. Anderson?

MR. ANDERSON: That's correct, Judge.

THE COURT: All right. Solicitor, I'll be glad to hear from you.

MR. REDMOND: Thank you, Your Honor. May it please the Court. I'd like to pass up these indictments. I think Madam Court Reporter has the records she needs for that purpose. Judge, and I'll be brief. First, I'd like to apologize to the Court and everyone because as we know this matter was scheduled for twelve o'clock and I explained to most of the folks here, but for those of you who had not heard that was clearly my mistake.

When the transportation order was done I did not review it, and I normally don't. Quite frankly, this is the first time that this has happened, but if had I reviewed it I would have caught the error. Naturally, and we would not have had to wait. So for everybody I'd like to offer my sincere apology for that. That was squarely my error.

As it relates to the matter at hand, Judge, first representing Mr. Hunt -- and let me just tell the Court that I have the family and, obviously, several members of both families, friends from the Birdtown Community that are out here in support of the family. But there is a video tape that's already cued up that at the appropriate time the family would like for the Court and, quite

frankly, the defendants to be able to see.

It is a videotape of the last birthday party which Mr. Richard Griggs, which was a couple months before he was murdered. And I think there may be other members of the family. Miss Griggs is going to want to address the Court as well at the appropriate time.

I will just start as to Mr. Hunter, I would tell the Court that at the time they entered the pleas, and I made it clear to everybody, that the State is making no recommendations. The case was held over because Anthony Robinson had not yet come forward for trial.

Subsequently, in July he did tender -- enter his plea of guilty and was sentenced to a term of life without the probably of parole. Of course, he had been noticed of the death penalty. Because of the U.S. Supreme Court case that came down, I believe that being Roford, a few years ago these two individuals, Mr. Hunter was 17. Mr. Ham was 15 and were not eligible for capital punishment. So they were not noticed with the intent to seek the death penalty.

However, we do allege hand of one is the hand of all and I won't go back over all the factual details unless the Court deems it necessary since the plea has already be entered. I will tell the Court that Mr. Hunter had indicated prior to the plea, at the time of the plea and

subsequent to the plea that he would be willing to testify in the trial against Anthony Robinson. So I can tell the Court that even though Mr. Robinson did not go to trial, he pled, but Mr. Hunter had indicated all along that he would be willing to testify.

Mr. Ham did not ever say he would not testify. And, quite frankly, I talked with Mr. Anderson a couple weeks before the plea was entered on Mr. Robinson and had been given permission to go to Lee to talk to Mr. Ham about testifying in the trial. I went out of town and upon returning I found out that this case was going to end up being a plea.

So I never got to have that discussion with Mr. Ham, but I can tell the Court that at the time we had not been definitively told that he would be willing to testify. That was an open question at the time.

Now, I think as it relates to the appropriate sentence that should be entered as to these defendants, quite frankly, the situation, since I've had so much discussions with the family, they would probably be much more eloquent than I as it relates their feelings.

I will defer at the appropriate time for the family. I'm sure as I said they will be much more eloquent than I would in that regard.

I think at this point, Your Honor, I would just

certainly say that murder, of course, is a minimum mandatory 30 year, no parole offense. And, again, without getting too much into the facts I would remind the Court that this is a situation where both parties were on the scene. This was a plot that was hatched out before it occurred.

And I think the particular significance is the fact that the parties were aware of the fact that there was a gun that Mr. Griggs had at the store, and he was shot prior to even being able to -- he was shot before he knew what was going on, quite frankly. I think that much is clear. These two defendants did give videotaped statements admitting their guilt.

But, I think interesting as to Mr. Hunter, Mr. Hunter was the party that was in the car. He remained in the car while Mr. Ham and Mr. Robinson went in and robbed and killed Mr. Griggs.

Specifically, Mr. Robinson was the trigger man, but interestingly, Mr. Ham was the one that actually lured or caused Mr. Griggs to open the door because Mr. Ham knew Mr. Griggs. And, of course, Mr. Griggs therefore knew Mr. Ham. The store had already closed. The way they got the door open was because Mr. Griggs was still in the store. Mr. Griggs knew Mr. Ham. Mr. Ham comes to the door. Mr. Griggs knowing Mr. Ham naturally went ahead and

let him go in. And it was at that time that he was murdered.

I think that's obviously a particular point as it relates to Mr. Ham's situation. And, again, I'll be glad, of course, obviously, to answer and address any matters the Court may see fit, but at this point I would yield any further comments to the family.

THE COURT: All right. At this time let me hear from you Mr. Wilson.

MR. WILSON: May it please the Court. Your Honor, obviously, this is a very serious situation and these are very serious charges, and Mr. Hunter understands that. He had entered his plea of guilty back in April of last year, and he's been waiting for the sentence since that time. Your Honor, at the time this occurred Mr. Hunter had barely turned 17.

He was, and I'm not -- I don't want the Court and certainly the family of the victim to think that I'm offering excuses, but I do think that it's important for the Court to understand the circumstances under which this occurred. And so while I'm not offering it necessarily as an excuse I'm certainly offering it in mitigation of what occurred.

He has pled guilty and so he is obviously guilty, and we're not in any way challenging that or contending it

otherwise, but I would be remiss to say -- in not saying that he was barely 17, and I think that there is a reason that the Supreme Court and our State Supreme Court has said that you can't give a youthful individuals the death penalty.

I think there is a reason for it, and the reason I think, Your Honor, is that even though they've done horrific or horrendous acts that because their judgment is just not that of an adult person. The judgment is just not the same. Even when they're 16 or 15 or even at 17, and again, it's not an excuse to go out and commit horrific crimes, but I think it certainly has to do with the person's ability to reason and make correct decisions.

In this particular case Mr. Hunter did something that was horrific. He went -- he was there. There is no question about the fact that he was there. There is no question about the fact that he kind of knew the robbery was going to happen.

Now, there are some things that may not be quite so clear and that is whether or not Mr. Robinson was actually going to shoot the victim, and again, it really doesn't matter technically under the hand of one is the hand of all. It doesn't make any difference because he was there. He was participating and he understands that.

I think there is also something to be said for the

fact that he didn't go in the store. Again, it's not one of those things which makes him any less guilty, but it is certainly one of those mitigating factors to show that the sentence -- that that ought to be reflective in his sentence. The fact that he didn't go in. He did not lure Mr. Griggs to the door. He did not have a gun. There is no testimony whatsoever at any point in time -- at any time during this process that he handled the gun; that he went in the store; that he had any contact with the victim whatsoever.

And I would ask the Court to take that into consideration in whatever sentence this Court decides to impose. The other thing I would say to this Court, Your Honor, is that and all too often we hear young people grow up and we make excuses and say, 'well, you know, he didn't have a father. He didn't have -- you know he grew up poor.'.

Well, you know and sometimes it is true and sometimes it is not true, but this young man grew up in a very difficult situation. His grandmother primarily raised him, and he was one of five children. His mom had five children. He grew up. He was the oldest of those five. He grew up pretty much with his grandmother and his grandfather. His grandfather died when he was probably 14 years-old, and that seems to be when his difficulties

started. Up until that time he had done pretty good in school. He had not gotten in any trouble.

Shortly after his grandfather died his troubles began. Now, we can argue all day about whether it was coincidence or whether it would have happened any way, and I have no crystal ball and I'm not suggesting to the Court that I do. I can say to you that they did start around the same time, his troubles and his grandfather's death.

After his grandfather died he started to have difficulty in school. He started to hang with if you will with the wrong crowd. Of course, you could say he's the wrong crowd, but his troubles began at that point. That continued. He got put out of school. He, in fact, he stopped school in the ninth grade and after that they put him on homebound instruction because of difficulties he had in school.

It never got any better, and then he started getting in trouble with the law by the time he was a little over 15, and it was just downhill at that point. And it led to this very tragic situation, and he understands that he has to be punished for what he's done and for his participation. And he has taken responsibility.

I think one of the things that impressed me the most, if there is anything about being impressed about such a horrific event, is that immediately upon his arrest when

the police talked to him he gave a videotaped statement. He didn't have a lawyer. He didn't invoke any rights. He went ahead and gave a statement. He admitted to what he had done. He told what everybody else had done. But even beyond that, once he was contacted, Your Honor, about coming forth and about Mr. Robinson's roll in this event I talked to him about that.

I went to the Solicitor. I said, "Look, he's willing to not only say what he said on the video. He's willing to take the witness stand. He's willing to testify," and I would think that's also very important event because I would say to the Court, Your Honor, having been involved in many, many death penalty cases defendants who go to trial in death penalty cases it's a horrific burden on the State to try these cases.

It's very difficult on the families of the victims. And only because you have witnesses who are willing to come forward and are willing to testify is the reason that Mr. Robinson in all likelihood ended up pleading guilty and getting a life sentence. Otherwise, he would have gone to trial, and I'm sure if there were no witnesses against him to testify against him then chances that he would have pled or slim to none.

And he did it because he had no other alternative and part of that is due to the fact that you had a young man

who participated, who was willing to come forward and testify. And I would ask the Court to also take that in consideration in the sentencing in this matter.

And, lastly, Your Honor, you know I would say his mom is here. She's in the back of the courtroom with his grandma and his sister. They're here. They're in support of him, and I talked to them a good while this morning, and they also understand that he has already pled guilty and that he's guilty and that he has to be sentenced.

They're not you know here to offer any excuses for his conduct but simply to let the Court know that they support him as an individual. Not what he did and not what he's accused of having done, but him because they still love him regardless. Despite the bad things he has done. And I've asked them if they wanted to speak to the Court. I don't know that they do.

And while I'm doing that I'll ask again. I see them shaking their heads that they do not wish to be heard. I just ask the Court to take those things into consideration that even today he is not yet reached his 21 birthday. He will soon be. I think next month. Sunday, will be 21 years-old Sunday, and he is looking at spending you know the rest of his life in prison. And if not the rest of it certainly a substantial, substantial portion of the rest of his life and certainly all of his youthful life.

At my age it doesn't make a whole lot of difference, but he's going to spend certainly the next 30 year in prison, and that's a long, long time when you're trying to serve it. And he has barely begun to live at this point. So I just ask the Court to take all those things in consideration in passing sentence in this case and I thank you so much for hearing us.

THE COURT: Thank you so much, sir. Mr. Anderson.

MR. ANDERSON: Judge, please the Court. Your Honor, when this event happened Angelo was only 15. Judge, it's my understanding from talking with him as well as talking with his mother and also, Your Honor, from reading the various incident reports in this case he was actually at home when I guess Dennis Hunter and Anthony Robinson came over.

Judge, one thing that Mr. Wilson didn't point out, but I'd like to point out to the Court. The night before -- the day before this incident happened Anthony Robinson had shot his girlfriend or his live in girlfriend or his significant other. And he knew there was a warrant out for him for assault and battery with intent to kill. And he talked to my client, Anglo, and also I think talked to Mr. Hunter into going with him. I've got to get out of town. I need y'all to help me get some money and, Judge, my client as I've indicated was 15 at the time this

happened.

Judge, he was actually evaluated by Dr. Heffler, Joel Heffler and, Your Honor, Mr. Redmond and I tried the waiver hearing over in front of Judge Henderson in I think Bennettsville on afternoon. But, Judge, Dr. Heffler actually wanted my client to stay in the juvenile system. That was his recommendation to the Court based upon a lot of his findings.

And, Judge, just a few of those were my client has a borderline IQ. It's in the 70s. Judge, his reading comprehension is about a third grade level. Judge, as Mr. Wilson pointed out and I will just briefly touch on this, I'm not trying to make excuses. Just trying to let you know where Angelo was coming from.

He never had any contact or very little contact with his father growing up. He has an older brother who was in jail. Judge, his mother was involved in a relationship. Stepfather, Angelo saw a lot of violence between his stepfather and his natural mother. I think the stepfather may have even abused Angelo at times.

Judge, he didn't have the best childhood growing up. Judge, he was in and out of D.J.J. a couple times. Actually went to the Marine Institute. Judge, one of the things they said. I've read the record from the Marine Institute, and I read some other records, he is easily

influenced by other. Your Honor, as I already said he was 15 when this happened. The gentlemen that plead to life, Mr. Robinson, was 19. Mr. Robinson had the gun. Mr. Robinson, I don't know if he asked Angelo or told Angelo, 'you're going to help me'.

Any way, Judge, everything I've read in Dr. Heffler's report, and I don't think Mr. Redmond would argue this point with me, my client is easily influenced by others. My client easily will succumb to pressure. And, of course, if somebody else has got a gun telling you that they want you to do something it makes a lot more easier to go along with it.

Judge, Angelo has told myself. He told Dr. Heffler. He told several people, his mother, "You know I didn't know this gentlemen was going to be killed. I want to let the family know that I didn't know he was going to be killed. I was doing it because I was told I was going to get killed if I didn't get him some money."

And that's what my client told me. That's what he told Dr. Heffler and that's what he told his mother. It doesn't justify what happened, Your Honor. Any time there is a robbery taking place and a gun is involved anything can go wrong, and in this case everything went wrong.

But, Judge, I would point that out to you. Your Honor, when Mr. Redmond and I actually met at the jail one

day, and we were talking with Angelo and told Angelo what he was facing and talking about this case Mr. Ham indicated that he did want to go ahead and enter the plea.

Your Honor, he indicated that he wanted to think about whether or not he would testify against Anthony Robinson. Judge, I believe that at that time he was still scared of Mr. Robinson even though he was incarcerated and Mr. Robinson was incarcerated and I think they were in the same facility, the Darlington County Detention Center. I think my client was still afraid of him and of what might happen.

Judge, since that time, of course, my client did plead guilty in April of last year. And he has indicated to me in some letters, and I told Mr. Redmond I think he will testify for you if you need him to. You have my permission to go talk with him. If you want me to go I'll go, but you have my permission to talk to Mr. Ham.

Judge, I believe he would have testified against Mr. Robinson if this case would have gone forward. Fortunately, not only for the State but also for the family of the victim it didn't go forward because, Your Honor, I been involved in a lot of death penalty cases as well. It's a hard burden for the State. It's hard on the family and it's also hard on the defendant, Your Honor, and their counsel and their family.

But, Judge, I will tell you all of that and simply that take those things in consideration and think about that and please consider that when you sentence Mr. Ham.

THE COURT: All right. Thank you. Mr. Hunter, I have heard from Mr. Wilson on your behalf. Is there anything that you would like to say.

MR. HUNTER: No, sir.

THE COURT: Mr. Ham, I heard from Mr. Anderson on your behalf. Is there anything that you would like to say.

MR. HAM: No, sir.

THE COURT: Gentlemen at some point in time this morning I will -- or this afternoon I will impose a sentence on you. I want each of you to understand that if you are going to appeal your guilty plea and your sentences it would have to take place within ten days of today's date. Do you understand that Mr. Hunter?

MR. HUNTER: Yes, sir.

THE COURT: And you, Mr. Ham?

MR. HAM: Yes, sir.

THE COURT: Thank you, gentlemen. I'll be glad to view at least a portion of the videotape and then be glad to hear, Solicitor, perhaps from one or two members on behalf of the family.

MR. REDMOND: Thank you, Your Honor.

MR. WILSON: Your Honor, is it fine if we sit?

THE COURT: Gentlemen, it's fine if you sit.

(WHEREUPON, a videotape was played for the Court in open Court.)

THE COURT: Thank you, Solicitor. I believe I have seen a sufficient amount of the tape, show the high regard in which his family and his friends, his children and his grandchildren, his wife, held him the esteem for which he was held in the community. So I will be glad to hear from one or two family members as I indicated that might wish to address the Court.

MR. REDMOND: Yes, sir, Your Honor. Judge, I asked -- Rick, if you come on back down. Rick Griggs, Mr. Griggs' son, Could address the Court at this time.

THE COURT: Thank you, Mr. Griggs. Be glad to hear from you.

MR. GRIGGS: Thank you. First, if it pleases Your Honor is there a way we could just ask a couple of questions about that night to ---

THE COURT: Are you talking about asking some questions of the individual defendants?

MR. GRIGGS: I can ask you and you can see if they would answer. I mean it's as simple as where was the car parked that night? Did they knock on the door? That type of thing just for our ---

THE COURT: What I will allow you to do is to pose these questions. They would have a moment that they could talk with their attorneys to perhaps provide some information that might render some closure for the family. I am not in a position where now that they're here for sentencing where we would be compelling answers for these types of things. But if you would like to present some questions that they can consider with their attorneys providing some information for you and the family members I have no objection to that.

MR. GRIGGS: It's not that many, and the first one is as simple as if Mr. Dennis could just tell us if the car -- where the car was parked that night? Was it on the side by the telephone? If he can tell us that. Yes or not.

THE COURT: What other questions?

MR. GRIGGS: Were all three of the defendants out by the phone that night when my dad walked out the cashier to her car, and ---

THE COURT: You're talking about now he's walking the cashier to the car before this incident occurred?

MR. GRIGGS: Right. Yeah, were all three gathered around the phone at that same time? And I know we talked about them getting in. We were curious whether them came to the door and actually knocked on the door and got my

dad to come and let them in or ---

THE COURT: All right, sir. I will see what we can to determine that.

MR. GRIGGS: Or did they come in ---

THE COURT: It appears from the presentation that was presented Mr. Wilson was indicating that Mr. Hunter was in the car and that it was Mr. Robinson and Mr. Ham that went to the door, but I did not hear that there was a breaking so to speak as opposed to I think the Solicitor indicated the evidence would indicate that your father was aware of Mr. Ham and allowed the door to be opened for that reason.

MR. GRIGGS: And my mom would like to know if while Mr. Ham was in there if he heard the phone ringing that she was calling to check on my dad when this incident was happening.

THE COURT: All right. Counsel, you've heard these questions, and I will allow you to discuss them with your respective clients to see what information they perhaps could shed.

MR. ANDERSON: Judge, please the Court. On behalf of Mr. Ham, Judge, he doesn't care -- I mean I don't think he can shed any light on the questions that's been asked at this time.

THE COURT: And with respect to Mr. Hunter?

MR. WILSON: It's pretty much the same. They've

given a detailed, video account of what they said occurred, and you know I don't know that there is anything ---

THE COURT: You're indicating they have no information beyond what information they gave to these questions?

MR. WILSON: Yes, sir. They've given every bit of information they could. And I know specifically he's asking questions about where the car was, and I know that was answered in the video information about where the car was supposed to have been that night.

THE COURT: Was the issue of the phone ringing a part of any of the video?

MR. REDMOND: No, sir. I don't think that was not mentioned.

MR. ANDERSON: No, sir, Your Honor. And like Mr. Wilson indicated I think everybody said everything they can remember the night they gave -- they day or night they gave a statement.

THE COURT: Thank you very much.

MR. GRIGGS: Well, first I want to show you. These are just some pictures from the visitation if you could see those. I just want to show you those to show you how many people were lined up and ---

THE COURT: Yes, sir.

MR. GRIGGS: --- and we stood.

THE COURT: I understand there was a great out pouring from the community in connection with the affection and esteem that they had your father in.

MR. GRIGGS: We stood in line for four hours to receive visitors. I think before I get into mine, I think my mom and sister wanted to say a few things.

THE COURT: All right. I'll hear from them briefly yes, sir.

MS. GRIGGS: Mariam Griggs. I'm the wife of Richard.

THE COURT: Yes, ma'am.

MS. GRIGGS: Well, I'm not a speaker, but I have to talk. We were married for 48 years. We have -- we had a good marriage. But I was so proud of him. He loved to speak. He could get up and speak to everybody. His voice wouldn't waiver. He could teach Sunday school. Deliver a sermon.

And he was just a good father and loving husband. But I was proud that he served in county council. He was always looking for stuff to be done. And they built the new E.M.S. building, and I'm sure his hand was raised up, let me help. They built the E.M.S. building, but the Darlington County Library, new library, Hartsville new library and the airport industrial was in shambles. And you should see it today.

The runway is longer, better equipment, Sonoco and New Corp. have a big building to put their airplanes in. And he just wanted to make a difference to make the infrastructure better so that the manufacturers can come in and give the young people something to do. And he was in business for 25 years, and sometimes he would have employees, you know they would be stealing.

And yet he had this heart that he believed in the kindness of mankind. He didn't want to fire them. Give them another chance. He was a good man. He was a good man. He didn't deserve to die like this, a horrible death. And, Your Honor, in the sentencing for me and my family I would love to hear no parole. No parole. I thank you for listening to me.

THE COURT: Yes, ma'am.

MS. HENDRICKS: Your Honor, I'd like to thank the Solicitor's Office for all their help given to us during this tragic time and for you to listen to us today. I'd also like to let Anglo Ham and Dennis Hunter know who Richard Griggs was. He was a husband, father. He was a grandfather, brother, uncle, and friend to everybody that knew him.

He was a man who was loved by his family and he loved his church. He loved his family. He loved his life, and he loved the Lord, Jesus Christ. He loved the store.

It's what we always called it, and he loved people. He was a people person. And one of the things I'm saying, I'm reiterating what were on the tape. He loved to see people come into church and to the store. He especially loved the little children. They would always come in cause they wanted to see Mr. Richard.

Daddy knew there was always good in people. He had people around the community, as Momma was saying, they wanted to come in and borrow money, and if he had it he certainly would give it to them. He would let them work it out some way at the store to make it up.

And, again, she said he had employees that would steal from him now and then. He would just work with them and just take them back up under his wing and take them back in and let them go on.

He was a trusting and good hearted man. Just as he opened the door the night he was killed he thought he was helping someone in need. He didn't like to see people sitting around when there was work to be done. He always knew there was something that needed to be done. And he told us children these values. He was a strict father. He wanted his children to have a good education.

I didn't get to attend college until I was at the age of 43 and I had one class left to finish before I would graduate and he didn't get to see me walk across that

stage as a college graduate. That was a dream that he had for all of his children. He also missed the college graduation of his granddaughter, Beth, and high school graduation of his grandson, Zack. He also missed the second birth of our second grandchild and not to mention all the countless other things he will now miss.

His niece, Hillary, once wrote about him that he was her hero. He always encouraged her and others to achieve their goal, and take on more responsibilities. He never saw a job that couldn't be done. She said that if there was a job that needed to be done he would find a way to get it done. She chose a song for him that day, "I Hope You Dance" because he would never want anyone to pass up an opportunity that came their way.

He made such an impact on Hillary's life and other people's lives just by a simple smile or a pat on the back when they came in the door. As teenagers he knew that they needed a little extra attention and he always showed him that he loved and cared for them.

Richard Griggs was a man who was worked hard all his life. He worked to provide a good life for us. I remember when we were young with the help of Momma, Granddaddy and Momma, he operated the store. Actually had two at one time. He had a hog pen -- hog farm and was even a part time farmer and a part time surveyor. He

worked long hours during the day and when some of those hogs were having pigs or having problems he and Rick and the other brothers were up all night helping to get them through their problems.

During all this time he was also a leader and he helped to start the Antioch Recreation Center and Birdtown Academy. He did this so that people in our community would have a good place to go swimming and the young people would have a good school to go to. He was always thinking about others.

He was a great community leader, and as you saw and all have said and Momma has talked about, his County Council years. They were the most productive years the County had seen, and he also helped elderly folks that needed medical equipment like those lift chairs.

Richard Griggs was truly a Christian man. He loved his church. He loved to sing in the choir, and always tried to make things better for people in church. He was a lay leader and he helped with church services when he was needed. Had a strong faith in the Lord's work.

He knew all things were possible with his help. Once my little brother, Scott, which was about two years old at the time drank some cleaning fluid and almost dies. But Daddy he knew he had to do something. He went to the church. He asked the sing the song, "Are You Able." And

he know only through the Lord's help that you could get through this because he knew this problem was something bigger than he could ever handle.

And with the prayers from the church family Scott was up and running around in no time and was better. Daddy also developed a painful disease called fibromyalgia and he hurt all over his body. Our family feels he contracted this disease from the stress of witnessing Scott's death at the age of 30. Scott die in his arms.

Even though he's in constant pain he managed to get up every morning. He was at that store at 5:30. They had to come to him for breakfast and folks always depended on him to have that store open. And he would be there until at least ten o'clock at night seven days a week.

So as I looked at Daddy as he was lying in the coffin I remember all the good times and bad times of our life. I began to rub his hand. I remember when he'd walk up beside me and take my hand and just stand there and hold it and rub it and pant it. So as I was rubbing his hands -- he had little crooked fingers cause he had had an accident and it never did straighten back out.

So I rubbed his hands I determined that I was rubbing off some make up and stuff that had been placed on his hands. And it was a hole. At that moment I realized that it was from a gunshot. I realized on that September night

he was trying so desperately to fight off bullets with his hands so he would not die. But how could anyone fight off ten bullets. Ten bullets coming at you all at one time. And I thought hoe he's on that floor and he died all alone.

How he died all alone. How I thought this was such a senseless, senseless killing. How could anyone do such a horrible thing. So you see Anglo Ham and Dennis Hunter and Mr. Robinson not only took away such a good man from our family but from our community.

Richard Griggs was a man we all loved and respected. I hope every day when they wake up and every night when they close their eyes that they think about Richard Griggs. They think about this man they have taken from so many people that loved him. Even after three years we miss him so much. There is not a day they goes by that we don't think about him and/or talk about him.

Your Honor, I just hope that you will not allow these men to every walk the streets freely again. Thank you for your time. Teresa Hendricks. I'm his daughter. Richard Griggs' daughter.

MR. GRIGGS: I want to first correct a couple of things if it's all right. Dennis Hunter was seven days away from being 18 when he committed this crime. I mean what was stated earlier he was almost 17 or was a little

over 17, he -- his birthday is 9-16-1986, and as far as I know that's 17 years, 358 days. So he was seven days away from being 18 which would give him -- if we could have gone through trial and not put our family back through hell again way we would have done that and gone after the death penalty.

So I would hope at that point he would have gotten life without the eligibility for parole. One other point to my question earlier, deep down in my heart I feel like Anglo Ham was the leader of this pack. Early on we heard that Anthony Robinson was six-foot, four and carried a gun at all this other hearings. He's not six foot, four.

He didn't make Anglo and Dennis go do this. I would say Angelo Ham was the leader that come down because he was the one that would visit the store and go in. He knew the practices that Dad stayed out there by himself, and I so I ask for you to take that into consideration when sentencing these guys.

I know -- I pray that you, you know, I know minimum is 30 years, but I want to be dead when they get out. I just could not tolerate them walking free out there. Kernard asked me not to do this, but I have some photographs I would like for you to see before you sentence them today, if that's all right, Your Honor.

MR. REDMOND: Judge, just for the record usually I

advise not to have the victim's family look at those photos, and Rick has been on me quite frankly for a year now and I refused to do so. But finally after having talked with him at length I decided to let him view the photos, probably against my better judgment, but, again, this is not a normal practice of mine. But I think you can see the depth of his emotions regarding this entire matter.

MR. GRIGGS: As we read through the autopsy report you can see there what my dad went through, and so I'm praying that you can give them the maximum. I don't know the laws, but you can go and see that at least make sure I'm in the grave many years before they ever think about being released.

I just really loved my dad so much I just cannot tolerate knowing that these guys will ever walk outside the prison while I'm alive. I do want to thank you for helping us bring this to a close. Again, I have five to ten pages, but I won't go through all that because you know how much we loved our dad.

And I know Friday is not good or this courtroom would have been full.

THE COURT: Well, it's obvious that whatever I do today will not be able to restore your father's life and won't really be able the restore your lives. We've talked

about his association with his church and his teaching Sunday school. And your sister talked about his missing things, but the reality probably is where he was now is such a joyful spot that he didn't miss. Y'all missed him at these various activities.

It appears that at least we know with respect to Mr. Hunter that he did not go into the residence -- I mean into the store and did not witness or participate in the ten shots being fired and what was taking place physically to your father and to your husband during that particular timeframe.

It appears that no one disputes, but at the time he was arrested and realized the consequences of what took place that he was willing to take those steps to ensure that those who has participated in this crime would have to pay for what they did.

And was willing to do what is what was necessary in order to testify fully against Mr. Robinson whether it was a trial that resulted in a jury finding Mr. Robinson guilty and then imposing a death sentence or whether it was a trial where Mr. Robinson would have been found guilty and the jury not have the recommended a death sentence.

We know that Mr. Ham was present at the door, was present inside. It does appear that he was someone who at

the time was 15 and someone who had an I.Q. that placed him it was in the 70s at an understanding that would perhaps not be as good an understanding as others. But it's hard to think of even someone who has got limited I.Q. not understanding the consequences of going in and committing a robbery and that a murder could have come out of that.

I can appreciate that they were, at least as to Mr. Hunter, ready from the beginning. As to Mr. Ham perhaps ready at that time the trial was going to take place to provide assistance to you and to the State to see that Mr. Robinson was effectively prosecuted.

I also can appreciate, however, while -- how you and all of the adult family members in particular would not feel comfortable with the idea of either of those gentlemen would be outside of prison walls while you were still outside of the Pearly Gates. It's a difficult situation to find a sentence that does justice for family members, recognizes that these individuals did assist in bringing about the prosecution.

I'm going to ask that y'all will if you will move back.

MR. GRIGGS: May I add one more thing?

THE COURT: Yes, sir.

MR. GRIGGS: After they did all this neither Mr. Ham

or Mr. Hunter either one bothered to call E.M.S. They didn't know whether he was dead or alive. They go to Hartsville and sit around smoke dope, do cocaine with no remorse. Even today they stand before you and don't even say I'm sorry. They personally don't even give a damn. So please take that into consideration.

THE COURT: I do. All right. Counsel, if you will bring your clients back before the Court. Mr. Wilson, anything further you like to say on behalf of Mr. Hunter?

MR. WILSON: No, sir, Your Honor.

THE COURT: Mr. Hunter, anything you'd like to say?

MR. HUNTER: No, sir.

THE COURT: Mr. Anderson, anything you would like to say on behalf of Mr. Ham?

MR. ANDERSON: No, sir, Your Honor.

THE COURT: Mr. Ham, anything else you would like so say?

MR. HAM: Yes, sir.

THE COURT: All right. I'll be glad to hear from you.

MR. HAM: Back in August, Your Honor, I did some legal material and requested my attorney be removed as my counsel due to the fact of him ineffective. Now, I sent that paper to the Clerk of Court, Mr. Scott Suggs. I returned it back, and it was filed but nothing was done

about this matter, sir. I feel as though that this sentence shouldn't be carried on today due to that fact, sir. I don't want him as my counsel my more, sir.

THE COURT: All right. Anything you would like to say beyond that.

MR. HAM: No, sir.

THE COURT: All right. Thank you very much. I accepted your pleas back on April 17, 2006. And find that those pleas were freely and voluntarily and intelligently entered into, and I accepted them. Today Mr. Anderson has come forward and he has attempted to tell me things that would help me on your behalf as I am faced with responsibility for determining what sentence would be appropriate.

You have simply indicated that you did not want him to be your attorney, but I think that he has served ably as your attorney, and I am not going to dismiss him as your attorney in this matter. If there is some matter that you can tell me to help in mitigation to help me as I am trying to determine what sentence might be appropriate I will be glad to hear from you if there is anything you would like to tell me about your situation.

MR. HAM: I just feel as though that I shouldn't be sentenced today, Your Honor, due to that fact ineffective. If you was in my shoes, Your Honor, not saying you are in

my shoes, but if you were in my shoes, Your Honor, and a man is trying to get you this time, Your Honor, that you would feel the same say I feel, Your Honor.

THE COURT: When you say, 'he's trying to get you time', what do you mean?

MR. HAM: Okay, it's like if it was -- if he was so curious as to why I'm right here now instead of me being right here, if he's so curious why I'm right here now then what?

THE COURT: I don't understand what you're saying.

MR. HAM: Your Honor, on September 5th 2007 I received a letter from Attorney Henry Anderson. He stated that, "Thank you for your letter of August 27th 2007. I'm not sure what your recollection of the hearing was in April. I am also curious as to why I'm recently started to hear from you about your case."

I feel as though, Your Honor, he didn't even have to go that far, Your Honor, with that because if he wanted to represent me, represent me to the best of his abilities. Don't be curious why I'm writing you when my life is on the line. My life is on the line right now, Your Honor, and not his and nobody else on. Just me and Mr. Hunter's.

THE COURT: Is there anything you would like to add? Mr. Anderson has told me a great deal about your situation, and I have heard from the State about your

involvement in the crime. You have pled guilty and then been found guilty under the law. The only thing remaining is what would be an appropriate sentence. Mr. Anderson has told me some things to help me which he feels like on your behalf about your situation as I am considering a sentence.

Is there anything else that you would like to tell me about the sentencing aspect in this matter? Some things that I might want to consider as I am trying to determine what would be an appropriate sentence.

MR. HAM: Yes, sir.

THE COURT: All right.

MR. HAM: For one, Your Honor, according to witness, James Robinson, statements and every other statement that is in the motion of discovery, okay, just because we was at this store at a particular time, Your Honor, doesn't mean that we actually killed anybody, we actually robbed anybody, we even committed a crime, okay.

And according to the statement that Mr. Hunter and Mr. Robinson wrote, Your Honor, as stated in -- from their mouths and was found in the room the night we was caught, Your Honor, there was some drugs, illegal substances in the room, Your Honor. We was all under the influence of drugs. Your Honor, the statements that they wrote basically tells a lie.

THE COURT: All right, sir. Thank you.

MR. REDMOND: Your Honor, at the appropriate time and I was not going to say anything, but based on Mr. Ham's comments the Court deem appropriate I feel compelled to respond to a limited degree regarding the issue of sentencing.

THE COURT: Anything further that Mr. Hunter would like to say and say about the fact that he's now been told that his statement was a lie?

MR. WILSON: Your Honor, he indicates -- I asked him about that. He said everything that he has said and every statement given has been truthful up to this point.

THE COURT: Mr. Hunter and Mr. Ham, one of the things Judges try to look at to see what is the possibility of some type of rehabilitation. What degree of remorse might exist when it comes to making a determination in sentencing.

Mr. Hunter, from your standpoint it appears that there is a terrible crime that has been committed; that there is some recognition of what you have done, your responsibility in it, and your desire to try and have judge entered in connection with this matter and to have the consequences of your sentence, whatever that sentence might be.

Mr. Ham, on your behalf, however, it appears that

there is no real sense of remorse; that having pled guilty you're now trying to recant the testimony that you previously gave; that as to your involvement that previous statements are incorrect and that you have no remorse and you have no acceptance of the responsibility in connection with this matter.

I've heard you speak. One of the reasons I wanted to hear you speak was to see how you could communicate your thoughts and your ideas and as to whether or not perhaps what has been presented to me as a limited I.Q. might in some way be reflected in that.

I do not find that if you have a limited I.Q. that in any way affected your ability to rationalize, to think or to communicate, but that you have simply refused to accept and acknowledge any responsibility in here and -- today and give me any hope that there is any reason to believe that you can be rehabilitated.

SENTENCE OF THE COURT

THE COURT: As to the sentence of murder I am imposing a life sentence on you. And as the sentence for armed robbery I am imposing 25 years.

As to you, Mr. Hunter, I find your situation is different and also find this is a tremendously senseless matter. I am sentencing you to 40 years on the murder and 25 years in connection with the armed robbery. You have

shown some symbolance that you can live long enough and/or remorseful enough that should you get the opportunity to live in society again at an advanced age that I think you can do so successfully. Good luck to you.

MR. REDMOND: Thank you, Your Honor.

MR. WILSON: Thank you, Your Honor.

MR. ANDERSON: Thank you, Your Honor.

THE COURT: Thank you very much.

END OF TRANSCRIPT OF RECORD

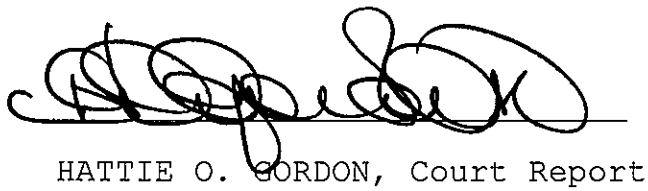
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

I, HATTIE O. GORDON, Official Court Reporter for the 4th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Darlington County, South Carolina, on the 14th day of September, 2007.

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

February 29, 2008



HATTIE O. GORDON, Court Reporter

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DARLINGTON COUNTY
Court of General Sessions

John M. Milling, Circuit Court Judge

Case No. 2005-GS-16-1969, 1970

The State, ... Respondent,

v.

Angelo B. Ham ..... Appellant.

NOTICE OF APPEAL

Angelo B. Ham appeals his conviction and sentence in this case. The sentence was imposed by the Honorable John M. Milling on September 14, 2007.

September 18, 2007

Henry M. Anderson, Jr.
Attorney for Appellant
Anderson Law Firm, P.A.
265 West Evans Street
Florence, SC 29501-3464
(843) 665-4300

Other Counsel of Record:

Kernard Redmond, Assistant Solicitor
Darlington County Solicitor's Office
1 Public Square, Room 410
Darlington, South Carolina 29532

FILED
2007 SEP 19 AM 9:13
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DARLINGTON COUNTY
Court of General Sessions

John M. Milling, Circuit Court Judge

Case No. 2005-GS-16-1969, 1970

FILED
2007 SEP 19 AM 9:13
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

The State, ... Respondent,

v.

Angelo B. Ham ..... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by hand delivering a copy of it to Kernard Redmond, Assistant Solicitor at his office at Darlington County Solicitor's Office, 1 Public Square, Room 410, Darlington, South Carolina 29532 on September 19, 2007.

September 19, 2007

Henry M. Anderson, Jr.
Attorney for Appellant
Anderson Law Firm, P.A.
265 West Evans Street
Florence, SC 29501-3464
(843) 665-4300

Other Counsel of Record:

Kernard Redmond, Assistant Solicitor
Darlington County Solicitor's Office
1 Public Square, Room 410
Darlington, South Carolina 29532

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	)	IN THE SOUTH CAROLINA COURT OF APPEALS
THE STATE, Respondent, v. ANGELO B. HAM Appellant	)	AFFIDAVIT

RECEIVED
JUN 02 2008
SC Court of Appeals

PERSONALLY appeared before me, Angelo B. Ham, who being duly sworn, deposes and says:

1. I am the appellant in the above captioned case.

2. I understand that I am entitled to an appeal of my conviction, and that, because I am indigent, I am entitled to the assistance of an attorney from the South Carolina Office of Appellate Defense. I have been informed that if I drop my direct appeal that I forever waive those issues that could be raised.

3. In light of the risks which have been explained to me, it is my desire that the South Carolina Office of Appellate Defense drop the appeal formerly filed on my behalf.

4. I have made this decision on my own, with a full understanding of all the possible consequences of this action.

5. I do not wish to appeal.

Angelo B. Ham
Angelo B. Ham

SWORN TO before me this 25
day of May, 2008.

Notary Public for South Carolina (L.S.)
My Commission Expires: 12-20-2017

RECEIVED
JUN 02 2008

The South Carolina Court of Appeals

The State, Respondent,

v.

Angelo B. Ham, Appellant.

The Honorable John M. Milling
Darlington County
Trial Court Case No. 2005-GS-16-01969
2005-GS-16-01970

ORDER of DISMISSAL AND REMITTITUR

The above entitled case is pending on appeal in this Court. It appears that Appellant, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw the appeal and moves the Court for an Order dismissing the appeal.

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. This case is REMITTED to the Clerk of Court for Darlington County.

V. Elaine Allen, Deputy Clerk

Columbia, South Carolina

6/9/2008



Original to: The Honorable Scott A. Suggs

cc: Deputy Chief Appellate Defender for Capital Appeals Robert M. Dudek
Assistant Deputy Attorney General Donald J. Zelenka
The Honorable John M. Milling

STATE OF SOUTH CAROLINA

County of Darlington

In the Court of Common Pleas

07 CP 16 08 11

FILED
2007 SEP 11 PM 12:41
SCOTT B. SUGGS
CLERK OF COURT
DARLINGTON CO., S.C.

Angelo Bernard Hall #315014
Full name and prison number (if any) of Applicant,

vs.

The State of South Carolina
Name of Respondent.

APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention South Carolina Department of Corrections; Lee Correctional Institution, 990 Wisacky Highway, Bishopville, S.C. 29010.

2. Name and location of Court which imposed sentence Darlington County Courthouse

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
   (a) Criminal Conspiracy
   (b) _____
   (c) _____

4. The date upon which sentence was imposed and the terms of the sentence:
   (a) April 17, 2006 - plead guilty to Criminal Conspiracy; 5 years non-violen
   (b) _____
   (c) _____

5. Check whether a finding of guilty was made
   (a) after a plea of guilty YES
   (b) after a plea of not guilty NO
   (c) after a plea of nolo contendere NO

6. Did you appeal from the judgment of conviction or the imposition of sentence?
   NO

7. If you answered "yes" to (6), list
   (a) the name of each Court to which you appealed:
      i. _____
      ii. _____
      iii. _____
   (b) the result in each such Court to which you appealed:
      i. _____
      ii. _____
      iii. _____
   (c) the date of each such result:
      i. _____
      ii. _____
      iii. _____
   (d) if known, citations of any written opinion or orders entered pursuant to such results:
      i. _____
      ii. _____
      iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:
   (a) WHEN I WROTE the Darlington County clerk of Court requesting forms
   (b) PCR applications I NEVER RECIEVED it in a timely MANNER. My ATTORNEY
   (c) NEVER asked ME do I WANT to appeal the decision in a timely MANNER

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
   (a) WAS "forced" to participate in such act (with a gun).
   (b) ATTORNEY HENRY M. ANDERSON was INEFFECTIVE.
   (c) Conflict of Interest (Honorable Judge).
   (d) Statements from Co-Defendants is void.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):
   (a) I was forced with a gun by my Co-Defendant.
   (b) didn't filed any Motions, petitions, or applications.
   (c) the Judge stated that he use to work for the Victim.
   (d) All of us were under the influence of drugs with is known as Marijuana.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? NO

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

FILED
2007 SEP 11 PM 12:41
SCOTT S. SUGGS
CLERK OF COURT/C.O.D.
DARLINGTON COUNTY, S.C.

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. WAS "forced" to participate in such act (with a gun).

ii. Attorney Henry M. Anderson, JR. was ineffective.

iii. Statements from Co-defendants is void because all of us were under the influence of drugs (Marijuana).

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

i. NONE

ii. Attorney didn't file any motions, petitions, or applications.

iii. All of us were under the influence of drugs which is known as Marijuana.

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Conflict of Interest (Honorable Judge) because I felt as though

(b) My attorney is against ME due to the fact that he, the prosecutor,

(c) and the Judge knew better.

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

(a) your arraignment and plea? YES

(b) your trial, if any? _____

(c) your sentencing? _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

i. Mr. Henry M. Anderson, Jr.; 205 West Evans Street; Florence, South Carolina, 29501-3404.

ii. _____

iii. _____

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

i. during a plea of guilty, and preliminary hearing

ii. _____

iii. _____

18. State clearly the relief you seek in filing this application.

That the sentence for guilty plea BE reversed/or overturned

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

NO

STATE OF SOUTH CAROLINA

County of Darlington

VERIFICATION

07 CP 16081 1

I, Angelo Bernard Hall #315014, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Angelo Hall #315014

SWORN to and subscribed before me this 7 day of Sept, 2007.

Debra Sims (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED
2007 SEP 11 PM 12:41
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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

I, Angelo Bernard Hall #315014, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Angelo Hall #315014
Applicant

SWORN or affirmed to and subscribed before me this 7 day of Sept, 2007.

Debra Sims
Notary Public

My Commission Expires 11-4-2015

RECEIVED
SEP 7 2007
LEECI MAIL ROOM

JJ

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2007-CP-16-0811
COUNTY OF DARLINGTON)	
)	
Angelo Bernard Ham,)	
S.C.D.C. No. 315014,)	
)	
Applicant,)	
)	**RETURN AND PARTIAL MOTION**
)	**TO DISMISS**
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

FILED
2007 NOV -2 AM 11:32
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

In response to the post-conviction relief application filed September 11, 2007, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Darlington County Clerk of Court's orders of commitment. The Darlington County Grand Jury indicted the Applicant at the October 2005 term of General Sessions for murder (2005-GS-16-1969), armed robbery (2005-GS-16-1970) and criminal conspiracy (2005-GS-16-1971). Henry M. Anderson, Jr., Esquire represented the Applicant.

On April 17, 2006, the Applicant pled guilty to all three charges but was only sentenced on criminal conspiracy. The Honorable John M. Milling sentenced the Applicant to five (5) years imprisonment on that charge. The Applicant did not appeal.[1]

Attached herewith and incorporated herein by reference are the records of the Darlington

[1] On September 14, 2007, Judge Milling sentenced the Applicant to concurrent terms of life imprisonment without parole for murder and twenty-five (25) years for armed robbery. The Applicant has appealed those convictions and sentences, and they are not a part of this PCR application.

County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel:
   a. Failed to ask if he wanted to file a notice of appeal.
2. "Conflict of interest (honorable judge)."
3. "Statements from co-defendants is [sic] void."

III.

The Respondent submits this Application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offense he challenges in this Application on April 17, 2006. The Applicant was therefore required to file his application before April 17, 2007. This Application was filed on September 11, 2007, which was almost five (5) months after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of

limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

The Respondent notes the Applicant has alleged that plea counsel did not advise him of the right to appeal. Although a defendant has a right to appeal his guilty plea, there is no constitutional requirement that he be advised of this right, absent extraordinary circumstances. Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995). The Respondent lacks sufficient information to admit or deny this allegation. Therefore, the Respondent requests an evidentiary hearing solely on this ground for relief. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V.

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

VI.

WHEREFORE, having made its Return, the Respondent moves to dismiss the issues raised in the application because the application was filed after the statute of limitations had expired. The Respondent requests, however, this Court convene an evidentiary hearing solely on the issue of whether plea counsel advised the Applicant of the right to an appeal.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: Karen C. Ratigan
Attorneys for Respondent

November ~~October~~ 1, 2007

FILED
2007 NOV -2 AM 11:32
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	IN THE COURT OF COMMON PLEAS 2007-CP-16-0811
ANGELO BERNARD HAM, 315014 Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return and Partial Motion to Dismiss of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Angelo Bernard Ham, 315014
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

FILED
2007 NOV -2 AM 11:32
SCOTT B. SUGGS
CLERK OF COURT P.D.
DARLINGTON COUNTY, S.C.

DATED this 1st day of November, 2007.

Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON ANGELO BERNARD HAM 315014 APPLICANT, -VS- THE STATE, RESPONDENT. **********	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO.: 2007-CP-16-0811 MOTION TO ALTER OR AMEND

FILED
2008 APR 23 AM 9:58
SCOTT S. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

This Motion comes before this Court respectfully requesting that the Courts grant me this Motion to alter and/or amend on the following:

9. The Applicant indictments are "sham legal process" that failed to confer subject matter jurisdiction upon trial court to convict him.
10. The Applicant indictments were true billed before the Grand Jury convene. The Applicant indictments are also in violation to the S. C. Code Section 14-7-1750; 14-9-210; and 14-5-50.
18. That my sentence be vacated.

RESPECTFULLY SUBMITTED
On behalf of Angelo B. Ham

Charles T. Brooks III
The Law Office of Charles T. Brooks III
309 Broad Street
Post Office Box 3512
Sumter, SC 29151
(803) 418-5708

Sumter, SC
April 21, 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	CASE NO.: 2007-CP-16-0811
	)	
ANGELO BERNARD HAM	)	
315014	)	
	)	
APPLICANT,	)	
	)	MOTION TO ALTER OR AMEND
-VS-	)	
	)	
THE STATE,	)	
	)	
RESPONDENT.	)	

****

This Motion comes before this Court respectfully requesting that the Courts grant me this Motion to alter and/or amend on the following:

9. The applicant contends that the Courts illegally waived him from Juvenile(Family) Courts to Adult (General Sessions) Court;

10. The waiver was in violation to Kent v United States, 383 U. ?S. 541, 86 S.Ct. 1045, 16 L.Ed. 2d 84 (1966). The Courts waived Applicant just to present an illegal indictment which failed to confer subject matter juridiction.

18. That my sentence be vacated.

RESPECTFULLY SUBMITTED
On behalf of Angelo B. Ham

Charles T. Brooks III
The Law Office of Charles T. Brooks III
309 Broad Street
Post Office Box 3512
Sumter, SC 29151
(803) 418-5708

Sumter, SC
June 3, 2008

FILED
2008 JUN -5 AM 10:18
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

JUDGMENT IN A CIVIL CASE

2008 OCT 15 AM 11:10

CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

IN THE COURT OF COMMON PLEAS

CASE NO. 07-811

Angelo B. Ham

State of SC

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

[ ] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

[ ] DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[ ] ACTION DISMISSED *(CHECK REASON)*: [ ] Rule 12(b), SCRCP; [ ] Rule 41(a), SCRP (Vol. Non-suit); [ ] Rule 43(k), SCRCP (Settled); [ ] Other - _____

[ ] ACTION STRICKEN *(CHECK REASON)*: [ ] Rule 40(j) SCRCP; [ ] Bankruptcy; [ ] Other - _____

IT IS ORDERED AND ADJUDGED: [ ] See attached order; [ ] Statement of Judgment by the Court:

PCR application has been withdrawn only to conspiracy charges.

Dated at Darlington, South Carolina, this 15 day of October, 2008.

PRESIDING JUDGE

This judgment was entered on the 20 day of October, 08, and a copy mailed first class this _____ day of _____, _____, to attorneys of record or to parties (when appearing pro se) as follows:

Charles Brooks

Karen Ratigan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON Angelo Bernard Ham, S.C.D.C. No. 315014, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS C.A. No. 2007-CP-16-0811 **ORDER OF DISMISSAL WITH PREJUDICE**

FILED
2008 DEC 15 PM 12:46
CLERK OF COURT
DARLINGTON COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR). A hearing was convened at the Darlington County Courthouse on October 15, 2008, at which time the Applicant was present in court and represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General.

At the hearing, the Applicant and his attorney informed this Court the Applicant wished to withdraw his PCR application with prejudice. The Applicant pled guilty on April 17, 2006 to murder (2005-GS-16-1969), armed robbery (2005-GS-16-1970), and criminal conspiracy (2005-GS-16-1971), but was only sentenced on the criminal conspiracy charge. The Applicant was sentenced on September 14, 2007 for the murder and armed robbery charges. The PCR application in this case challenged only the criminal conspiracy conviction and sentence. The Applicant stated he wished to withdraw this PCR application and was advised by this Court that he could file a PCR application challenging the convictions and sentences for murder and armed robbery within one (1) year of the date his direct appeal on those charges was decided.

The Applicant was sworn and questioned by the Court about his withdrawal request to

ensure the withdrawal of the application was free and voluntary; that the Applicant had not been promised anything or threatened, coerced, or induced into withdrawing the application; that the Applicant was fully satisfied with the services of his appointed attorney in this matter; and that the Applicant was aware the dismissal was with prejudice.

Based upon the Applicant's testimony, this Court finds the dismissal of this application for post-conviction relief is voluntary and the Applicant has knowingly and intelligently elected to have his PCR application dismissed with prejudice.

FILED
2008 DEC 15 PM 12:46
CLERK OF COURT
DARLINGTON COUNTY, S.C.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be dismissed with prejudice; and

2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4 day of November, 2008.

Larry B. Hyman, Jr.
Presiding Judge
Fourth Judicial Circuit

Conway, South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON ANGELO BERNARD HAM, 315014 Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	IN THE COURT OF COMMON PLEAS 2007-CP-16-0811 AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Order of Dismissal With Prejudice** of the Respondent in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Charles T. Brooks, Esquire
Post Office Box 3512
Sumter SC 29151

FILED
2008 DEC 15 PM 12:46
CLERK OF COURT
DARLINGTON COUNTY, S.C.

DATED this 12th day of December, 2008.

Judy A. C. Carey, Legal Assistant
For Respondent

2008 NOV 21 AM 11:48

DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA

County of Darlington

In the Court of Common Pleas

08 CP 16 1006

Angelo Bernard Hom #315014
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.

APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution; 990 Wisacky Highway; Bishopville, S.C. 29010

2. Name and location of Court which imposed sentence Darlington County Courthouse; 1 Public Square; Darlington, S.C. 29532

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
   (a) 2005-GS-16-1969 (Murder)
   (b) 2005-GS-16-1970 (Armed Robbery)
   (c) _____

4. The date upon which sentence was imposed and the terms of the sentence:
   (a) September 14, 2007 - LWOP
   (b) September 14, 2007 - 25 years
   (c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty ✓

(b) after a plea of not guilty

(c) after a plea of nolo contendere

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

YES

7. If you answered "yes" to (6), list

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

i. The South Carolina Court of Appeals

ii.

iii.

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

i. withdrew the appeal from this court

ii.

iii.

(c) the date of each such result:

i. June 9, 2008

ii.

iii.

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

i. N/A

ii.

iii.

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) ineffective assistance of counsel

(b)

(c)

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

(a) ineffective assistance of counsel

(b) violations due to illegal indictments

(c) illegal waiver from juvenile to adult

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Attorney failed to investigate case with close scrutiny.

(b) indictments failed to confer subject matter jurisdiction.

(c) All 8 factors must consider before waiving me up to general sessions.

08 CP 16 1008

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A

(d) any other petitions, motions or applications in this or any other Court?

N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) indictment(s) "subject matter jurisdiction" - plead guilty

(b) juvenile waiver - didn't know the law at the time

(c) arrest warrants - didn't have and/or knew the law at the time

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

(a) your arraignment and plea? ✓

(b) your trial, if any? N/A

(c) your sentencing? ✓

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

i. Henry M. Anderson, Jr.; 1405 West Evans Street; Florence, S.C. 29501

ii. Robert M. Dudek; Division of Appellate Defense; P.O. Box 11589; Columbia, S.C. 29211

iii. _____

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

i. plea and sentencing

ii. appeal

iii. _____

18. State clearly the relief you seek in filing this application.

vacation of sentence due to his illegal violations

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

N/O

08 CP 16 1006

STATE OF SOUTH CAROLINA

County of Darlington

VERIFICATION

I, Angelo Bernard Hall, SCDC #315014, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Angelo Bernard Hall, SCDC #315014

SWORN to and subscribed before me this 19 day of Nov., 2008

A Bracey Sims (L.S.)
Notary Public

My Commission Expires: 5/16/14

FILED
2008 NOV 21 AM 11:48
DARLINGTON COUNTY, S.C.

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

I, Angelo Bernard Hall, SCDC #315014, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Angelo Bernard Hall, SCDC #315014
Applicant

SWORN or affirmed to and subscribed before me this 19 day of Nov., 2008

A Bracey Sims
Notary Public

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2008-CP-16-1006
COUNTY OF DARLINGTON)	
)	
Angelo Bernard Ham,)	
S.C.D.C. No. 315014,)	
)	
Applicant,)	**RETURN**
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

FILED
2009 MAR 20 AM 10: 32
SUSAN C. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

The Respondent, making its Return to the application for post-conviction relief filed November 21, 2008, would respectfully show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Darlington County Clerk of Court's orders of commitment. The Darlington County Grand Jury indicted the Applicant at the October 2005 term of General Sessions for murder (2005-GS-16-1969), armed robbery (2005-GS-16-1970) and criminal conspiracy (2005-GS-16-1971). Henry M. Anderson, Jr., Esquire represented the Applicant.

On April 17, 2006, the Applicant pled guilty to all three charges but was only sentenced on criminal conspiracy. The Honorable John M. Milling sentenced the Applicant to five (5) years imprisonment on that charge. The Applicant did not file an appeal from the criminal conspiracy guilty plea or sentence.[1]

[1] The Applicant filed a PCR application on September 11, 2007 related to the conviction and sentence on the criminal conspiracy charge (2007-CP-16-0811). The Applicant, however, chose to voluntarily withdraw his PCR application. The Honorable Larry B. Hyman, Jr. dismissed the matter with prejudice by order dated November 4, 2008.

On September 14, 2007, the Applicant was sentenced on the murder and armed robbery charges. Judge Milling sentenced the Applicant to concurrent terms of life imprisonment without parole for murder and twenty-five (25) years for armed robbery.

A timely Notice of Appeal was filed at the South Carolina Court of Appeals in order to challenge the convictions and sentences for the murder and armed robbery charges. The Applicant, however, chose to withdraw his appeal. The Court of Appeals dismissed the case and issued the remittitur by order dated June 9, 2008.

Attached herewith and incorporated herein by reference are the records of the Darlington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, the sentencing transcript, and the appellate records.

II.

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

1. Ineffective assistance of counsel.
2. Violations due to illegal indictments.
3. Illegal waiver from juvenile to adult.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v.

Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent submits the Applicant's assertion that the plea court lacked subject matter jurisdiction is without merit. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). The Respondent further notes that indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. The indictments in this case were true-billed and clearly sufficient to put the Applicant on notice of the charges he was facing.

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

FILED
2009 FEB 20 AM 10:32
JEANNETTE G. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

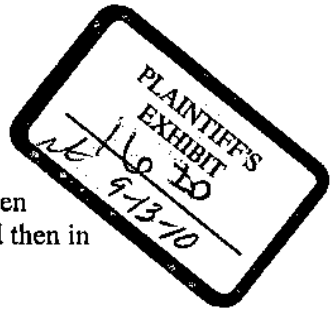
KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: Mary A. Williams for
Attorneys for Respondent
Karen Ratigan

February 25, 2009

FILED
2009 FEB 20 AM 10:32
SCOTT D. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.



GROUNDS FOR POST CONVICTION RELIEF

1. Trial counsel was ineffective in failing to move to withdraw his guilty plea, when Defendant requested withdrawal and in writing (see Exhibit 7)and orally to counsel and then in court (transcript at p. 35+). *See* Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009)

2. Applicant's indictments were improper and void since they were true billed before the Grand Jury convened. The indictments were true billed October 20, 2005 but the grand jury did not convene until October 24, 2005 – Exhibit 5. See S.C. Code Ann Section 14-7-1750 that provides in order to return a true bill of indictment the grand jury must find that probable cause existed. Also S.C. Code Ann Section 14-7-1140 provides that any irregularity in the grand jury process must be made by a motion to quash the indictment. See Evans v. State, 363 S.C. 495 (2005). Counsel was ineffective for failing to discuss this irregularity with the Defendant and for failing to move to quash.

3. Trial counsel was ineffective for failing to advise the Defendant of the trial/sentencing judge's relationship with the victim. Though the court, made some disclosure concerning its relationship with the victim, counsel failed to follow up with any questions to the judge in this regard or discuss the matter with the applicant. Had the Defendant known the trial judge and victim were from the same town, crossed paths in business, the judge had personal knowledge regarding the victims funeral (See page 14, line 2-4.) and that he could have his plea and sentencing conducted by another judge, he would have objected to the trial judge participating. See Transcript page 8, line 24 – page 9, line 23.

4. Trial counsel failed to object to the admission of videotape containing clips of the victim's birthday party that was allowed in to evidence during the sentencing phase. *See* Rule 401, SCRE

5 Trial counsel was ineffective for failing to object to applicant's illegal detention – See Rule 3, SCRCrimP stated that once a defendant is arrested and detained, an arrest warrant shall be brought forth within 15 days – arrest warrant was not served until 10 months later

6 The Family Court erroneously waived jurisdiction to the Court of General Sessions (04-JU-16-233, 234 and 235) despite the findings in the pre-waiver evaluation report and testimony of Dr. Heffler. Counsel was ineffective for failing to appeal this ruling; for failing to ask Judge Henderson of any connection with the victim and further in failing to ask him to recuse; and failing to adequately present evidence regarding the Defendants ability to rehabilitate and the State's failure to follow its own suggestions. See "Needs and Recommendations" of Vanessa Galvarino Hiers, MSW, LMSW dated 12-7-01 – Exhibit 11.

7. Trial counsel was ineffective for failing to investigate the applicant's case and therefore the Defendant was inadequately prepared to make a decision as to his plea or request for trial.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2008-CP-16-1006
COUNTY OF DARLINGTON)	
)	
Angelo Bernard Ham,)	
S.C.D.C. No. 315014,)	
)	
Applicant,)	**ORDER OF DISMISSAL**
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

FILED
2010 DEC 10 AM 9:36
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 21, 2008. The Respondent made its return on February 25, 2009. An evidentiary hearing into the matter was convened on September 13, 2010 at the Darlington County Courthouse. The Applicant was present at the hearing and represented by Gary I. Finklea, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Henry M. Anderson, Jr., Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Darlington County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, the Respondent's return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. The Applicant was indicted at the October 2005 term of the Darlington County Grand Jury for murder (2005-

GS-16-1969), armed robbery (2005-GS-16-1970), and criminal conspiracy (2005-GS-16-1971). He was represented by Henry M. Anderson, Jr., Esquire.

On April 17, 2006, the Applicant pled guilty to all three charges but was only sentenced on criminal conspiracy. The Honorable John M. Milling sentenced the Applicant to five (5) years imprisonment on that charge. The Applicant did not file an appeal from the criminal conspiracy guilty plea or sentence.[1]

On September 14, 2007, the Applicant was sentenced on the murder and armed robbery charges. Judge Milling sentenced the Applicant to concurrent terms of life imprisonment without parole for murder and twenty-five (25) years for armed robbery.

A notice of appeal was filed at the South Carolina Court of Appeals in order to challenge the convictions and sentences for the murder and armed robbery charges. The Applicant, however, chose to withdraw this appeal. The Court of Appeals dismissed the case and issued the remittitur by order dated June 9, 2008.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Violations due to illegal indictments.
3. Illegal waiver from juvenile to adult.

The Applicant filed a pro se document captioned "Motion to Alter/or Amend" dated June 29, 2009 in which he made the following allegation:

1. Ineffective assistance of counsel:
   a. Failed to object to the videotape that was allowed into evidence during

[1] The Applicant filed a PCR application on September 11, 2007 related to the criminal conspiracy charge (2007-CP-16-0811). The Applicant, however, chose to voluntarily withdraw this application and the Honorable Larry B. Hyman, Jr. dismissed the matter with prejudice by order dated November 4, 2008.

the plea hearing.

The Applicant filed a pro se document captioned "Motion to Alter/or Amend" dated July 27, 2009 in which he made the following allegation:

1. The plea judge did not have subject matter jurisdiction of the armed robbery charge.

The Applicant filed a pro se document captioned "Motion to Alter/or Amend" dated February 16, 2010 in which he made the following allegation:

1. The Family Court illegally waived jurisdiction to the Court of General Sessions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v.

State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated plea counsel did not properly investigate his case. The Applicant stated plea counsel failed to contact James Robinson (a witness from outside the store). The Applicant stated plea counsel failed to argue there was no SLED ballistics report. The Applicant stated plea counsel should have made a motion when the plea judge stated he knew the victim. The Applicant stated he wanted plea counsel to move to withdraw his guilty plea. The Applicant testified he wanted to withdraw his plea because he believed there were errors in the State's evidence and that his co-defendants were lying.

Plea counsel testified he had not noticed the indictments stated the Grand Jury convened on October 24 but that the true bill was signed on October 20. Plea counsel testified, however, that this did not affect the case in any way. Plea counsel testified there was a delay between the date the Applicant was arrested and the date he was served with the arrest warrant. Plea counsel testified this may have been because the Applicant was in DJJ custody in Columbia at the time. Plea counsel stated, however, that he was on notice of the Applicant's charges and this did not affect his representation. Plea counsel stated he represented the Applicant at the waiver hearing in family court and that there was nothing else he could have done at that hearing. Plea counsel stated he and the Applicant did not discuss appealing the waiver. Plea counsel stated he did not recall whether a ballistics test was performed. Plea counsel stated he attempted to speak to witness James Robinson, but that Robinson refused. Plea counsel testified he would have

discussed any potential recusal issues with the Applicant but said the plea judge in this case would have been (most likely) the most lenient sentencing judge. Plea counsel testified he did not object to the videotape of the victim that was viewed during sentencing because it was a guilty plea hearing and it did not impact the Applicant's sentence. Plea counsel testified the Applicant's behavior and attitude during the sentencing hearing is what resulted in a heftier sentence. Plea counsel testified that, more than one (1) year after the plea hearing – and shortly before the sentencing hearing – the Applicant indicated he had second thoughts about having pled guilty.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.18; p.25). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.13-16; pp.17-20).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have moved to quash the indictments because they were defective. Initially, this Court notes the Applicant and plea counsel were on notice of the charges the Applicant was facing. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103,

610 S.E.2d 494, 500 (2005). Indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. Regardless, the Applicant's argument that plea counsel should have objected because the Grand Jury was not scheduled to convene when his indictments were signed is without merit. While terms of court are technically prescribed by statute, this Court notes general sessions matters may be transacted during common pleas terms of court and vice versa. See S.C. Code Ann. §§ 14-5-410, -420 (Supp. 2003). Therefore, even if the Grand Jury were convened during a term of common pleas, it would not have rendered the indictments defective.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have argued a violation of Rule 3(c), SCRCrimP. Our courts have found a mere violation of this Rule does not prevent the State from pursuing the case. See State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984) ("[T]he failure of the solicitor to act upon a warrant within ninety (90) days . . . does not within itself invalidate a warrant or prevent subsequent prosecution."). Further, this Court finds the Applicant failed to provide evidence of any prejudice that resulted from the delay. See, e.g., State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (noting one must prove prejudice in order to prevail on an allegation that one's speedy trial rights were violated).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have appealed the family court judge's decision to transfer the case to general sessions. Such a transfer order is interlocutory and not immediately appealable. See Sanders v. State, 281 S.C. 53, 56 n.1, 314 S.E.2d 319, 321 n.1 (1984) (citing State v. Lockhart, 275 S.C. 160, 267 S.E.2d 720 (1980)). That decision, therefore, must be appealed at the conclusion of the resulting guilty plea or trial. Plea counsel did file a notice of appeal in this case. At that point, the Applicant

could have pursued the transfer issue. Instead, the Applicant chose to voluntarily withdraw his appeal.

This Court finds the Applicant failed to meet his burden of proving plea counsel failed to properly investigate his case. This Court finds plea counsel adequately explained why he was not able to speak with witness James Robinson. This Court notes that, while the Applicant challenged the lack of a ballistics report in this case, he did not present any evidence at the PCR hearing about what such a report would have concluded. As such any discussion of the impact of the Applicant's contention at trial is speculative. See Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Further, this Court finds the Applicant cannot prove any prejudice because the State had overwhelming evidence of his guilt. The Applicant and his two co-defendants gave videotaped confessions in which they each admitted their guilt and the others' roles in the robbery and murder. (Plea transcript, p.24; Sentencing transcript, p.8). Plea counsel testified the videotape from the store showed one co-defendant shooting the victim and the Applicant taking the money. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

This Court finds the Applicant failed to meet his burden of proving plea counsel should

have advised him of the plea judge's relationship with the victim. The Applicant failed to prove there was any basis for plea counsel to have asked the plea judge to recuse himself. At the plea hearing, the plea judge stated he had known the victim but had performed no legal work for him while in private practice. (Plea transcript, p.7). Plea counsel stated this was not a problem. (Plea transcript, p.7). This Court finds the Applicant failed to prove either that the plea judge misrepresented the nature of his relationship with the victim or that the plea judge was prejudiced in any way by that relationship. Cf. State v. Loftin, 278 S.C. 618, 300 S.E.2d 480 (1983) (finding the fact the defendant has filed a lawsuit against the judge does not necessarily require recusal, especially where there is no evidence the judge was prejudiced).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have objected to the viewing of the videotape (prepared by the victim's family) at the sentencing hearing. After plea counsel spoke in mitigation at the sentencing hearing, the State played a videotape that had been recorded at the victim's last birthday party. (Sentencing transcript, p.6, lines 2-4; pp.19-20). This Court finds the Applicant failed to articulate a basis upon which plea counsel should have objected.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have moved to withdraw the guilty plea. Though cited by the Applicant, this Court finds the case of Rolen v. State[2] is distinguishable from the case at bar. In Rolen, the plea judge accepted the defendant's guilty plea but, immediately after the victims made their statements, the defendant proclaimed his innocence. In this case, such a contemporaneous declaration did not occur, as more than one year had elapsed before the Applicant indicated he wished he had not pled guilty. The Applicant pled guilty in April 2006, but the sentences for armed robbery and

[2] 384 S.C. 409, 683 S.E.2d 471 (2009).

murder were deferred because a co-defendant had opted for a jury trial. That co-defendant pled guilty in July 2007 and received life sentence. (Sentencing transcript, p.6; p.17). In letter sent to plea counsel in late August 2007, the Applicant stated he did not realize he had entered guilty pleas to murder and armed robbery and "woulld have withdraw the plea from the beginning" if he had known that he would be sentenced on those charges.[3] At the sentencing hearing in September 2007, the Applicant did not object to the proceedings in any way until the matter was almost concluded. The Applicant said he had nothing to add after plea counsel spoke at length in mitigation. (Sentencing transcript, pp.15-19). After the videotape was played for the plea judge and the victims were allowed to speak, the Applicant made no comment. (Sentencing transcript, pp.20-32). The Applicant then suddenly stated he did not want to be sentenced that day because he felt plea counsel was ineffective and should be relieved. (Sentencing transcript, pp.35-38). The Applicant never proclaimed his innocence – he merely stated his confession was "a lie." (Sentencing transcript, p.38). This Court re-asserts that the facts of this case are easily distinguished from those in Rolen. A contemporaneous declaration of innocence was not made during the plea hearing. This Court notes the Applicant did not question his decision to plead guilty until after the co-defendant in this case had pled guilty more than one year later. The Applicant failed to meet his burden of proving plea counsel should have moved to withdraw his April 2006 guilty pleas at the September 2007 sentencing hearing.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence

[3] This Court finds the Applicant's assertion that he was unaware he was pleading guilty to all three charges is both not credible and refuted by the extensive guilty plea transcript.

that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and

2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7th day of Dec., 2010.

Thomas A. Russo
Presiding Judge
Fourth Judicial Circuit

Florence, South Carolina.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	
	2008-CP-16-1006
ANGELO BERNARD HAM, 315014	
Applicant,	
vs	AFFIDAVIT OF SERVICE BY MAIL
STATE OF SOUTH CAROLINA,	
Respondent.	

FILED
2010 DEC 10 AM 9:36
SCOTT B. SUGGS
CLERK OF COURT, D.R.D.
DARLINGTON COUNTY, S.C.

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Order of Dismissal** of the Respondent in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Gary I. Finklea, Esquire
Post Office Box 1317
Florence SC 29503-1317

DATED this 8th day of December, 2010.

Judy A. C. Carey, Legal Assistant
For Respondent

The South Carolina Court of Appeals

Angelo Bernard Ham, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-182627

ORDER

This matter is before the Court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief.

Petitioner's counsel asserts the petition is without merit and requests permission to withdraw from further representation. Petitioner has filed a pro se petition.

After careful consideration of the entire appendix as required by *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.

Paula G. Short, Jr. J.

J.

J.

Columbia, South Carolina

March 11, 2014

FILED
2014 MAR 31 AM 9:09
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

cc: Robert M. Pachak
Karen Christine Ratigan
Angelo Bernard Ham

170

918-1006

The South Carolina Court of Appeals

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COLUMBIA, SOUTH CAROLINA 29201
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www.sccourts.org

March 27, 2014

The Honorable Scott B. Suggs
1 Public Sq Rm B4
Darlington SC 29532-3213

REMITTITUR

Re: Ham, Angelo Bernard v. The State
Lower Court Case No. 2008CP1601006
Appellate Case No. 2011-182627

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Robert M. Pachak, Esquire
Karen Christine Ratigan, Esquire
Angelo Bernard Ham, 00315014
The Honorable Thomas A. Russo

FILED
2014 MAR 31 PM 4:09
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
County of Darlington	)	13CP1602 48
	)	Case No.:
Angelo Bernard Ham, 315014	)	
Applicant,	)	
	)	
vs.	)	**APPLICATION FOR POST-CONVICTION RELIEF**
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

1. Place of detention: Lee Correctional Institute, 990 Wisacky Hwy, Bishopville, SC 29010.

2. Name and location of Court that imposed sentence: Darlington County Court of General Sessions.

3. Name(s) of co-defendant(s) (if any): Dennis Hunter and Anthony Robinson

4. The indictment number or numbers upon which and the offenses for which sentence was imposed:

   (a) Murder: 05-GS-16-1969
   (b) Armed robbery: 05-GS-16-1970

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

   (a) September 14, 2007: life imprisonment for murder.
   (b) September 14, 2007: 25 years (concurrent) for armed robbery.

6. A finding of guilty was made after a plea of guilty.

7. Applicant did not appeal from judgment of conviction and the imposition of sentence.

8. Not applicable.

9. Applicant did not perfect as appeal on advice of counsel following his conviction.

TRUE CERTIFIED COPY,
CLERK OF COURT/FMC
DARLINGTON COUNTY, SC

FILED
2013 MAR 20 AM 11:59
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

10. & 11. GROUNDS FOR RELIEF WITH SUPPORTING FACTS

10(a): **Applicant's sentence of life without parole, imposed for a crime he committed when he was a juvenile, violates the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution.**

11(a): **Supporting facts:** In *Miller v. Alabama*, the United States Supreme Court held that mandatory sentences of life without parole for juvenile offenders violate the Eighth Amendment to the United States Constitution. *Miller v. Alabama*, 132 S.Ct. 2455, 2464 (2012). While the Court in *Miller* was not required to – and did not -- explicitly address whether a life without parole sentence is under all circumstances constitutionally excessive when imposed upon a juvenile offender, there can be no doubt that the Court will find such sentences to be cruel and unusual punishment when that question is ultimately squarely presented. Such a result follows inexorably from the steady evolution of the standards of decency rejecting life without parole for juveniles for non-homicides and mandatory life without parole sentences in homicide cases, combined with the Eighth Amendment principles established by the Supreme Court *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S.___, 130 S.Ct. 2011 (2009), and *Miller* itself.

To be valid under the 8th Amendment, a punishment must comport with the "evolving standards of decency that mark the progress of a maturing society." *Miller*, 132 S. Ct. at 2478 (internal quotations omitted). Mercy towards the guilty is one form of decency, and a maturing society can abandon harsh punishments it views as "unnecessary or unjust." *Id.* The inquiry into the validity of a punishment relies heavily upon legislative enactments already expressed by the states, and the trajectory of such judgments at the time the reviewing court conducts the Eighth Amendment analysis. *Id.* at 2459.

In *Graham*, the Supreme Court spoke of national consensus[1] and noted that six jurisdictions[2] did not allow life without parole sentences for any juvenile offenders. As of 2011, twelve jurisdictions in the United States prohibited sentencing juveniles to life without parole,[3] and other states are currently in the process of eliminating life without parole as a sentencing option.[4] At the international level, universal human rights

[1] The Court has repeatedly stated that, "[t]he clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures." *Graham*, 130 S.Ct. at 2023; *Atkins*, 536 U.S. at 312.

[2] The Court referred to Alaska, Colorado, Montana, Kansas, Kentucky, and Texas. *Graham*, 130 S.Ct. at Appendix III.

[3] These states are: Alaska, Colorado, Kansas, Kentucky, Maine, Montana, New Mexico, New York, Oregon, Texas, West Virginia, and the District of Columbia.

[4] These states include: Arkansas, Florida, Illinois, Iowa, Louisiana, Massachusetts, Michigan, Nebraska, Washington, and Wyoming. *See Graham*, 130 S.Ct. at 2024; *see also* Amnesty International and Human Rights Watch Report, *The Rest of Their Lives: Life Without Parole for Child Offenders in the U.S.*, October 2005; *see also* Wyoming Laws Ch. 18 (H.B. 23) §6-2-101; §6-10-301 (c) (2013).

principles, including the American Declaration of Rights and Duties of Man,[5] preclude the imposition of life without parole sentences for children on the basis that the unique characteristics of youth mandate a second opportunity for review.[6] In *Graham*, the Court recognized that the U.N. Convention on the Rights of the Child,[7] ratified by every country except Somalia and the United States, is evidence of international opinion. It explicitly prohibits life without parole sentences on juvenile offender cases. *Graham*, 130 S.Ct. at 2033.[8]

In addition to the unmistakable trend toward rejection of life without parole sentences for juveniles, *Miller*, relied heavily upon the fact that a child's character is not yet fully formed; his traits are "more transitory and less fixed" and his actions less likely to be "evidence of irretrievable depravity." *Miller*, 132 S.Ct. at 2464; *see also Roper*, 534 U.S. at 570. The Court also noted that children "have limited control over their own environment," lack maturity and responsibility, and are thus inclined toward "recklessness, impulsivity and needless risk-taking." *Id.* Elaborating on the cruelty of imposing a life without parole sentence on a juvenile, the Court noted "the great difficulty . . . of distinguishing at this early age between 'the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption. . . . We believe that incorrigibility is inconsistent with youth." *Miller*, 132 S.Ct. at 2469 (quoting *Roper*, 543 U.S. at 573); *see also Graham*, 130 S.Ct. at 2026-27; *Workman v. Commonwealth*, 429 S.W.2d at 378.

---

[5] The International Covenant on Civil and Political Rights, to which the United States is a party, prohibits a life without parole as a sentencing option in cases involving juveniles, International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, Articles 7, 14, 24. Such sentences also constitute a violation of numerous human rights treaties. *See* American Declaration of the Rights and Duties of Man, Article VII; American Convention on Human Rights, Nov. 21, 1969, 1144 U.N.T.S. 143, Article 19; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc No. 95-20 (1922), 1465 U.N.T.S. 85.

Barbara Hernandez, a sixteen year old girl, together with thirty-one other Michigan residents serving life without parole sentences for crimes committed as children, have filed actions to the Inter-American Commission on Human Rights. Their petition alleges that the U.S. and the State of Michigan are violating the American Declaration of the Rights and Duties of Man and universal human rights principles by sentencing them to a life sentence without the possibility of parole. See American Civil Liberties Union (http://www.aclu.org), Source URL: http://www.aclu.org/blog/criminal-law-reform-human-rights/seeking-second-chance-childrensentenced-life-without-parole.

[6] See T. v. United Kingdom, 170 Eur. Ct. H. R. ¶ 121 (1999) 9 (holding that a sentence of detention is illegal under international law where no parole eligibility date is set, and relying upon many of the same reasons contemplated in United States' domestic case law concerning the need for a second chance of review in these cases).

[7] Convention on the Rights of a Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

[8] *See Graham*, 132 S.Ct. at 2034 (quoting *Roper*, 543 U.S. at 577) (observing that "'the United States now stands alone in a world that has turned its face against'" life without parole sentences for juvenile non-homicide offenders); *see also id.* at 2036 (Stevens, J., concurring) (reaffirming the Court's reliance on international law for at least a century when interpreting the Eighth Amendment's "'evolving standards of decency'").

Significantly, "[n]othing the Court said about children – about their distinctive (and transitory) mental traits and environmental vulnerabilities – is crime-specific." *Miller*, 132 S.Ct. at 2465. Those characteristics are "evident in the same way, and to the same degree" in juveniles who commit homicide as they are in those who commit armed robbery, kidnapping or any other offense. *Id.* at 2465. In short, the constitutional difference between juvenile and adult offenders does not turn in any respect on the nature of the crime, and any purported distinction on that basis finds no support in the Court's recent decisions.

Finally, the Court also relied upon the difficulty of distinguishing between the "unfortunate" and the truly culpable offender: "To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable." *Graham*, 130 S.Ct. at 2030. Indeed, it is difficult, if not impossible, for even highly trained child psychologists and psychiatrists to differentiate juvenile offenders whose crimes are the product of permanent fixed character traits from those whose crimes are the result of circumstances and the transient qualities of youth.[9] *Miller*, 132 S.Ct. at 2469 (citing *Roper*, 543 U.S. at 573, and *Graham*, 130 S.Ct. at 2026-27).

It is equally impossible for a judge or a jury to make such a determination. The potential for reform that is present in all juvenile offenders thus requires States to maintain the possibility of eventual release as a sentencing option. It would be constitutionally excessive to render a final, permanent judgment that a juvenile offender should never be released; a mechanism for future review must be available, because States cannot ignore the juvenile's "potential to attain a mature understanding of his own humanity." *Roper*, 543 U.S. at 573.

Applicant was 15 years old at the time of the offense which resulted in his current sentence of life imprisonment without the possibility of parole. Given the direction of the Supreme Court's juvenile sentencing decisions, the legal principles governing the sentencing of juvenile offenders, and the heightened capacity for change in all juvenile offenders, this Court should hold that Applicant's sentence violates both the 8th Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution.

10(b): **Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution as an excessive and cruel and unusual punishment because he was both a juvenile and a person who did not kill or intend to kill the victim.**

11(b): **Supporting facts:** Because Applicant was both a juvenile and a person who did not kill, attempt to kill or intend that a killing would take place, his culpability is doubly diminished and thus life without parole is an excessive and, therefore, cruel and unusual

[9] See *Miller*, 132 S.Ct. at 2464 (referencing American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 701–706 (4th ed. text rev. 2000); Steinberg & Scott 1015).

punishment. *Miller*, 132 S.Ct. 2476 (Breyer, J., concurring). *Graham* held that life without parole for juveniles is a sentence functionally equivalent to the death penalty. *Graham*, 130 S.Ct. at 2027. Referencing *Graham*, the Court in *Miller* held that the Eighth Amendment demands "individualized sentencing . . . analogous to 'that required in' capital punishment [cases].'" *Id.* at 2468. Applicant was only fifteen years old, and thus a juvenile, at the time of the offense and would therefore be ineligible for the death penalty under *Roper v. Simmons*, 543 U.S. 551 (2005). Additionally, Applicant was not the trigger-person and was convicted of murder pursuant to South Carolina's "hand of one, hand of all" doctrine. As the *Graham* Court noted, "a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability." 130 S.Ct. 2027. According to the reasoning in *Graham*, a juvenile with this doubly diminished moral culpability is categorically ineligible for the most severe penalty for juveniles under the law, life without parole. *Miller*, 132 S.Ct. 2476 (Breyer, J., concurring) ("*Graham* dictates a clear rule: The only juveniles who may constitutionally be sentenced to life without parole are those convicted of homicide offenses who "kill or intend to kill.") (citing 130 S.Ct., at 2027).

Additionally, an adult in the same factual situation as Applicant, whose role in the crime was minor and who did not have the requisite intent to commit homicide, would be ineligible for the death penalty under *Enmund v. Florida*, and *Tison v. Arizona*. 458 U.S. 782 (1982); 482 U.S. 921 (1987). Read alongside *Miller* and that Court's analogy between life without parole for juvenile offenders and the death penalty for adults, the *Enmund-Tyson* line of cases also bans the most serious sentence for juveniles, life without parole, for those who lack the necessary level of intent to commit homicide. In other words, just as *Enmund-Tyson* bans the imposition of the death penalty for adults who played a minor role in the crime and lack a requisite mental state, it also bans the imposition of life without parole (the equivalent of death for juveniles) for juveniles in that position. Because Applicant was a juvenile, played a minor role in the crime, and lacked the requisite intent to commit homicide, he is categorically ineligible for a sentence of life without parole.

In *Enmund*, the Court held that a death sentence for a defendant who "aids and abets in a felony in the course of which a murder is committed by others but who did not himself kill, attempt to kill, or intend that a killing take place or that lethal force will be employed" is impermissible under the Eight Amendment. *Enmund* 458 U.S. 782 at 797. The petitioner in *Enmund* was in the car waiting to help his co-defendants escape after an armed robbery when the murder took place. *Id.* at 788. In contrast, the Court held in *Tison* that a defendant "whose [degree of] participation is major and whose mental state is one of reckless indifference to the value of human life" falls outside the categorical protection provided by *Enmund*. *Tison* 482 U.S. 921 at 1685. The Court found that the facts in *Tison*[10] supported a finding that petitioners played a major role in the commission

[10] "Raymond Tison brought an arsenal of lethal weapons into the Arizona State Prison which he then handed over to two convicted murders, one of whom he knew had killed a prison guard in the course of a previous escape attempt. By his own admission he was prepared to kill in furtherance of the prison break. He performed the crucial role of flagging down a passing car occupied by an innocent family whose fate was then entrusted to the known killers he had previously armed. He robbed these people at their direction and then guarded the victims at gunpoint

of the crime, and "both subjectively appreciated that their acts were likely to result in the taking of innocent life." *Id.* at 1685.

On September 9, 2004, Applicant and nineteen-year-old Anthony Robinson approached the convenience store Griggs Thriftway, in Hartsville, while another juvenile waited in a car. Because the store had closed for the day, Applicant knocked on the door, and the storeowner let Applicant and Robinson in. Robinson then shot and killed the storeowner and left with the cash that was in the register. Robinson had never informed the two juveniles with him that he planned on shooting the storeowner, and at no point did Applicant handle any weapon.

The facts of this case are much closer to *Enmund* than to *Tison*. Applicant's participation was minor. Robinson planned to commit the crime whether or not Applicant joined him at the store, the Applicant played no role in the homicide, and the Applicant had only a minor part in the robbery. Furthermore, Applicant did not use any force whatsoever, and so did not kill or attempt to kill. In addition, Robinson's status as the only armed participant, the only adult participant, and the only participant with a clear motive for robbing the store, all reduce Applicant's role.

The combination of Applicant's lack of a requisite mental state and juvenile status at the time of the offenses diminishes his moral culpability to a level that renders a sentence of life without parole constitutionally impermissible under *Miller*, *Graham*, *Enmund, Tison,* and the Eighth and Fourteenth Amendments. *Miller*, 132 S.Ct. 2464.

10(c): **Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, § 15 of the South Carolina Constitution, because the proceedings which led to its imposition were both procedurally and substantively inadequate.**

11(c): **Supporting Facts:** The proceedings which culminated in the imposition of Applicant's sentence of life without parole failed to comply with fundamental Eighth Amendment mandates:

Miller established a presumption against imposing a sentence of life without parole for juveniles. 132 S.Ct. at 2469 ("we require [a sentencer] to take into account how children are different . . . "). Applicant's sentencing procedure included no such presumption.

The Eighth Amendment requires particularized consideration of a juvenile defendant's character and background, and the circumstances of the offense. *Woodson v. North Carolina*, 428 U.S. 280, 303–304 (1976) (plurality opinion). Applicant's sentencing

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while they considered what next to do. He stood by and watched the killing, making no effort to assist the victims before, during, or after the shooting. Instead, he chose to assist the killers in their continuing criminal endeavors, ending in a gun battle with the police in the final showdown." *Tison* 482 U.S. 921 at 1685.

procedure included neither adequate presentation nor adequate consideration of mitigating evidence, and thus failed to satisfy the constitutional requirements of "individualized sentencing" and the "distinct set of legal rules" now applicable in juvenile homicide cases. *Miller*, 132 S.Ct. at 2466, 2468. For example:

Applicant's sentencing hearing included insufficient reference to his youth and his non-trigger-person status, thus precluding an appropriate consideration of his "diminished culpability." *Miller*, 132 S.Ct. at 2464. No witnesses were called at the sentencing hearing and no records or documents were admitted. This is not because substantial mitigating evidence did not exist.

On the contrary, preliminary investigation has revealed, *inter alia*,[11] that there is a powerful case in mitigation of punishment. Applicant's mother was an alcoholic and a drug addict. She drank heavily during her pregnancy and also used other drugs. Applicant was born over six weeks premature, and he was put in the intensive care unit. Doctors told Applicant's mother that he might not survive. The first time the hospital sent Applicant home with his mother, he had to be rushed back to the Emergency Room when he temporarily stopped breathing. Ultimately, Applicant spent the first two and a half months of his life in the hospital before he could be safely released to his mother. Applicant's biological father was not present nor a factor in his life, and his mother's live-in-boyfriend was an abusive alcoholic and drug dealer. As a young child, Applicant witnessed the live-in-boyfriend physically abuse his mother. Applicant's mother was physically abusive. Once, after she found out that her live-in-boyfriend had engaged in a romantic relationship with another woman, Applicant's mother put the Applicant and his siblings in the backseat of her car and went to confront the boyfriend. When they arrived, the children watched their mother attack the boyfriend, repeatedly stabbing him with a kitchen knife. Applicant was eight years old when he witnessed the stabbing. Due to his mother's subsequent arrest, Applicant and his siblings went to live with their elderly grandmother. In part because the grandmother was too infirm to provide appropriate supervision, Applicant began experimenting with alcohol. When his mother returned, Applicant began to help himself to alcohol and drugs he found in his mother's drug supply. During an unsupervised outing when he was ten years old, Applicant tried to drive a neighbor's truck. Applicant sped up, crashed, and flipped the truck. Applicant received a head injury that left him initially unresponsive. He received stitches in his head at the local emergency room and still suffers from periodic migraine headaches that began after the accident. Applicant also struggled in school, failing to achieve basic age appropriate benchmarks in reading and writing. When individuals from a local church community intervened in Applicant's life and tried to provide him with positive adult role models, Applicant's mother refused to allow Applicant to have any more contact with them. Applicant yearned to fit in with peers and children in the neighborhood, but he was often teased about his family's poverty and his mother's substance abuse. Because of his desire to please those around him, older and more intelligent children would frequently take advantage of Applicant. This information—which was not presented to or

[11] All other aspects of Applicant's background, contained above in 11(b), are incorporated here by reference.

considered by the sentencing court—demonstrates Applicant's immaturity and reduced moral blameworthiness.

The Court made no mention of Applicant's juvenile status in explaining the sentencing decision. Applicant's sentencing was therefore grounded on an "irrevocable judgment" about his character that was fundamentally "at odds with [his] capacity for change," *id.*, and incompatible with the Eighth Amendment mandate set forth in *Miller*.

10(d): **Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution, because Applicant's counsel failed to develop and present mitigating evidence which would have warranted a sentence of less than life without parole.**

11(d): **Supporting facts:** Trial counsel's performance before and during Applicant's sentencing proceeding was both deficient and prejudicial. *Strickland v. Washington*, 466 U.S. 668 (1984). With the benefit of constitutionally adequate representation, there is at least a reasonable probability that Applicant would have received a sentence less than life without parole. Counsel's acts or omissions included the following:

Counsel failed to develop and present evidence that Applicant had an I.Q. that was just above the cut-off for mental retardation. Applicant's school records detail that Applicant regularly failed classes and repeatedly scored below standard levels in reading comprehension tests. Although counsel casually mentioned that Applicant's I.Q. was in the 70's, counsel did not provide any of the contextual evidence that confirmed that Applicant repeatedly failed basic age-appropriate academic tasks and had low cognitive functioning. Trial counsel did not secure the assistance of a mental health expert to evaluate Applicant and testify at his sentencing hearing. This lack of evidence supporting Applicant's diminished intelligence led the Court to explicitly state that it chose to rely on a very brief in-court colloquy with Applicant to conclude that his intellectual functioning was not a mitigating circumstance, rather than relying on any scientific evidence of Applicant's intellectual functioning that counsel put on the record.

Counsel also failed to develop and present a wealth of mitigating evidence that Applicant was subjected to physical and emotional abuse and neglect throughout his childhood, and that, in addition to his low intellectual functioning Applicant also has other brain impairments.[12]

But for trial counsel's deficient and unreasonable failure to develop and present evidence of Applicant's limited intellectual functioning and the abuse and neglect he endured at home, there is a reasonable probability that the sentencer would have selected a punishment less severe than life without parole. *See, e.g.*, *Wiggins v. Smith*, 539 U.S. 510, 539 (2003) (concluding that counsel provided constitutionally ineffective representation at capital sentencing where counsel did not investigate or present defendant's history of

[12] The mitigating evidence concerning Applicant's upbringing is more fully alleged in section 11(c), *supra*, and is incorporated herein by reference.

borderline mental retardation, abuse, and neglect); *See also*, *Sears v. Upton*, 561 U.S. ___, 130 S.Ct. 3259, 3261 (2010) (reversing decision that counsel's deficient performance was not prejudicial where counsel's failure to conduct mitigation investigation resulted in defendant's brain damage not coming to light at capital sentencing); *Porter v. McCollum* 558 U.S. 30, 31 (2009) (finding counsel constitutionally ineffective in failing to uncover and present any mitigating evidence regarding defendant's mental health, family history, and military service); *Rompilla v. Beard*, 545 U.S. 374, 374 (2005) (finding constitutionally deficient representation at capital sentencing where counsel failed to investigate "obvious signs" that defendant suffered from mental illness).

12. Applicant filed two petitions for post-conviction relief in State Court under South Carolina Law. Applicant has not previously filed any other petition in Federal or State Courts, nor has applicant filed any petition for certiorari in the United States Supreme Court.

13. (a) The specific nature of Applicant's petitions:

(i) Applicant filed a State Court Application for Post-Conviction Relief on September 11, 2007.

(ii) Applicant filed a State Court Application for Post-Conviction Relief on November 21, 2008.

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

(i) Court of Common Pleas, Darlington County, South Carolina.

(ii) Court of Common Pleas, Darlington County, South Carolina.

(c) The disposition thereof:

(i) Applicant's Application for Post-Conviction Relief was withdrawn.

(ii) Applicant's Application for Post-Conviction Relief was dismissed.

(d) The date of each such disposition:

(i) December 15, 2008.

(ii) December 10, 2010.

(e) Citations of any written opinions or orders entered pursuant to such disposition:

(i) Ham v. State (2007-CP-16-00811)

(ii) Ham v. State (2008-CP-16-01006)

14. The grounds set forth in (10) have not been previously presented to this or any other court, state or federal, in any petition, motion or application which Applicant has filed.

15. Not applicable.

16. The grounds set forth in (10) have not been previously presented because they were not appropriate issues for direct appeal or for a petition for a writ of certiorari to the United States Supreme Court. Furthermore, these grounds rely on newly established Supreme Court precedent in *Miller v. Alabama*, 567 U.S. ___ (2012).

17. Applicant was represented by counsel during his plea, sentencing, and an appeal for post-conviction relief.

18. (a) Name and address of each attorney who represented Applicant:

(i) Henry M. Anderson, Jr., 265 West Evans St., Suite A, Florence, SC 29501

(ii) Gary Ivan Finklea, P.O. Box 1317, Florence, SC 29503

(b) Proceedings at which each such attorney represented Applicant:

(i) Anderson was appointed by the Court to represent Applicant at his preliminary hearing, during his plea, and at sentencing.

(ii) Finklea was appointed by the Court to represent Applicant during his 2008 Post-Conviction Relief application.

19. Applicant seeks relief from his convictions and sentence.

20. Applicant is not under sentence from any other court.

Respectfully submitted,

By: _____

Elizabeth Franklin Best
Counsel of Record
Blume, Norris and Franklin-Best
900 Elmwood Ave.
Ste. 101
Columbia, SC 29201
(803) 765-1044
betsy@blumelaw.com

John H. Blume
158 Myron Taylor Hall
Ithaca, NY 14853
(607) 255-1030
jb94@cornell.edu

March 19th, 2013

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2013 MAR 20 AM 11:59
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED
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CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
County of Darlington)	
)	
Angelo Bernard Ham, 315014)	Case No.: 13CP16 0248
Applicant,)	
)	
vs.)	**MOTION TO STAY PROCEEDINGS RELATED TO APPLICATION FOR POST-CONVICTION RELIEF**
)	
State of South Carolina,)	
Respondent.)	

Defendant, Angelo Bernard Ham, by and through undersigned counsel, hereby requests that this Court stay these post-conviction proceedings pending the South Carolina Supreme Court's resolution of *Aiken v. Byars*, No. 2012-213286.

I. Relevant Factual Background

On September 14, 2007, Angelo Ham was convicted of murder and armed robbery in the Darlington County Court of General Sessions for offenses committed when he was fifteen years old. The judge sentenced him to life in prison without the possibility of parole for the murder, plus twenty-five years for armed robbery. On June 25, 2012, the United States Supreme Court decided *Miller v. Alabama*, which: a) declared that mandatory life without parole sentences for juveniles violate the Eighth Amendment; b) created a strong presumption against ever imposing life without parole sentences on juveniles offenders; and, c) mandated that, before a juvenile can be sentenced to life without parole, there must be an individualized sentencing hearing similar to the penalty phase of a capital trial. *Miller*, 132 S. Ct. 2455, 2460, 2468, 2469 (2012).

Given this sea change in the legal rules regulating sentencing hearings in cases where juveniles have been sentenced to, or face a possible sentence of, life without parole, Applicant, and other juveniles so sentenced, filed a joint Petition for Writ of Certiorari in the original

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jurisdiction of the South Carolina Supreme Court on October 29, 2012.[1] That case, *Aiken v. Byars*, *supra*, remains pending before the South Carolina Supreme Court, and raises a series of substantive and procedural issues that, once resolved, will inform the litigation and resolution of *Miller*-related claims across South Carolina. Given that the Court has not yet acted on the petition, and given the impending one year anniversary of *Miller*, Applicant has this same day filed an application for post-conviction relief in this Court challenging his sentence as cruel and unusual punishment under the Eighth Amendment to the United States Constitution and Article I, Section 15 of the South Carolina Constitution.

II. This Court Should Stay the Proceedings

Because the claims for post-conviction relief contained in the application largely mirror the questions presented in the Petition for Writ of Certiorari pending before the South Carolina Supreme Court in *Aiken v. Byars*, this Court should stay the proceedings in this action until that case is resolved. Courts in this State routinely stay proceedings "when there is another issue pending between the same parties in another action and the resolution of that issue will affect the action sought to be stayed." *Talley v. John-Mansville Sales Corp.*, 285 S.C. 117 (1985). Applicant's individual post-conviction application and the class action Petition both request resentencing under *Miller* due to substantive and procedural defects in the sentencing hearing that culminated in his current sentence of life imprisonment without the possibility of parole. The South Carolina Supreme Court's resolution of the questions presented in *Aiken v. Byars* will likely control future sentencing proceedings involving juveniles offenders, and will determine whether Applicant and other similarly situated individuals must be resentenced in a manner consistent with the constitutional principles established in *Miller*. Given the commonality of

[11] Copies of the pleadings in *Aiken v. Byars* are attached to this motion.

issue in the two actions, it would be a waste of scarce judicial resources for this Court to act while *Aiken v. Byars* is pending.

III. Conclusion

THEREFORE, for the above stated reasons, this Court should enter an order staying the proceedings in this case pending the South Carolina Supreme Court's resolution of the Petition for Writ of Certiorari in *Aiken v. Byars*.

Respectfully Submitted,

Elizabeth Franklin Best
Counsel of Record
Blume, Norris and Franklin-Best
900 Elmwood Ave.
Ste. 101
Columbia, SC 29201
(803) 765-1044
betsy@blumelaw.com

John H. Blume
158 Myron Taylor Hall
Ithaca, NY 14853
(607) 255-1030
jb94@cornell.edu

March 19th 2013

FILED
2013 MAR 20 AM 11:59
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)
)
Angelo Bernard Ham, 315014)
)
Applicant,)
vs.)
)
)
State of South Carolina,)
)
Respondent.)
)

IN THE COURT OF COMMON PLEAS

Case No. 13CP160248

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Applicant's Motion for Appointment of Counsel, Application for Post-Conviction Relief, and Motion to Stay Proceedings Related to Application for Post-Conviction Relief was served by first class United States mail, postage prepaid, this 19th day of March, 2013, upon the following:

Alan Wilson, Esq.
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

Jill A. Rider

Jill A. Rider

FILED
2013 MAR 20 AM 11:58
SCOTT B. SUGGS
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DARLINGTON COUNTY, S.C.

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DARLINGTON COUNTY, SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2013-CP-16-0248
	)	
Angelo Bernard Ham, 315014,	)	
	)	
Applicant,	)	
	)	**RETURN AND MOTION TO DISMISS**
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for post-conviction relief (PCR) filed March 20, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted at the October 2005 term of the Darlington County Grand Jury for murder (05-GS-16-1969), armed robbery (05-GS-16-1970), and criminal conspiracy (2005-GS-16-1971). Henry M. Anderson, Jr., Esquire represented Applicant. On April 17, 2006, Applicant pled guilty as indicted before the Honorable John M. Milling who sentenced Applicant to five years imprisonment for criminal conspiracy. On September 14, 2007, Judge Milling sentenced Applicant to concurrent terms of life imprisonment for murder and twenty-five years for armed robbery.

A notice of appeal was filed with the South Carolina Court of Appeals. Applicant chose to withdraw this appeal and the Court of Appeals dismissed the appeal, and the matter was remitted to the lower court on June 9, 2008.

Applicant thereafter filed an application for post-conviction relief on November 21, 2008 (2008-CP-16-1006). Gary I. Finklea, Esquire, represented Applicant. Respondent made a timely return and an evidentiary hearing into the matter was convened on September 13, 2010 at the Darlington County Courthouse before the Honorable Thomas A. Russo. In an Order dated December 7, 2010, Judge Russo denied and dismissed Applicant's PCR with prejudice.

A notice of appeal was filed on January 4, 2011 to the South Carolina Supreme Court and Robert M. Pachak, Esquire, perfected a Johnson Writ for Certiorari on September 21, 2011. Applicant thereafter filed a pro se Petition for Writ of Certiorari on February 4, 2013. As of this date, the appeal in the Supreme Court is still pending.

Attached herewith and incorporated herein are the records of the Chesterfield Darlington County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and if available, the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Denied right to effective assistance of counsel"
   a. "counsel failed to develop and present mitigating evidence"
2. "Sentence…imposed…violates the Eighth Amendment of the United States Constitution and Article I, §15 of the South Carolina Constitution."
   a. "excessive and cruel and unusual punishment"

b. "proceedings which led to [the] imposition [of the sentence] were both procedurally and substantively inadequate."

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he

would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test, in addition to being filed past the applicable statute of limitations, and in addition to being successive. Therefore, Respondent requests this Court summarily dismiss the Application with prejudice.

IV.

The statute of limitations applicable to post-conviction relief actions bars the entire application. S.C. Code Ann. § 17-27-45 (Supp. 2001) requires an inmate to file a post-conviction relief application "within one year after the entry of a judgment of conviction . . . ." This provision applies to all convictions after the July 1, 1995 effective date of the statute. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

Applicant's conviction occurred on April 17, 2006 and his sentence on September 14, 2007. Applicant should have filed this application on or before September 14, 2008. Applicant filed this post-conviction relief application many years later. Accordingly, since Applicant did not present these allegations in a timely manner, this Court should dismiss the application with prejudice as barred by the statute of limitations.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily

dismiss the application for post-conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief, filed on November 21, 2008. Successive applications for post-conviction relief are strongly disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "**could not have been raised** . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present **any** reasons why he could not have raised the

current allegations in his previous post-conviction relief application. Accordingly, this application should be summarily dismissed.

VI.

Applicant also contends various direct appeal issues. These issues are not proper in a post-conviction relief proceeding, which is not a substitute for a direct appeal. Claims which could or should have been raised in a direct appeal cannot be asserted for the first time in a post-conviction relief proceeding. See Simmons v. State, 264 S.C. 417, 2l5 S.E.2d 883 (l974); Sellars v. Boone, 26l S.C. 462, 200 S.E.2d 686 (l973) (double jeopardy). Also, these allegations are currently pending on appeal before the South Carolina Supreme Court, therefore, Applicant's allegations must be denied and dismissed.

VII.

The State therefore requests that this Court summarily dismiss this Application as it is filed outside the statute of limitations, is successive to Applicant's previous PCR application, and also seeks relief not available in PCR, pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

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

IX.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By:_____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 14, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2013-CP-16-0248
	)	
ANGELO BERNARD HAM, 315014	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return and Motion to Dismiss** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Elizabeth Franklin-Best, Esquire
Blume, Weyble & Norris, LLC
900 Elmwood Avenue; Suite 101
Columbia SC 29201

DATED this 14th day of May, 2013.

Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2013-CP-16-0248
	)	
Angelo Bernard Ham, 315014	)	
	)	
Applicant,	)	
	)	**CONDITIONAL ORDER OF DISMISSAL**
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 20, 2013. Respondent made a timely Return, requesting summary dismissal of the matter. This Court also has before it the records of the Clerk of Court regarding the subject convictions.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Darlington County Clerk of Court orders of commitment. Applicant was indicted at the October 2005 term of the Darlington County Grand Jury for murder (05-GS-16-1969), armed robbery (05-GS-16-1970), and criminal conspiracy (2005-GS-16-1971). Henry M. Anderson, Jr., Esquire represented Applicant. On April 17, 2006, Applicant pled guilty as indicted before the Honorable John M. Milling who sentenced Applicant to five years imprisonment for criminal conspiracy. On September 14, 2007, Judge Milling sentenced Applicant to concurrent terms of life imprisonment for murder and twenty-five years for armed robbery.

A notice of appeal was filed with the South Carolina Court of Appeals. Applicant chose

to withdraw this appeal and the Court of Appeals dismissed the appeal, and the matter was remitted to the lower court on June 9, 2008.

Applicant thereafter filed an application for post-conviction relief on November 21, 2008 (2008-CP-16-1006). Gary I. Finklea, Esquire, represented Applicant. Respondent made a timely return and an evidentiary hearing into the matter was convened on September 13, 2010 at the Darlington County Courthouse before the Honorable Thomas A. Russo. In an Order dated December 7, 2010, Judge Russo denied and dismissed Applicant's PCR with prejudice.

A notice of appeal was filed on January 4, 2011 to the South Carolina Supreme Court and Robert M. Pachak, Esquire, perfected a Johnson Writ for Certiorari on September 21, 2011. Applicant thereafter filed a pro se Petition for Writ of Certiorari on February 4, 2013. As of this date, the appeal in the Supreme Court is still pending.

ALLEGATIONS

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Denied right to effective assistance of counsel"
   a. "counsel failed to develop and present mitigating evidence"
2. "Sentence…imposed…violates the Eighth Amendment of the United States Constitution and Article I, §15 of the South Carolina Constitution."
   a. "excessive and cruel and unusual punishment"
   b. "proceedings which led to [the] imposition [of the sentence] were both procedurally and substantively inadequate."

DISCUSSION

This Court finds that the Application should be dismissed with prejudice as it was filed beyond the statute of limitations and is successive.

Statute of Limitations

Applicant has failed to comply with the filing procedures of the Act. S.C. Code Ann § 17-27-10 to –160 (1976 & Supp. 1997). The Act reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a) (Supp. 1998).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant's conviction was April 17, 2006 and was sentenced on September 14, 2007. This application was filed beyond the time the statutory filing period expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the PCR Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Court finds that it should summarily dismiss the Application for PCR for failure to file within the time mandated by statute.

Successive

The current Application is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are strongly disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

> **All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not**

> **so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.**

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application. Accordingly, this application should be summarily dismissed.

JMB 4

CONCLUSION

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court, and serving such

reasons with the SC Office of the Attorney General: Attn. Assistant Attorney General Tyson A. Johnson, Sr., Post Office Box 11549, Columbia, SC 29211.

AND IT IS SO ORDERED this

23rd day of May, 2013.

Honorable J. Michael Baxley
Chief Administrative Judge
4th Circuit

Darlington, South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	)	IN THE COURT OF COMMON PLEAS
Angelo Bernard Ham, Applicant, v. State of South Carolina, Respondent.	)	2013-CP-16-0248 **RESPONSE TO AG'S RETURN AND MOTION TO DISMISS**

Applicant, Angelo Bernard Ham, by and through counsel, hereby requests that this Court deny the Attorney General's Motion to Dismiss.

I. Relevant Factual Background

Ham is an indigent inmate currently serving a sentence of life imprisonment without the possibility of parole for an offense he committed when he was a juvenile. He is seeking post-conviction relief from his sentence pursuant to *Miller v. Alabama*, 132 S.Ct. 2455 (2012) (holding that courts must conduct individualized sentencing hearings as in capital case before sentencing juvenile offenders to life without parole). On March 20, 2013, Ham filed an Application for Post-Conviction Relief, Motion to Stay Proceedings related to Application for Post-Conviction Relief, and Motion for Appointment of Counsel in the Darlington County Clerk of Court's office. Ham's stay motion was based on the fact that applicant is also a member of a class of juveniles who filed a Petition for Writ of Certiorari in the South Carolina Supreme Court's original jurisdiction challenging their sentences and seeking guidance from the Court as to the procedures to be used in cases where life without parole is a sentencing possibility for a

juvenile offender. [1] On May 6, 2013, the Supreme Court granted certiorari, and petitioners' brief is due June 6, 2013.[2] The South Carolina Supreme Court, therefore, has evidenced its willingness to consider the very issues presented in Ham's post-conviction relief application. Given these developments, and for other reasons discussed below, dismissal is improper.

II. This Court should deny the Attorney General's Motion to Dismiss

A. The South Carolina Supreme Court granted certiorari in *Aiken v. Byars.*

The Attorney General's Proposed Order of Dismissal fails to reference either *Aiken v. Byars* or the *Miller v. Alabama* — significant omissions given the legal seachange in the constitutional regulation of juvenile sentencing hearings ushered in by the Supreme Court of the United States in *Miller* and the South Carolina Supreme Court's decision to consider the impact of Miller on the petitioners' sentences including applicant's life without parole sentence. As noted in the initial stay motion, the claims in Ham's application for post-conviction relief largely mirror the questions presented in *Aiken v. Byars*; both request resentencing under *Miller* due to substantive and procedural defects in the sentencing hearing that culminated in Ham's current sentence of life imprisonment without the possibility of parole. Thus, the South Carolina Supreme Court's resolution of the questions presented in *Aiken v. Byars* will likely control whether Ham, and other similarly situated individuals, must be resentenced in a manner consistent with the constitutional principles established in *Miller*. Given the commonality of the issues, this Court should simply hold this case in abeyance pending the ultimate resolution of the issue that the Supreme Court has decided to address. Holding this case in abeyance "when there is another issue pending between the same parties in another action and the resolution of that

[1] The Petition in *Aiken et al v. Byars* was filed on October 29, 2012; a copy of the petition was filed as an attachment to the original stay motion.

[2] A copy of the order granting certiorari is attached to this pleading.

issue will affect the action sought to be stayed" comports with the law in this state. *Talley v. John-Mansville Sales Corp.*, 285 S.C. 117 (1985). Given our Supreme Court's expressed willingness to consider this issue, and for the sake of judicial economy, this Court should deny the Attorney General's motion to summarily dismiss Ham's application for post-conviction relief.

B. **Summary dismissal of Ham's application is improper because PCR is the proper vehicle to raise his claim.**

The Attorney General's office also asks this Court to dismiss this application because it is "filed outside the statute of limitations, is successive to Applicant's previous PCR action, and seeks relief not available in PCR . . . on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing." Return and Motion to Dismiss, p. 7. These claims are not accurate.

S.C. Code Ann. §17-27-45(b) extends the PCR statute of limitations by one year for binding constitutional decisions, like *Miller*, and states that successive post-conviction applications are the proper procedure to ask the Court to apply them. *Franklin v. Maynard*, 356 S.C. 276, 588 S.E.2d 604 (2003) (holding S.C. Code §17-27-45(b) is proper procedure for challenging death sentence imposed prior to the Supreme Court's *Atkins v. Virginia*, 536 U.S. 304 (2002)(holding that persons with mental retardation cannot be sentenced to death)). Ham's post-conviction relief challenge to his sentence, therefore, is the proper vehicle to challenge his life without parole sentence as cruel and unusual punishment under *Miller* because it was filed within one year of the United States Supreme Court's decision and thus is not time barred or improperly successive.

The South Carolina Supreme Court has recently addressed situations where second or successive petitions are permitted. If an applicant alleges facts that would establish an exception to either the statute of limitations or the general prohibition against successive PCR applications, and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing. *McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623, 626 (2013); *see also Leamon v. State*, 363 S.C. 432,434, 611 S.E.2d 494, 495 (2005):

> Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the application is not entitled to relief. S.C.Code Ann. §17-27-70(b) and (c) (2003). When considering the State's motion for summary dismissal of an application, where no evidentiary hearing has been held, the circuit court must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant.

The issues Ham raises in his PCR application, taken in the light most favorable to him, entitle him to sentencing relief under *Miller*. For this additional reason, dismissal of Ham's application is improper.

III. Conclusion

For these reasons, and the reasons set forth in the original stay motion, Ham respectfully asks this Court to deny the Attorney General's motion to summarily dismiss his application for post-conviction relief.

Respectfully submitted,

Elizabeth A. Franklin-Best

Elizabeth A. Franklin-Best
Blume Norris & Franklin-Best, LLC
900 Elmwood Avenue, Ste. 101
Columbia, South Carolina 29201
(803) 765-1044
betsy@blumelaw.com

May 28, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
Angelo Bernard Ham, 315014	)	Case No. 2013-CP-16-0248
	)	
Applicant,	)	
vs.	)	
	)	**CERTIFICATE OF SERVICE**
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The undersigned hereby certifies that a copy of the Applicant's Response to the Attorney General's Return and Motion to Dismiss was served by first class United States mail, postage prepaid, this 28th day of May, 2013, upon the following:

David Spencer, Esq.
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

Jill A. Rider

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
Angelo Bernard Ham, #315014, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2013-CP-16-248 **RETURN TO APPLICANT'S "Response to AG's Response and Motion to Dismiss"**

Respondent, by and through undersigned counsel, making a Return to Applicant's "Response to AG's Response and Motion to Dismiss[,]" filed May 28, 2013, would respectfully show unto this Court:

1. The matter is before the Court by way of a Post-Conviction Relief (PCR) action filed March 20, 2013. Applicant also filed a "Motion to Stay Proceedings Related to Application for Post-Conviction Relief" and a "Motion for Appointment of Counsel" contemporaneously with his Application for PCR. Respondent filed a Return and Motion to Dismiss on May 13, 2013. Respondent also submitted a proposed Conditional Order of Dismissal on May 14, 2013. The Conditional Order of Dismissal was signed on May 23, 2013, and filed May 30, 2013. Applicant filed this "Response to AG's Return and Motion to Dismiss" on May 28, 2013;

2. One of the allegations set forth in the PCR application is that the United States Supreme Court opinion in Miller v. Alabama, ___ U.S. ___, 132 S. Ct. 2455 (2012) requires the grant of post-conviction relief because Applicant was a juvenile when he committed the underlying crime for which he was sentenced to life imprisonment without parole;

3. Applicant has filed a "Response to AG's Return and Motion to Dismiss[,]" in

which he argues that the Application should not be dismissed. Applicant asks that the Court "hold this case in abeyance pending the ultimate resolution" of the issues in Aiken v. Byers, Appellate Case No. 2012-213286. (Applicant's Resp. p. 2-3);

4. Respondent agrees that this matter should be held in abeyance until the South Carolina Supreme Court has issued a ruling in Aiken. In Aiken, the issues being raised in the Petition for a Writ of Certiorari concern whether Miller should extend to all sentences of life imprisonment without parole for juvenile defendants or alternatively whether such defendants are entitled to a new sentencing hearing. As the Court's decision in Aiken will likely be dispositive of the Miller issue raised in the instant case, the instant case should be held in abeyance pending a final decision in Aiken;

5. Respondent reserves all defenses;

6. Respondent submits that all motions for discovery or funding, as well as Applicant's Motion for Appointment of Counsel, should also be held in abeyance pending the Supreme Court's ruling in Aiken;

7. Respondent submits that the Conditional Order of Dismissal should not become final pending the Supreme Court's ruling in Aiken;

8. Respondent submits Applicant's "Motion to Stay Proceedings Related to Application for Post-Conviction Relief" should be granted pending the Supreme Court's ruling in Aiken.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Deputy Attorney General
S.C. Bar No. 100777

Post Office Box 11549
Columbia, South Carolina 29211

By: _____
Attorneys for Respondent

August 16, 2013

STATE OF SOUTH CAROLINA) COUNTY OF DARLINGTON)	IN THE COURT OF COMMON PLEAS
ANGELO BERNARD HAM, 315014) Applicant,)	2013-CP-16-0248
vs)	AFFIDAVIT OF SERVICE VIA MAIL
STATE OF SOUTH CAROLINA,) Respondent.)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return to Motion to Stay Proceedings** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Elizabeth A. Franklin-Best, Esquire
Blume, Norris & Franklin-Best, LLC
900 Elmwood Avenue; Suite 101
Columbia SC 29201

DATED this 16th day of August, 2013.

Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	IN THE COURT OF COMMON PLEAS FOURTH JUDICIAL CIRCUIT
Angelo Bernard Ham, #315014, Applicant, v. State of South Carolina, Respondent.	2013-CP-16-0248 **AMENDED** **RETURN AND MOTION TO DISMISS**

In response to the post-conviction relief (PCR) application filed March 20, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Darlington County Clerk of Court's orders of commitment. The Darlington County Grand Jury indicted the Applicant at the October 2005 term of General Sessions for murder (2005-GS-16-1969), armed robbery (2005-GS-16-1970) and criminal conspiracy (2005GS-16-1971). Henry M. Anderson, Jr., Esquire represented the Applicant.

On April 17, 2006, the Applicant pled guilty to all three (3) charges, but was only sentenced on criminal conspiracy, due to further issues with a co-defendant on the other charges. The Honorable John M. Milling sentenced the Applicant to five (5) years imprisonment for criminal conspiracy. The Applicant did not file an appeal from the criminal conspiracy guilty plea or sentence.

On September 14, 2007, the Applicant was sentenced on the murder and armed robbery charges. Judge Milling sentenced the Applicant to concurrent terms of life imprisonment without parole for murder and twenty-five (25) years for armed robbery.

A timely Notice of Appeal was filed at the South Carolina Court of Appeals in order to challenge the convictions and sentences for the murder and armed robbery charges. The Applicant, however, chose to withdraw his appeal. The Court of Appeals dismissed the case and issued the remittitur by order dated June 9, 2008.

First PCR Application (2007-CP-16-0811)

In his first application for post-conviction relief, filed on September 11, 2007, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
    a. Failed to ask if he wanted to file a notice of appeal
2. "Conflict of interest (honorable judge)"
3. Statements from co-defendants is [*sic*] void."

Respondent filed a return and partial motion to dismiss on or about November 1, 2007. Applicant filed a motion to dismiss on or about November 12, 2007, as well as a motion for summary judgment on or about November 14, 2007, and a motion to alter or amend on April 21, 2008. On or about July 11, 2008, it an amended PCR application was filed by the Applicant. An evidentiary hearing was convened on the matter on October 15, 2008 before the Honorable Larry B. Hyman, Jr. at the Darlington County Courthouse. Applicant was represented by Charles T. Brooks, Esquire, and Respondent was represented by Karen C. Ratigan, Esquire, of the South Carolina Office of the Attorney General. At the hearing, Applicant represented that he wished to withdraw his application, and this was done with prejudice. An order to this effect was signed by Judge Hyman on November 4, 2008.

Second PCR Application (2008-CP-16-1006)

In his second application for post-conviction relief, filed on November 21, 2008, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

a. Failed to object to the videotape that was allowed into evidence during the plea hearing.

2. Violations due to illegal indictments.
   a. The plea judge did not have subject matter jurisdiction of the armed robbery charge.
3. Illegal waiver from juvenile to adult.
   a. The Family Court illegally waived jurisdiction to the Court of General Sessions.

Respondent filed a return on or about February 25, 2009. Applicant filed a motion to alter or amend on June 29, 2009, a request for production of documents on August 3, 2009, a second motion to alter or amend on July 27, 2009, and a third motion to alter or amend on February 16, 2010.. Of these motions, relief was granted via an order granting limited discovery issued October 19, 2009 by the Honorable Paul M. Burch. The Honorable Thomas A. Russo convened an evidentiary hearing into the application on September 13, 2010 at the Darlington County Courthouse. Applicant was present at the hearing and represented by Gary I. Finklea, Esquire. Judge Russo denied the application by written order filed December 10, 2010. Applicant filed a timely notice of appeal from the denial of his application, and Robert M. Pachak, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of a Johnson[1] petition for writ of certiorari. The Court of Appeals denied the petition on March 11, 2014, and returned the remittitur on March 27, 2014.

Applicant also filed a motion for relief pursuant to SCRCP 60(b)(5), which provides that the Court may relieve a party from a final judgment where the judgment "has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." Judge Burch found Applicant's arguments to be ineffective, particularly in that he had "not shown how the legal and factual basis of Judge Russo's order has been reversed or

[1] Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

otherwise vacated, or that it is no longer equitable to enforce the order denying PCR. " The order was signed on May 12, 2014.

Fourth PCR Application (2014-CP-16-0202)

After filing the instant PCR application, to be further discussed below, Applicant filed a fourth PCR application. This matter is still pending before this Court.

II.

In his third and current application for post-conviction relief the Applicant, by and through Elizabeth Franklin-Best, Esquire, alleges that he is being held in custody unlawfully for the following reasons:

1. Applicant's sentence of life without parole, imposed for a crime he committed when he was a juvenile, violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution;
2. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution as an excessive and cruel and unusual punishment because he was both a juvenile and a person who did not kill or intend to kill the victim;
3. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution, because the proceedings which led to its imposition were both procedurally and substantively inadequate; and
4. Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§3 and 14 of the South Carolina Constitution because Applicant's counsel failed to develop and present mitigating evidence which would have warranted a sentence of less than life without parole.

Contemporaneously with the application, Applicant filed a motion to stay proceedings pending the South Carolina Supreme Court's resolution of Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572, regarding the sentencing of juveniles to life without parole. Ms. Franklin-Best also filed a motion for appointment of counsel on this date. Respondent filed a return and motion to dismiss on May 14, 2013, alleging that the application should be summarily dismissed due to its nature as successive and filed outside of the statute of limitations. On or about May 28, 2013, Applicant's

counsel filed a document entitled "Response to AG's Return and Motion to Dismiss," which argued that, due to the pending litigation in Aiken, holding these proceedings in abeyance was the proper tactic; further, Applicant argued that a PCR was the proper vehicle to raise his claim under S.C. Code Ann. §17-27-45(b), which extends the filing timeframe if relevant cases are pending before a court whose rulings are binding on South Carolina. Respondent filed a return on or about August 16, 2013 to this response, in which it concedes that this matter should be held in abeyance until the South Carolina Supreme Court ruled on Aiken.

For the purpose of this Return, Respondent incorporates the Clerk of Court records, Applicant's prior PCR records, and the South Carolina Department of Corrections' records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits the allegation related to Miller v. Alabama, __ U.S. __, 132 S. Ct. 2455 (2012), must be dismissed. On November 12, 2014, the South Carolina Supreme Court held sentences of life without the possibility of parole that were imposed on juveniles violated the Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution. Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The South Carolina Supreme Court specifically ordered "any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced." Id. at 545, 765 S.E.2d at 578 (emphasis added). As such, any challenges under Miller are not properly heard in a PCR action and this allegation must be summarily dismissed.[2]

[2] Respondent notes this case has been held in abeyance pending the resolution of Aiken v. Byars. As the United States Supreme Court denied the State's petition for writ of certiorari on June 1, 2015, this matter is no longer stayed.

IV.

As to any other issues. this Court should summarily dismiss the current application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice, 305 S.C. 448, 409 S.E.2d 392. Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If an applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. The applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant could have raised the new grounds for relief in his prior post-conviction relief applications. Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

V.

Respondent also submits this application for Post-Conviction Relief should also be dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to –160 (Supp. 2003). S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offenses he challenges on April 17, 2006. Therefore, Applicant was required to file his PCR application on or before April 18, 2007. Applicant filed this application on March 18, 2014, nearly seven (7) years after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

VI.

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

VII.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to Applicant's previous PCR applications and was filed after the statute of limitations had expired. The challenges to applicant's life without parole sentence must be filed in general sessions.

Respectfully submitted,

ALAN M. WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By: _____
Attorneys for the Respondents
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

Columbia, South Carolina
March 10, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2014-CP-16-0248
	)	
ANGELO BERNARD HAM, 315014	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Amended Return and Motion to Dismiss** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Elizabeth A. Franklin-Best, Esquire
Blume, Norris & Franklin-Best, LLC
900 Elmwood Avenue; Suite 101
Columbia SC 29201

DATED this 10th day of March, 2016.

Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	IN THE COURT OF COMMON PLEAS FOURTH JUDICIAL CIRCUIT
Angelo Bernard Ham, #315014, Applicant, v. State of South Carolina, Respondent.	2013-CP-16-0248 **AMENDED** **CONDITIONAL ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed March 20, 2013.

I. PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Darlington County Clerk of Court's orders of commitment. The Darlington County Grand Jury indicted the Applicant at the October 2005 term of General Sessions for murder (2005-GS-16-1969), armed robbery (2005-GS-16-1970) and criminal conspiracy (2005GS-16-1971). Henry M. Anderson, Jr., Esquire represented the Applicant.

On April 17, 2006, the Applicant pled guilty to all three (3) charges, but was only sentenced on criminal conspiracy, due to further issues with a co-defendant on the other charges. The Honorable John M. Milling sentenced the Applicant to five (5) years imprisonment for criminal conspiracy. The Applicant did not file an appeal from the criminal conspiracy guilty plea or sentence.

On September 14, 2007, the Applicant was sentenced on the murder and armed robbery charges. Judge Milling sentenced the Applicant to concurrent terms of life imprisonment without parole for murder and twenty-five (25) years for armed robbery.

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A timely Notice of Appeal was filed at the South Carolina Court of Appeals in order to challenge the convictions and sentences for the murder and armed robbery charges. The Applicant, however, chose to withdraw his appeal. The Court of Appeals dismissed the case and issued the remittitur by order dated June 9, 2008.

First PCR Application (2007-CP-16-0811)

In his first application for post-conviction relief, filed on September 11, 2007, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
    a. Failed to ask if he wanted to file a notice of appeal
2. "Conflict of interest (honorable judge)"
3. Statements from co-defendants is [*sic*] void."

Respondent filed a return and partial motion to dismiss on or about November 1, 2007. Applicant filed a motion to dismiss on or about November 12, 2007, as well as a motion for summary judgment on or about November 14, 2007, and a motion to alter or amend on April 21, 2008. On or about July 11, 2008, it an amended PCR application was filed by the Applicant. An evidentiary hearing was convened on the matter on October 15, 2008 before the Honorable Larry B. Hyman, Jr. at the Darlington County Courthouse. Applicant was represented by Charles T. Brooks, Esquire, and Respondent was represented by Karen C. Ratigan, Esquire, of the South Carolina Office of the Attorney General. At the hearing, Applicant represented that he wished to withdraw his application, and this was done with prejudice. An order to this effect was signed by Judge Hyman on November 4, 2008.

Second PCR Application (2008-CP-16-1006)

In his second application for post-conviction relief, filed on November 21, 2008, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

a. Failed to object to the videotape that was allowed into evidence during the plea hearing.

2. Violations due to illegal indictments.
   a. The plea judge did not have subject matter jurisdiction of the armed robbery charge.
3. Illegal waiver from juvenile to adult.
   a. The Family Court illegally waived jurisdiction to the Court of General Sessions.

Respondent filed a return on or about February 25, 2009. Applicant filed a motion to alter or amend on June 29, 2009, a request for production of documents on August 3, 2009, a second motion to alter or amend on July 27, 2009, and a third motion to alter or amend on February 16, 2010.. Of these motions, relief was granted via an order granting limited discovery issued October 19, 2009 by the Honorable Paul M. Burch. The Honorable Thomas A. Russo convened an evidentiary hearing into the application on September 13, 2010 at the Darlington County Courthouse. Applicant was present at the hearing and represented by Gary I. Finklea, Esquire. Judge Russo denied the application by written order filed December 10, 2010. Applicant filed a timely notice of appeal from the denial of his application, and Robert M. Pachak, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of a Johnson[1] petition for writ of certiorari. The Court of Appeals denied the petition on March 11, 2014, and returned the remittitur on March 27, 2014.

Applicant also filed a motion for relief pursuant to SCRCP 60(b)(5), which provides that the Court may relieve a party from a final judgment where the judgment "has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." Judge Burch found Applicant's arguments to be ineffective, particularly in that he had "not shown how the legal and factual basis of Judge Russo's order has been reversed or

[1] Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988),

otherwise vacated, or that it is no longer equitable to enforce the order denying PCR. " The order was signed on May 12, 2014.

Fourth PCR Application (2014-CP-16-0202)

After filing the instant PCR application, to be further discussed below, Applicant filed a fourth PCR application. This matter is still pending before this Court.

CURRENT APPLICATION

In his third and current application for post-conviction relief the Applicant, by and through Elizabeth Franklin-Best, Esquire, alleges that he is being held in custody unlawfully for the following reasons:

1. Applicant's sentence of life without parole, imposed for a crime he committed when he was a juvenile, violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution;
2. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution as an excessive and cruel and unusual punishment because he was both a juvenile and a person who did not kill or intend to kill the victim;
3. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution, because the proceedings which led to its imposition were both procedurally and substantively inadequate; and
4. Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§3 and 14 of the South Carolina Constitution because Applicant's counsel failed to develop and present mitigating evidence which would have warranted a sentence of less than life without parole.

Contemporaneously with the application, Applicant filed a motion to stay proceedings pending the South Carolina Supreme Court's resolution of Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572, regarding the sentencing of juveniles to life without parole. Ms. Franklin-Best also filed a motion for appointment of counsel on this date. Respondent filed a return and motion to dismiss on May 14, 2013, alleging that the application should be summarily dismissed due to its nature as successive and filed outside of the statute of limitations. On or about May 28, 2013, Applicant's

counsel filed a document entitled "Response to AG's Return and Motion to Dismiss," which argued that, due to the pending litigation in Aiken, holding these proceedings in abeyance was the proper tactic; further, Applicant argued that a PCR was the proper vehicle to raise his claim under S.C. Code Ann. §17-27-45(b), which extends the filing timeframe if relevant cases are pending before a court whose rulings are binding on South Carolina. Respondent filed a return on or about August 16, 2013 to this response, in which it concedes that this matter should be held in abeyance until the South Carolina Supreme Court ruled on Aiken.

Before this Court are the records of the Darlington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Applicant's previous PCR records, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Miller v. Alabama

This Court finds the allegation related to Miller v. Alabama, __ U.S. __, 132 S. Ct. 2455 (2012) must be dismissed. On November 12, 2014, the South Carolina Supreme Court held sentences of life without the possibility of parole that were imposed on juveniles violated the Eighth Amendment under Miller and that those individuals are entitled to resentencing pursuant to the United States Constitution. Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). The South Carolina Supreme Court specifically ordered "any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced." Id. at 545, 765 S.E.2d at 578

(emphasis added). As such, any challenges under Miller are not properly heard in a PCR action and this allegation must be summarily dismissed.[2]

Successiveness

The Court finds that the current application for post-conviction relief must also be summarily dismissed because it is successive to the previous application for post-conviction relief. S.C. Code Ann. § 17-27-90 (2003) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations could have been raised in the proceedings based on Applicant's prior application for post-conviction relief, and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State,

[2] This case has been held in abeyance pending the resolution of Aiken v. Byars. As the United States Supreme Court denied the State's petition for writ of certiorari on June 1, 2015, this matter is no longer stayed, and Applicant must file his motion for resentencing in the Court of General Sessions prior to June 1, 2016.

274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

Statute of Limitations

This Court further finds that this Application for post-conviction relief must also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offenses he challenges on April 17, 2006. Therefore, Applicant was required to file his PCR application on or before April 18, 2007. Applicant filed this application on March 18, 2014, nearly seven (7) years after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

III. CONCLUSION

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Darlington County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Jessica E. Kinard, Esquire
PCR Division – 4th Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 16th day of March, 2016.

THE HONORABLE ROGER E. HENDERSON
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

Chesterfield, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
Angelo Bernard Ham, #315014, Applicant, v. State of South Carolina, Respondent.	)	2013-CP-16-0248 **FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 20, 2013. Respondent made its return on or about May 14, 2013, requesting the application be summarily dismissed based upon expiration of the statute of limitations and the presumption against successive applications. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed May 23, 2013 and filed May 30, 2013, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final.

On or about May 28, 2013, Applicant's counsel filed a document entitled "Response to AG's Return and Motion to Dismiss," which argued that, due to the pending litigation in Aiken[1], holding these proceedings in abeyance was the proper tactic; further, Applicant argued that a PCR was the proper vehicle to raise his claim under S.C. Code Ann. §17-27-45(b), which extends the filing timeframe if relevant cases are pending before a court whose rulings are binding on South Carolina. Respondent filed a return on or about August 16, 2013, to this

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DARLINGTON COUNTY, S.C.

[1] Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014).

response, in which it concedes that this matter should be held in abeyance until the South Carolina Supreme Court ruled on Aiken.

Subsequent to the final ruling in Aiken, Respondent filed an amended return on or about March 10, 2016, requesting the application be summarily dismissed based upon the expiration of the statute of limitations, the presumption against successive applications, and because Applicant's claim is not properly before the Court of Common Pleas pursuant to the ruling in Aiken. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued an Amended Conditional Order of Dismissal signed March 16, 2016 and filed March 24, 2016, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a Certificate of Service dated December 15, 2016, serving the above-mentioned Amended Conditional Order of Dismissal on the Applicant's counsel of record, Elizabeth A. Franklin-Best.

To date, Applicant has failed to respond to either Respondent's amended motion to dismiss or this Court's Amended Conditional Order of Dismissal. Therefore, this Court finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

[*Remainder of page left blank intentionally*]

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, the application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED this 3rd day of March, 2017.

HONORABLE ROGER E. HENDERSON
Chief Administrative Judge
Fourth Judicial Circuit Court

Georgetown, South Carolina.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2013-CP-16-0248
ANGELO B. HAM, 315014.	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Amended Conditional Order of Dismissal** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Elizabeth A. Franklin-Best, Esquire
Blume Norris & Franklin-Best, LLC
900 Elmwood Avenue, Suite 200
Columbia, SC 29201

FILED
2017 MAR 16 AM 9:24
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

DATED this 15th day of December, 2016.

Mallory Morris, Legal Assistant
For Respondent

COPY

FORM 5 14CP160202

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
County of Darlington)

Angelo Hom #315014)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR)

POST-CONVICTION RELIEF)

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CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.

INSTRUCTIONS – READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution

2. Name and location of Court which imposed sentence Darlington County Clerk of Court; 1 Public Square, Rm B-4; Darlington, S.C. 29540

3. Name(s) of co-defendant(s) (if any) Anthony Robinson and Dennis Hunter

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2005-GS-16-1969 ("Murder")

(b) 2005-GS-16-1970 ("Armed Robbery")

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

(c) 2005-GS-16-1971 ("CRIMINAL CONSPIRACY")

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

(a) 9/14/07

(b) " "

(c) " "

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SCOTT B. SUGGS
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DARLINGTON COUNTY, S.C.
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6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty

(c) after a plea of nolo contendere

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

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

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

i. S.C. Court of Appeals

ii. [illegible]

iii.

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

i. WITHDRAWN

ii.

iii.

(c) the date of each such result:

i. June 9, 2008

ii.

iii.

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

i.

ii.

iii.

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

(a)

(b)

(c) _____

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

(a) Ineffective Assistance of PCR counsel

(b) Ineffective Assistance of Plea Counsel

(c) Denied Confrontation Rights

(d) Guilty Plea not valid

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

(a) Failed to raise properly claim

(b) ineffective during critical stage of adversarial process

(c) I was denied the right to cross-examine witnesses

(d) all elements could not be proved by State and I had a justifiable defense

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

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

i. PCR

ii. Writ of Certiorari

iii. _____

iv. _____

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

i. Darlington County Court of Common Pleas

ii. S.C. Supreme Court but transferred to Court of Appeals

iii. _____

iv. _____

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CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

(c) the disposition thereof:

i. Dismissed with prejudice

ii. Denied

iii. _____

iv. _____

(d) the date of each such disposition:

i. December 7, 2010

ii. March 11, 2014

iii. _____

iv. _____

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

i. 2008-CP-10-1006

ii. 2011-182627

iii. _____

iv. _____

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

● Yes

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SCOTT B. SUGGS
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CHARLESTON COUNTY, S.C.

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

(a) which grounds have been presented:

i. 11(6)

ii. _____

iii. _____

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

i. The issue was not raised or argued properly

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) your arraignment and plea? ✓

(b) your trial, if any? _____

(c) your sentencing? ✓

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

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

_____

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

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

i. Henry M. Anderson / P.O. Box 1904 / Florence, S.C. 29503

ii. Robert Dodek / SCCID

Robert Pachak / SCCID

iii. Gary E. Finklea / P.O. Box 317 / Florence, S.C. 29503

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

i. Plea & Sentencing

ii. Direct Appeal / writ of certiorari

iii. PCR

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CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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

Vacation of Sentence

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

NO

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Darlington)

I, Angelo Horn, being duly sworn upon ~~my~~ oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 13th day of March, 2014.

Angelar. Smith (L.S.)
Notary Public

My Commission Expires: 9/30/2023

2014 MAR 18 AM 11:33
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

Revised 3/2003

14CP160202

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

I, [redacted] Angelo Hall, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this 13th day of March, 2014.

Angela V. Shuler
Notary Public

My Commission Expires: 9/30/2023

FILED
2014 MAR 18 AM 11:33
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

Revised 3/2003

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	)	IN THE COURT OF COMMON PLEAS OF THE FOURTH JUDICIAL CIRCUIT
Angelo Bernard Ham, S.C.D.C. No. 315014, Applicant, v.	)	Case No.: 2014-CP-16-0202 **RETURN AND MOTION TO DISMISS**
State of South Carolina, Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief filed March 18, 2014, would respectfully show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Darlington County Clerk of Court's orders of commitment. The Darlington County Grand Jury indicted the Applicant at the October 2005 term of General Sessions for murder (2005-GS-16-1969), armed robbery (2005-GS-16-1970) and criminal conspiracy (2005GS-16-1971). Henry M. Anderson, Jr., Esquire represented the Applicant.

On April 17, 2006, the Applicant pled guilty to all three (3) charges, but was only sentenced on criminal conspiracy, due to further issues with a co-defendant on the other charges. The Honorable John M. Milling sentenced the Applicant to five (5) years imprisonment for criminal conspiracy. The Applicant did not file an appeal from the criminal conspiracy guilty plea or sentence.

DARLINGTON COUNTY, S.C. CLERK OF COURT 2014 MAR 5 PM 8:40

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Applicant, however, chose to withdraw his appeal. The Court of Appeals dismissed the case and issued the remittitur by order dated June 9, 2008.

II.

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    a. Failed to ask if he wanted to file a notice of appeal
2. "Conflict of interest (honorable judge)"
3. Statements from co-defendants is [*sic*] void."

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1. Ineffective assistance of counsel.
    a. Failed to object to the videotape that was allowed into evidence during the plea hearing.
2. Violations due to illegal indictments.

a. The plea judge did not have subject matter jurisdiction of the armed robbery charge.

3. Illegal waiver from juvenile to adult.
   a. The Family Court illegally waived jurisdiction to the Court of General Sessions.

Respondent filed a return on or about February 25, 2009. Applicant filed a motion to alter or amend on June 29, 2009, a request for production of documents on August 3, 2009, a second motion to alter or amend on July 27, 2009, and a third motion to alter or amend on February 16, 2010.. Of these motions, relief was granted via an order granting limited discovery issued October 19, 2009 by the Honorable Paul M. Burch. The Honorable Thomas A. Russo convened an evidentiary hearing into the application on September 13, 2010 at the Darlington County Courthouse. Applicant was present at the hearing and represented by Gary I. Finklea, Esquire. Judge Russo denied the application by written order filed December 10, 2010. Applicant filed a timely notice of appeal from the denial of his application, and Robert M. Pachak, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of a Johnson[1] petition for writ of certiorari. The Court of Appeals denied the petition on March 11, 2014, and returned the remittitur on March 27, 2014.

Applicant also filed a motion for relief pursuant to SCRCP 60(b)(5), which provides that the Court may relieve a party from a final judgment where the judgment "has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." Judge Burch found Applicant's arguments to be ineffective, particularly in that he had "not shown how the legal and factual basis of Judge Russo's order has been reversed or

[1] Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988),

otherwise vacated, or that it is no longer equitable to enforce the order denying PCR. " The order was signed on May 12, 2014.

Third PCR Application (2013-CP-16-0248)

In his third application for post-conviction relief, filed March 20, 2013 by and through Elizabeth Franklin-Best, Esquire, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Applicant's sentence of life without parole, imposed for a crime he committed when he was a juvenile, violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution;
2. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution as an excessive and cruel and unusual punishment because he was both a juvenile and a person who did not kill or intend to kill the victim;
3. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution, because the proceedings which led to its imposition were both procedurally and substantively inadequate; and
4. Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§3 and 14 of the South Carolina Constitution because Applicant's counsel failed to develop and present mitigating evidence which would have warranted a sentence of less than life without parole.

Contemporaneously with the application, Applicant filed a motion to stay proceedings pending the South Carolina Supreme Court's resolution of Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572, regarding the sentencing of juveniles to life without parole. Ms. Franklin-Best also filed a motion for appointment of counsel on this date. Respondent filed a return and motion to dismiss on May 14, 2013, alleging that the application should be summarily dismissed due to its nature as successive and filed outside of the statute of limitations. On or about May 28, 2013, Applicant's counsel filed a document entitled "Response to AG's Return and Motion to Dismiss," which argued that, due to the pending litigation in Aiken, holding these proceedings in abeyance was the proper tactic; further, Applicant argued that a PCR was the proper vehicle

to raise his claim under S.C. Code Ann. §17-27-45(b), which extends the filing timeframe if relevant cases are pending before a court whose rulings are binding on South Carolina. Respondent filed a return on or about August 16, 2013 to this response, in which it concedes that this matter should be held in abeyance until the South Carolina Supreme Court ruled on Aiken. This matter is still pending before this Court.

III.

In his fourth and current application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel
   a. Failed to raise properly [*sic*] claim
2. Ineffective assistance of plea counsel
   a. Ineffective during critical stage of adversarial process
3. Denied confrontation rights
   a. I was denied the right to cross-examine witnesses.
4. Guilty plea not valid
   a. All elements couldn't be proved [*sic*] by state and I had a justified defense.

For the purpose of this return, Respondent incorporates the Darlington County Clerk of Court's records regarding the subject convictions, South Carolina Department of Corrections records, Applicant's previous PCR orders, and the filings regarding this PCR. Respondent reserves the right to amend this return upon receipt of any relevant materials.

IV.

This Court should summarily dismiss Applicant's current PCR application because it is successive to his previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can present a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450,409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant failed to establish any sufficient reason why he did not raise his current grounds for relief in a previous application. Respondent moves to summarily dismiss Applicant's current application because it is successive to his previous applications.

V.

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court held the one-year statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offenses he challenges on April 17, 2006. Therefore, Applicant was required to file his PCR application on or before April 18, 2007. Applicant filed this application on March 18, 2014, nearly seven (7) years after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). S.C. Code Ann. Section 17-27-70(c) authorizes the circuit court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent moves to summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

VI.

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

Remainder of page intentionally left blank.

VII.

WHEREFORE, Respondent moves to summarily dismiss this application because it is untimely and successive to Applicant's prior applications.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General
S.C. Bar #77889

By: _____
Attorneys for the Respondent
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

Columbia, South Carolina

March 10, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2014-CP-16-0202
	)	
ANGELO BERNARD HAM, 315014	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return and Motion to Dismiss** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Angelo Bernard Ham, 315014
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

DATED this 10th day of March, 2016.

2016 MAR 15 AM 8:40
CLERK OF COURT
DARLINGTON COUNTY, S.C.

Judy A.C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	)	IN THE COURT OF COMMON PLEAS OF THE FOURTH JUDICIAL CIRCUIT
Angelo Bernard Ham, S.C.D.C. No. 315014, Applicant, v.	)	Case No.: 2014-CP-16-0202 **CONDITIONAL ORDER OF DIMISSAL**
State of South Carolina, Respondent.	)	

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Angelo Ham (Applicant) on March 18, 2015. The State (Respondent) made its return, requesting the application be summarily dismissed.

TRUE CERTIFIED COPY
CLERK OF COURT/MAC
DARLINGTON COUNTY, SC

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Darlington County Clerk of Court's orders of commitment. The Darlington County Grand Jury indicted the Applicant at the October 2005 term of General Sessions for murder (2005-GS-16-1969), armed robbery (2005-GS-16-1970) and criminal conspiracy (2005GS-16-1971). Henry M. Anderson, Jr., Esquire represented the Applicant.

On April 17, 2006, the Applicant pled guilty to all three (3) charges, but was only sentenced on criminal conspiracy, due to further issues with a co-defendant on the other charges. The Honorable John M. Milling sentenced the Applicant to five (5) years imprisonment for criminal conspiracy. The Applicant did not file an appeal from the criminal conspiracy guilty plea or sentence.

FILED
2016 MAR 24 A 9:
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

On September 14, 2007, the Applicant was sentenced on the murder and armed robbery charges. Judge Milling sentenced the Applicant to concurrent terms of life imprisonment without parole for murder and twenty-five (25) years for armed robbery.

A timely Notice of Appeal was filed at the South Carolina Court of Appeals in order to challenge the convictions and sentences for the murder and armed robbery charges. The Applicant, however, chose to withdraw his appeal. The Court of Appeals dismissed the case and issued the remittitur by order dated June 9, 2008.

Attached herewith and incorporated herein by reference are the records of the Darlington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, the sentencing transcript, and the appellate records.

First PCR Application (2007-CP-16-0811)

In his first application for post-conviction relief, filed on September 11, 2007, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
    a. Failed to ask if he wanted to file a notice of appeal
2. "Conflict of interest (honorable judge)"
3. Statements from co-defendants is [*sic*] void."

Respondent filed a return and partial motion to dismiss on or about November 1, 2007. Applicant filed a motion to dismiss on or about November 12, 2007, as well as a motion for summary judgment on or about November 14, 2007, and a motion to alter or amend on April 21, 2008. On or about July 11, 2008, it an amended PCR application was filed by the Applicant. An evidentiary hearing was convened on the matter on October 15, 2008 before the Honorable Larry B. Hyman, Jr. at the Darlington County Courthouse. Applicant was represented by Charles T. Brooks, Esquire, and Respondent was represented by Karen C. Ratigan, Esquire, of the South Carolina Office of the Attorney General. At the hearing, Applicant represented that he wished to withdraw his application, and this was done with prejudice. An order to this effect was signed by Judge Hyman on November 4, 2008.

Second PCR Application (2008-CP-16-1006)

In his second application for post-conviction relief, filed on November 21, 2008, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
    a. Failed to object to the videotape that was allowed into evidence during the plea hearing.
2. Violations due to illegal indictments.
    a. The plea judge did not have subject matter jurisdiction of the armed robbery charge.
3. Illegal waiver from juvenile to adult.
    a. The Family Court illegally waived jurisdiction to the Court of General Sessions.

Respondent filed a return on or about February 25, 2009. Applicant filed a motion to alter or amend on June 29, 2009, a request for production of documents on August 3, 2009, a second motion to alter or amend on July 27, 2009, and a third motion to alter or amend on February 16, 2010.. Of these motions, relief was granted via an order granting limited discovery issued October 19, 2009 by the Honorable Paul M. Burch. The Honorable Thomas A. Russo convened an evidentiary hearing into the application on September 13, 2010 at the Darlington County Courthouse. Applicant was present at the hearing and represented by Gary I. Finklea, Esquire. Judge Russo denied the application by written order filed December 10, 2010. Applicant filed a timely notice of appeal from the denial of his application, and Robert M. Pachak, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of a Johnson[1] petition for writ of certiorari. The Court of Appeals denied the petition on March 11, 2014, and returned the remittitur on March 27, 2014.

Applicant also filed a motion for relief pursuant to SCRCP 60(b)(5), which provides that the Court may relieve a party from a final judgment where the judgment "has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or

[1] Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988),

otherwise vacated, or it is no longer equitable that the judgment should have prospective application." Judge Burch found Applicant's arguments to be ineffective, particularly in that he had "not shown how the legal and factual basis of Judge Russo's order has been reversed or otherwise vacated, or that it is no longer equitable to enforce the order denying PCR. " The order was signed on May 12, 2014.

Third PCR Application (2013-CP-16-0248)

In his third application for post-conviction relief, filed March 20, 2013 by and through Elizabeth Franklin-Best, Esquire, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Applicant's sentence of life without parole, imposed for a crime he committed when he was a juvenile, violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution;
2. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution as an excessive and cruel and unusual punishment because he was both a juvenile and a person who did not kill or intend to kill the victim;
3. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution, because the proceedings which led to its imposition were both procedurally and substantively inadequate; and
4. Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§3 and 14 of the South Carolina Constitution because Applicant's counsel failed to develop and present mitigating evidence which would have warranted a sentence of less than life without parole.

Contemporaneously with the application, Applicant filed a motion to stay proceedings pending the South Carolina Supreme Court's resolution of Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572, regarding the sentencing of juveniles to life without parole. Ms. Franklin-Best also filed a motion for appointment of counsel on this date. Respondent filed a return and motion to dismiss on May 14, 2013, alleging that the application should be summarily dismissed due to its nature as successive and filed outside of the statute of limitations. On or about May 28, 2013, Applicant's

counsel filed a document entitled "Response to AG's Return and Motion to Dismiss," which argued that, due to the pending litigation in Aiken, holding these proceedings in abeyance was the proper tactic; further, Applicant argued that a PCR was the proper vehicle to raise his claim under S.C. Code Ann. §17-27-45(b), which extends the filing timeframe if relevant cases are pending before a court whose rulings are binding on South Carolina. Respondent filed a return on or about August 16, 2013 to this response, in which it concedes that this matter should be held in abeyance until the South Carolina Supreme Court ruled on Aiken. This matter is still pending before this Court.

II.

In his fourth and current application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel
   a. Failed to raise properly [*sic*] claim
2. Ineffective assistance of plea counsel
   a. Ineffective during critical stage of adversarial process
3. Denied confrontation rights
   a. I was denied the right to cross-examine witnesses.
4. Guilty plea not valid
   a. All elements couldn't be proved [*sic*] by state and I had a justified defense.

Before this Court are the Darlington County Clerk of Court's records regarding the subject convictions, South Carolina Department of Corrections records, Applicant's previous PCR orders, and current PCR records.

III.

This Court finds Applicant's current PCR application must be summarily dismissed because it is successive to his previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a

subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can present a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450,409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

This Court finds Applicant failed to establish any sufficient reason why he did not raise his current grounds for relief in a previous application. This Court must summarily dismiss Applicant's current application because it is successive to his previous applications.

IV.

This Court finds this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. See S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court held the one-year statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offenses he challenges on April 17, 2006. Therefore, Applicant was required to file his PCR application on or before April 18, 2007. Applicant filed this application on March 18, 2014, nearly seven (7) years after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). Section 17-27-70(c) authorizes this Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court must summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

Pursuant to section 17-27-70(b) of the South Carolina Code, this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this order upon him to show why this order should not become final.

Applicant shall file any reasons he may have with the Horry County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Jessica E. Kinard, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 16th day of March, 2016.

THE HONORABLE ROGER E. HENDERSON
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

Manning, South Carolina

44
JK

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Post Office Box 21787 – Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated T. Brown (***Server***) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF Lee)

AFFIDAVIT OF PERSONAL SERVICE

On this 26 day of April **2016**, I served the **Conditional Order of Dismissal**, on ***Inmate*** **Angelo Bernard Ham, 315014,** by delivering personally and leaving a copy of the same at **Lee Correctional Institution,** Bishopville SC. Deponent is not a party to this action.

s/ T. Brown
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 26 day of April, **2016**

Debra Eastridge (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/3/2026

ADMISSION OF SERVICE

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (Lee ***Correctional Institution***), Bishopville, Lee County, SC this 26 day of April, ***2016.***

s/
Inmate
SCDC *Inmate #:* 315014

2014-CP-16-0202

State of South Carolina)) County of Darlington)	In the Court of Common Pleas Fourth Judicial Circuit C/A No.: 2014-CP-16-0202
Angelo Law, #315014, Applicant, vs. State of South Carolina, Respondent.	Applicants Response To the Conditional Order of Dismissal

This response is in opposition to the Conditional Order of Dismissal filed in this Honorable Court on March 24, 2016 and served on the Applicant on April 20, 2016.

FILED
2016 APR 28 P 12:58

ISSUE 1

Applicant contends that he was denied his 6th and 14th Amendment rights to effective assistance of appellate counsel, where PCR counsel failed to amend Applicants PCR Application or Rule 59(e) motion to include all grounds and/or arguments presented in the present application.

Applicant states that S.C Supreme Court Rules 30(5) and 71.1(d) makes it mandatory that post-conviction attorneys make sure that all available grounds are raised in PCR proceeding.

After filing a pro se post-conviction application and after being given court appointed counsel, a pro se litigant cannot thereafter file any further pleadings, and any amendments to his application must be made by counsel. State v. Sanders, 269 S.C 215, 237 S.E 2d 52 (1977); Foster v. State, 298 SC 306, 379 S.E 2d 907 (1989). Thus, if PCR counsel does not amend the pro se application, the Applicant has no way to have all supporting grounds and/or arguments heard.

After preparing and submitting his pro se application for PCR, the Applicant was appointed Gary I. Finklea to represent him in this matter. Thereafter, the Applicant wrote his attorney and verbally asked him to amend his pro se application to include the supporting grounds of ineffective assistance of plea counsel which appears in the present application. However, PCR counsel failed to do so and did not raise same during the Applicants evidentiary hearing. As a result of the Applicant being a layman, he did not know how to present these claims in his pro se application or at the evidentiary hearing, and as a result these grounds were not heard or ruled upon, even though they could have resulted in the Applicants case being reversed and remanded back to the Family Court for a proper ruling consistent with the Federal Juvenile Delinquency Act.

Since State v. Carpenter, 277 S.C. 309, 286 S.E.2d 384 (1982) and State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986) prohibits S.C. litigants from raising claims of ineffective assistance of trial counsel during their initial/direct appeals, the PCR proceedings must be viewed as the first appeal as of right on that particular claim. The S.C. Supreme Courts decision in Austin v. State, 409 S.E.2d 392 (1991), holding that there is no constitutional right to counsel in state PCR proceedings is based on a far-stretched reading of the Supreme Court decision in Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The decision in Finley merely held that there is no constitutional right to counsel in state court discretionary appeals after the appellate stage has been exhausted. Id., 107 S.Ct. at 1993.

Because the claim of ineffective assistance of counsel cannot be exhausted until an application for PCR is filed, South Carolina litigants clearly have a right to effective assistance of counsel in presenting their claims of ineffective assistance of trial counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985); Coleman v. Thompson, 111 S.Ct. 2546, 2568 (1991). As a result, when an applicant is not assisted by a PCR attorney in setting forth all grounds to support his claim of ineffective assistance of trial counsel in his initial application, he or she should not be barred thereafter from

submitting a second application to include additional grounds for a court's review.

In Carter v. State, 293 S.C 528, 362 S.E.2d 20 (1987), and again in Alice, supra, the S.C. Supreme Court cited Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Land v. State, 274 S.C 243, 262 S.E.2d 735 (1980) and the S.C. Code of Laws sections 17-27-90 for the general proposition, that successive applications are viewed with disfavor and that the applicant has the burden of showing that a new ground for relief could not have been raised in a previous application. However, Alice, supra, does not give attention to the courts decision in Case v. State, 277 S.C 374, 287 S.E.2d 913 (1982), which held that if the applicant meets the burden, a hearing must be afforded despite the successiveness of the application. The facts in Case established that Case had no attorney in his first application, and that it was highly doubtful whether, in point of fact, that he could have raised the appropriate argument. Alice, supra; Id., 309 S.E.2d at 394.

In a situation where a PCR Applicant is not assisted by his PCR attorney is properly amending his first application to include all supporting grounds underlying a claim of ineffective assistance of Trial Counsel, and does not know of such grounds, or does not know

from to waive them, and is barred from presenting those pleadings in light of State v. Sanders, supra, and Foster v. State, supra, he or she must be seen to be "without counsel" and in the same position as that of the applicant in Case v. State, supra. The Court, under such circumstances should find that the second application should be heard despite its successiveness because the first application lacked specificity, unless it can find that the Applicant intentionally waived his or her right to have the grounds stated in the subsequent application heard in the first

If South Carolina litigants are entitled to appeal from denials of PCR under Austin v. State, 409 S.E.2d 395 (1991), if they can establish that they did not voluntarily waive their right to appeal, then they should also be allowed to file a subsequent application alleging that all grounds supporting claim of ineffective assistance of trial counsel were not presented in the first application due to ineffective assistance of PCR counsel, who in reality is not PCR counsel on such claim, but instead is an appellate attorney in the first appeal as of right on that particular claim.

Accordingly, the Applicant states that he should be allowed to file this subsequent application

for 2807 due to the fact that his first PCR counsel was ineffective.

ISSUE(S) 2, 3, and 4

Applicant contends that Issues 2, 3, and 4 are attached hereto marked as exhibit 1. See "Motion For Relief From Judgment under Rule 60(b)(5) dated December 27, 2013."

Applicant begs this Honorable Court to reflect to this exhibit because he only recieves 10 sheets of paper a month and does not have any funds to pay for anymore paper. To such extent that this Honorable Court do not accept this attachment then please grant the Applicant with an extension (i.e., 30 days) so that he may get the paper so that he can write out everything and then submit the final copies.

ISSUE 5

Applicant contends that the trial court lacked subject matter jurisdiction to accept his guilty plea. Applicant furthers contends that he did not allege this issue in his application and the Respondent did not have

, in their response but this is an issue that cannot be waived.

As a general rule, "a defendant's knowing and intelligent guilty plea forecloses independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Tollett v. Henderson, 411 U.S. 258, 267, 93 S.Ct. 1602, 1608, 36 L.Ed.2d 235 (1973). There are exceptions to this rule, however; a person may, despite a valid guilty plea, pursue a certain type of claim that has been variously defined as a claim that attacks "the State's power to bring any indictment at all," United States v. Broce, 488 U.S. 563, 575, 109 S.Ct. 757, 765, 102 L.Ed.2d 927 (1989), that protects a defendants "right not to be haled into court," Blackledge v. Perry, 417 U.S. 21, 30, 94 S.Ct. 2098, 2104, 40 L.Ed.2d 628 (1974), and that, "the charge is one which the State may not constitutionally prosecute," Menna v. New York, 423 U.S. 61, 62 n.2, 96 S.Ct. 241, 242 n.2, 46 L.Ed.2d 195 (1975) (per curiam).

In South Carolina, "subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." Pierce v. State, 338 S.C. 139, 150, 526 S.E.2d 222, 227 (2000); S.C. Const. art. V § 11 ("the Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such

appellate jurisdiction as provided by law.")

S.C. Code Ann. §14-9-210 provides, in pertinent part that "the county solicitor shall prepare and, through the presiding judge of the court of general sessions, submit to the grand jury, while in attendance upon the court of general sessions, bills of indictment in all cases pending in the county court in which the punishment may exceed a fine of five hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the grand jury..."

S.C. Code Ann. §14-5-650 provides, in pertinent part that "the courts of the fourth judicial circuit shall be held as follows:

1) Courts of General Sessions:
at Darlington for Darlington County on the third Monday in February, the second Monday in April, the third Monday in June and the third Monday in September.

2) Courts of Common Pleas:
at Darlington for Darlington County on the second Monday in January for two weeks, the third Monday in March for two weeks, the fourth Monday in April, the fourth Monday

in June, the fourth Monday, in October for two weeks."

The S.C. Supreme Court held that "under our judicial system, the presiding judge in the Circuit Court loses jurisdiction with the adjournment of the term." State v. Best, 257 S.C. 361, 186 S.E.2d 272 (S.C. 1972).

Applicant states that the Darlington County Grand Jury true billed his indictments for Murder, Armed Robbery, and Criminal Conspiracy on October 20, 2005 and reported their finding to the presiding Judge of the Court of General Sessions on October 24, 2005. (See exhibits 2, 3, and 4).

Although the Applicant does not challenge the October 24, 2005 Court of General Sessions term, the Applicant do hereby object to the October 20, 2005 term. Evidence shows that the Darlington County Court of General Sessions was not in session on October 20, 2005. (See exhibit 5).

So, therefore, how could the Darlington County Grand Jury return a true bill of indictment when in accordance to S.C. Code Ann. §14-9-210, the Court of General Sessions must be in session in order for the county solicitor to submit a bill of indictment to the grand jury so that the grand jury can act on it to find a true bill or no bill of indictment

Based upon the evidence presented by the Applicant, the trial court lacked subject matter jurisdiction to accept the Applicants guilty plea.

CONCLUSION

Wherefore, having submitting this response, the Applicant respectfully prays that this Honorable Court DENY the Respondents request to summarily dismiss Applicants PCR Application and GRANT the Applicant an evidentiary hearing.

May 16, 2016

Respectfully Submitted,

#315014

Angelo Hom #315014
L.C.I./F1 #1140
990 Wisacky Highway
Bishopville, S.C. 29010

State of South Carolina

County of: Darlington

Angelo Horn, #315014,
Applicant,
vs.
State of South Carolina,
Respondent.

In the Court of Common Pleas
Fourth Judicial Circuit

C/A No.: 2014-CP-16-0202

Certificate of Service

I, Angelo Horn, hereby certify that a copy of the "Applicants Response to the Conditional Order of Dismissal", in the above-cited matter was this day served on the Respondent by depositing a copy of the same in the U.S. Mail, postage prepaid, to the following address:

S.C. Office of Attorney General
P.O. Box 11549
Columbia, S.C. 29211-1549

May 16, 2016

#315014

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
Angelo Bernard Ham, #315014, Applicant, v. State of South Carolina, Respondent.	2014-CP-16-0202 **FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 18, 2014. The Respondent made its return on or about March 10, 2015, requesting the application be summarily dismissed based upon expiration of the statute of limitations and the presumption against successive applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed March 16, 2016 and filed March 24, 2016, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated April 26, 2016, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

TRUE CERTIFIED COPY,
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

Applicant filed a document titled "Applicant's Response to the Conditional Order of Dismissal" on May 20, 2016, in which Applicant states "that he should be allowed to file this subsequent application for PCR due to the fact that his first PCR counsel was ineffective" in that he failed to amend the PCR application to include all grounds. Applicant further argues that the trial court lacked subject matter jurisdiction because the "Darlington County Court of General

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Sessions was not in session" when indictments were true billed. Applicant, to address issues 2, 3 and 4 in the Conditional Order of Dismissal, attached a document titled "Motion for Relief from Judgment Under Rule 60(b)(5)" that was filed in Applicant's second PCR cases 2008-CP-16-1006.

This Court has reviewed Applicant's responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court finds Applicant's responses do not give rise to any genuine issue of material fact that would require an evidentiary hearing and therefore have failed to provide sufficient reasons why the Conditional Order of Dismissal should not become final.

This Court finds that Applicant's claim of ineffective assistance of PCR counsel is dismissed, as it is not a cognizable claim for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). Once a PCR Applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). Further, Kelly v. State explicitly states, "that the holding in *Martinez*[1] is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions." Kelly v. State, 404 S.C. 365, 365, 745 S.E.2d 377 (2013). Consequently, pursuant to Rule 12(b)(6), SCRCP, Applicant's contention that he received ineffective assistance of PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application.

[1] Martinez v. Ryan, __ U.S. ___, 132 S.Ct. 1309 (2012) (holding ineffective assistance of collateral counsel may constitute "cause" to excuse procedural default in federal habeas corpus actions under the federal "cause and prejudice" standard)

This Court finds that Applicant's allegation that the trial court lacked subject matter jurisdiction because the Grand Jury did not meet during the time his indictment was true-billed is denied. Defects in the indictment do not affect subject matter jurisdiction. However, an Applicant may challenge the subject matter jurisdiction of the trial court and such a claim may be raised at any time. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777. The circuit court obviously has subject matter jurisdiction to try criminal matters. Therefore, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the Circuit Court had subject matter jurisdiction.

The Court submits further that a challenge to the legality and sufficiency of the process of the state grand jury does not implicate the subject matter jurisdiction of the circuit court. Evans v. State, 363 S.C. 495, 509-10, 611 S.E.2d 510, 518 (2005). Further, a defendant must challenge the legality and sufficiency of the process before the jury renders a verdict in order to preserve the issue for appellate review. Id. The regularity of grand jury proceedings is presumed absent clear evidence to the contrary. Id. at 514, 611 S.E.2d at 520.

The chief administrative judge for each circuit schedules terms of the grand jury in each county. The Applicant has failed to sufficiently challenge the legality and sufficiency of the Horry County Grand Jury process. Further, the Applicant has failed to provide any evidence that the Grand Jury did not convene in April 2000 as indicated on his true-billed indictment. Because the Applicant has failed to state with any specificity the evidence supporting his claim, this Court summarily dismisses this allegation with prejudice.

This Court submits that the doctrine of *res judicata* bars all of Applicant's claims listed in his attached "Motion for Relief from Judgment Under Rule 60(b)(5)". *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within 30 days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 3rd day of February 3rd, 2017.

TRUE CERTIFIED COPY,
Scott B Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

ROGER E. HENDERSON
Chief Administrative Judge
Fourth Judicial Circuit Court

Cheskerfield, South Carolina.

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SCOTT B. SUGGS
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated _____ (*Server*) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
COUNTY OF LEE) **AFFIDAVIT OF PERSONAL SERVICE**

On this 9th day of March **2017**, I served the **Final Order of Dismissal**, on *Inmate* **Angelo Ham, #315014,** by delivering personally and leaving a copy of the same at ~~*Allendale*~~ LEE *Correctional Institution,* 990 Wisacky Highway. Deponent is not a party to this action.

s/ _____

SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 9 day of March, **2017**

_____ (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/3/2024

ADMISSION OF SERVICE

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (LEE *Correctional Institution*), 990 Wisacky Highway, LEE County, SC this 9th day of March, *2017.*

s/ _____
Inmate
SCDC *Inmate #:* 315014

2014-CP-16-0202

State of South Carolina
County of Darlington

IN THE Court of Common Pleas
FOR THE FOURTH JUDICIAL CIRCUIT

Angelo Hom, #315014,
Applicant,

v/s.

State of South Carolina,
Respondent.

2014-CP-16-0202

APPLICANTS NOTICE AND MOTION FOR CONTINUANCE

TRUE CERTIFIED COPY.
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

PLEASE TAKE NOTICE THAT THE Applicant hereby, moves before this Court respectfully requesting for a thirty ("30") day extension in submitting the Applicants Motion For Reconsideration in the above cited matter. Applicant contends that this Honorable Court issued its Final Order in this case on February 3, 2017, at which, Applicant was served with a copy of such on March 9, 2017. Since this day, the Applicant has been reviewing his case files and the appropriate case laws as well as drafting the Motion For Reconsideration to be submitted to this Court. Being that the SCDC does not photocopy hand generating material, Applicant is forced to hand generate every copy which will take longer than the ten ("10") day limits allotted

For filing such motions. Applicant further contends that by granting this Motion, the Respondent will not be prejudiced on a result.

TRUE CERTIFIED COPY,
S. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

CONCLUSION

WHEREFORE, having made this Motion the Applicant hereby respectfully pray that this Honorable Court grants this Motion.

March 15, 2017

Respectfully Submitted,
[redacted] #31501Y
Angelo Horn #31501Y
L.C.I./FS #278
990 Wisacky Highway
Bishopville, S.C. 29010

FILED
2017 MAR 20 PM 1:30
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

State of South Carolina
County of Darlington

IN THE Court of Common Pleas
For the Fourth Judicial Circuit

Angelo Horn, #315014,
Applicant,

vs.

State of South Carolina,
Respondent.

C/A No.: 2014-CP-16-0202

CERTIFICATE OF SERVICE

TRUE AND CERTIFIED COPY.
Scott B. Suggs
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

I, Angelo Horn, hereby certify that a certified copy of the "Applicants Notice and Motion For An Continuance", in the above cited matter was this day served on the Respondent by placing a copy of the same in the U.S. Mail, postage prepaid to the following addresses:

Darlington County Clerk of Court
P.O. Box 1177
Darlington, S.C. 29540

S.C. Attorney General
P.O. Box 11549
Columbia, S.C. 29211

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SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

March 15, 2017

#315014

State of South Carolina County of Darlington	In the Court of Common Pleas For the Fourth Judicial Circuit
Angelo Hom, #315014, Applicant, vs. State of South Carolina, Respondent.	C/A No.: 2014-CP-16-0202 APPLICANTS MOTION FOR RECONSIDERATION UNDER RULE 59(e), SCRCP

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, Applicant, Angelo Hom (also referred to herein as "Hom") hereby submit this motion for reconsideration of the Court's Final Order dated February 3, 2017

This Motion for Reconsideration is divided into several sections as set forth. Each section provides multiple grounds for reconsideration of the Courts Order. Collectively, pursuant to these grounds for reconsideration, Applicant seeks ruling on matters that the Court did not address in its order, Hom seek the Courts reasons for deciding certain matters where no reasons are given and Hom seek for the court to reconsider its rulings and correct its errors based on the record and the law.

TRUE CERTIFIED COPY,
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

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SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

ISSUE 1.

GROUNDS FOR RECONSIDERATION BASED ON THE RESPONDENTS DEFAULT AND WAIVER.

ISSUE 2.

GROUNDS FOR RECONSIDERATION BASED ON INEFFECTIVE ASSISTANCE OF PCR COUNSEL NOT A COGNIZABLE CLAIM FOR RELIEF.

ISSUE 3.

GROUNDS FOR RECONSIDERATION BASED ON PCR COUNSEL FAILING TO PRESERVE APPLICANTS CLAIMS FOR REVIEW.

The Fourth Circuit has recognized three grounds for amending an earlier judgment under Federal Rule of Civil Procedure 59(e): (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Pac. Ins. Co. v. Am. Nat. Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). A Rule 59(e) motion "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." Exxon Shipping Co. v. Baker, 554 U.S. 471, 486 n.5 (2008). Further, "mere disagreement [with a district court's ruling] does not support a Rule 59(e) motion." Hutchinson v. Staton, 994 F.2d 1076, 1082 (4th Cir. 1993). "In general reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." Pac. Ins. Co., 148 F.3d at 403. A motion for reconsideration "is not a license for a losing party's attorney to get a second bite at the apple." Bey v. Shapiro Brown & Alt, LLP., 997 F.Supp.2d 310, 321 (D. Md. 2014)

(citing Shields v. Shetter, 120 F.R.D. 123, 125-26 (D. Colo. 1988)).

ISSUE 1.

GROUNDS FOR RECONSIDERATION BASED ON THE RESPONDENTS DEFAULT AND WAIVER.

Applicant contends that he filed the above cited application with the Darlington County Clerk of Court on March 18, 2014. After failing to adequately to this application by way of an answer, summary judgment, etc., Applicant filed a Notice and Motion for Default in the Darlington County Clerk of Court on December 9, 2014, pursuant to Rule 55(a) of the S.C. Rules of Civil Procedure.

Applicant further contends that after the Respondent still failed to respond to the Applicants Notice and Motion for Default, Applicant submitted a correspondence to the Honorable Daniel Shearouse of the S.C. Supreme Court advising him of this situation, at which time, the Honorable Shearouse

contacted this Honorable Court advising them to respond to this application. Respondent does not dispute these facts, nor has any default hearing been held to attest to these facts or motion.

Based on the above-mentioned legal issues and facts, Applicant states that not only has the Respondent waived their asserted rights to defend his claims but the Applicant would be prejudiced as a result of not having his claims properly heard to preserve his issues for review by the high court or on appeal. SEE Regions Bank v. Owens, 402 S.C. 642, 648, 741 S.E.2d 51, 54 (Ct. App. 2013)

ISSUE 2.

GROUNDS FOR RECONSIDERATION BASED ON INEFFECTIVE ASSISTANCE OF PCR COUNSEL NOT A COGNIZABLE CLAIM FOR RELIEF.

Applicant contends that the Respondent and this Honorable Court dismissed his PCR

under Pennsylvania v. Finley, 481 U.S. 551 (1987); Ace v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991); Kelly v. State, 404 S.C. 365, 365, 745 S.E.2d 377 (2013); and Rule 12(b)(6), SCRCP alleging that ineffective assistance of PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application.

Although this is controlling case law in this State, Applicant contends that this case is somewhat different because not only was not afforded with a proper adjudication of the merits of his case but PCR counsel failed to properly preserve his issues for review by failing to file a Rule 59(e) motion like Applicant advised him to do. The Supreme Court has well settled this issue by remanding cases to the PCR court for PCR counsels' failure to file a Rule 59(e) motion. SEE McCullough v. State, 464 S.E.2d 340, 341 (S.C. 1995) (remanding matter to PCR court, despite the fact that no Rule 59(e) motion had been filed, and admonishing all parties to carefully prepare and review PCR orders to ensure that they specifically address

the issues raised and make conclusions of law.) The Court considered this as a "second bite of the apple" that is cited in Bey v. Shapiro Brown & Alt, LLP, 997 F.Supp.2d 310, 321 (D.Md. 2014) (citing Shields v. Shelter, 120 F.R.D. 123, 125-26 (D.Colo. 1988)).

Based on the above-cited facts, Applicant states that he is entitled to have the PCR Court to properly rule on each of his issues so that they can be properly preserve for review.

ISSUE 3.

GROUNDS FOR RECONSIDERATION BASED ON PCR COUNSEL FAILING TO PRESERVE APPLICANTS CLAIMS FOR REVIEW.

Applicant contends that at his first PCR Hearing, his PCR Counsel, Gary I. Finkel, Esq., raised seven ("7") grounds for post conviction relief. Those grounds are as follow:

1.) Trial counsel was ineffective in failing to move to withdraw his guilty plea, when Defendant requested withdrawal and in writing (see Exhibit 7) and orally to counsel and then in court (transcript at p. 35+). See Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009)

2.) Applicant's indictments were improper and void since they were true billed before the Grand Jury convened. The indictments were true billed October 20, 2005 but the grand jury did not convene until October 24, 2005 - Exhibit 5. See S.C. Code Ann. Section 14-7-1750 that provides in order to return a true bill of indictment the grand jury must find that probable cause existed. Also S.C. Code Ann. Section 14-7-1140 provides that any irregularity in the grand jury process must be made by a motion to quash the indictment. See Evans v. State, 363 S.C. 495 (2005) Counsel was ineffective for failing to discuss this irregularity with the Defendant and for failing to move to quash.

3.) Trial counsel was ineffective for failing to advise the Defendant of the trial/sentencing judge's relationship with the victim. Though the court, made some disclosure concerning its relationship with the victim, counsel failed to follow up with any questions to the judge in this regard or discuss the matter with the applicant. Had the Defendant known the trial judge and victim were from the same town, crossed paths in business, the judge had personal knowledge regarding the victims funeral (see page 14, line 2-4) and that he could have his plea and sentencing conducted by another judge, he would have objected to the trial judge participating. See Transcript page 8, line 21 - page 9, line 23.

4.) Trial counsel failed to object to the admission of videotape containing clips of the victim's birthday party that was allowed in to evidence during the sentencing phase. See Rule 401, SCRE

5.) Trial counsel was ineffective for failing to object to applicant's illegal detention - See Rule 3, SCRCrimP stated that once a defendant is arrested and detained, an arrest warrant shall be brought forth within 15 days - arrest warrant was not served until 10 months later.

6.) The Family Court erroneously waived jurisdiction to the Court of General Sessions (04-JU-16-233, 234 and 235) despite the findings in the pre-waiver evaluation report and testimony of Dr. Heffler. Counsel was ineffective for failing to appeal this ruling; for failing to ask Judge Henderson of any connection with the victim and further in failing to ask him to recuse; and failing to adequately present evidence regarding the defendants ability to rehabilitate and the State's failure to follow its own suggestions. See "Needs and Recommendations" of Vanessa Galvarino Hiers, MSW, LMSW dated 12-7-01 - Exhibit 11.

7.) Trial counsel was ineffective for failing to investigate the applicant's case and therefore the Defendant was inadequately prepared to make a decision as to his plea or request for trial.

Applicant contends that noticing the above-cited issues that his PCR counsel raised in his PCR, Issues 2, 6, and 7 were not fully preserved for review because PCR counsel failed to properly raised them correctly.

Noticing Issue 2, PCR counsel failed to put forth evidence, i.e., Grand Jury calender (SEE attached exhibit I), that would have showed the Courts that the Darlington County Grand Jury did not actually convened on October 20, 2005 as stated on the indictments. Not only does the indictments show these facts but the statute clearly reflect that neither the Darlington County Court of General Sessions or Court of Common Pleas was in session on October 20, 2005. Applicant states that the S.C. Code Ann. §14-9-210 only allow the Grand Jury to

convene to hear evidence to determine if the indictment should be "TRUE BILL" or "NO BILL" during the Court of General Sessions while the Court is in session. And, the S.C. Supreme Court held in State v. Best, 257 S.C. 361, 186 S.E.2d 572 (S.C. 1972) that "the Circuit Court loses jurisdiction with the adjournment of the term." The term was not in session by statute or by Court order on October 20, 2005 which makes or mean that the Grand Jury or the Circuit Court lacked jurisdiction to "TRUE BILL" the Applicants indictments.

In the Courts Order of Dismissal dated December 7, 2010 (See C/A No. 2008-CP-16-1006), the Circuit Court addressed this issue but, however, gave a frivilous reason for denial, at which, Applicants PCR Counsel should have filed a Rule 59(e) motion to asked the Court to correct its reasons for denial and to give the correct law. However, PCR Counsel failed to do such.

Further, in the Courts Final Order dated February 3, 2007 (See C/A No. 2014-CP-16-0202), the Circuit Court stated " the Chief administrative judge for each

circuit schedules terms of the grand jury in each county. The Applicant has failed to sufficiently challenge the legality and sufficiency of the Horry County Grand Jury process. Further, the Applicant has failed to provide any evidence that the Grand Jury did not convene in April 2000 as indicated on his true-billed indictment. Because the Applicant has failed to state with any specificity the evidence supporting his claim, this Court summarily dismisses this allegation with prejudice."

However, Applicant was not indicted or charged in Horry County, his crimes was not committed in the year of 2000, and, during his first PCR, trial counsel testified to the facts that not only did he not noticed this violation but if he did, this violation would have had some different bearing on his representation for the Applicant. The Applicant not only plead guilty upon the advice of counsel but, during his [redacted] PCR, the Applicant's PCR counsel received his trial counsel entire file on this case but did not received copies of the Applicants indictment or arrest warrants as trial

admitted to not having those documents.

Therefore, this shows that both trial counsel and PCR counsel failed to either investigate Applicants case during a critical stage and failed to properly litigate the facts of Applicants case.

Noticing Issue 6, PCR counsel failed to properly preserve Applicants claims by not only failed to contest the Circuit Court denial but also failed to raise every issue that the Applicant told him to raise. As such, PCR counsel failed to filed a Rule 59(e) motion. In the Order of Dismissal dated December 7, 2010 (See C/A No. 2008-CP-16-1006), the Circuit Court stated "This Court finds the Applicant failed to meet his burden of proving plea counsel should have appealed the family court Judge's decision to transfer the case to general sessions. Such a transfer order is interlocutory and not immediately appealable. See Sanders v. State, 281 S.C. 53, 56 n. 1, 314 S.E.2d 319, 321 n. 1 (1984)(citing State v. Lockhart, 275 S.C. 160, 269 S.E.2d 720 (1980)). That decision, therefore, must be appealed at the conclusion

of the resulting guilty plea or trial. Plea counsel did file a notice of appeal in this case. At that point, the Applicant could have pursued the transfer issue. Instead, the Applicant chose to voluntarily withdraw his appeal."

Applicant contends that the courts in United States v. Smith, 851 F.2d 706 (4th Cir. 1988) clearly held that "the justifications for allowing the immediately appeal of transfer orders remain the same regardless of whether the appeal is based on an alleged procedural or substantive deficiency." Id. at 708; In re J.L.W., 136 N.C. App. 596, 599, 602, 525 S.E.2d 500, 502, 504 (2000) (transfer order is a "final order" and appealable under State v. T.D.R., 347 N.C. 489, 496, 495 S.E.2d 700, 703 (1998), but a finding of "probable cause, on the State's motion to transfer jurisdiction" is not appealable immediately); United States v. A.W.J., 804 F.2d 492, 492-93 (8th Cir. 1986) ("orders transferring juveniles for adult prosecution," although "reviewable after trial," are also immediately appealable by accused "under the collateral order exception of Cohen v. Beneficial

Industrial Loan Corp., 337 U.S. 541 (1949)").

Therefore, knowing that the federal courts specifically recognize the juvenile transfer order as an order that is immediately appealable under 'Cohen', Applicant contends that his PCR counsel was ineffective for failing to file a Rule 59(e) motion to allow the Circuit Court to correct its errors as mandated by this Rule.

Noting Issue 7, PCR counsel failed to put forth any adequate evidence showing how Applicants plea counsel failed to investigate the case so that the Applicant could have adequately plead guilty or went to trial.

Applicant contends that he was convicted under the hands of one the hands of will theory which is actually the "felony-murder rule." Applicant did not have the intent to kill, nor in possession of a deadly weapon before, during, or after the commission of the crime. However, he was convicted for murder in the first degree, Armed Robbery, and Criminal Conspiracy for the purpose of planning an Armed Robbery. The elements of Armed Robbery

is undisputedly "robbery with a deadly weapon." The elements of murder is "premeditation and/or the intent to kill." Applicant did not have either one.

Applicant does not dispute the fact that under the hands of one the hands of all that all persons participating is guilty as a principal but, however, plea counsel nor trial judge advised Applicant of the different degrees of principal nor was the Applicant aware of the fact that he could not be equal offenders with the actual perpetrator, the one who had the intent to kill or the one who did the killing.

Applicant states that some courts have ~~prohibited~~ avoided the prohibitions of Mullaney v. Wilbur, 421 U.S. 684 (1975) and Sandstrom v. Montana, 442 U.S. 510 (1979) by construing the felony-murder rule as not requiring intent or malice aforethought. These courts, however, generally have failed to consider the constitutional implications of imposing several penalties for a crime without a mens rea element. The Supreme Court

recently has addressed this issue in two closely related line of cases, and these holdings indicate that imposition of severe punishments for nonregulatory crimes without a finding of culpability violates constitutional guarantees of the eighth amendment and the due process clause.

In Enmund v. Florida, 458 U.S. 782, 788-801 (1982), the Supreme Court held that the imposition of the death penalty for a nontriggerman convicted of felony-murder violates the eighth amendment prohibition of cruel and unusual punishment. Justice White, writing for the majority, stressed two factors in holding the punishment unconstitutional: the lack of a legitimate penological justification and the lack of a justifiable retribution interest.

The Court found that the death penalty would not deter "one who does not kill and has no intention or purpose that life will be taken.... If a person does not intend that

life be taken.... the possibility that the death penalty will be imposed for vicarious felony murder will not 'enter into the cold calculus that precedes the decision to act.'" Id. at 799 (quoting, in part from Gregg v. Georgia, 428 U.S. 153, 186 (1976)). Justice White proceeded to analyze the statistical data and agreed with those "competent observers who have concluded that there is no basis in experience for the notion that death so frequently occurs in the course of a felony for which killing is not an essential ingredient that the death penalty should be considered as a justifiable deterrent to the felony itself." The majority thus concluded that no legitimate deterrent effect justified imposing the death penalty for felony murder.

Justice White's second rational was the lack of a retribution justification. He found it unconscionable to treat nontriggermen and triggermen

alike because "it is fundamental that 'causing harm intentionally must be punished more severely than causing the same harm unintentionally.' Enmund, 458 U.S. at 798 (quoting H. Hart, Punishment and Responsibility 182 (1968)). Relying on noncapital cases, Justice White asserted: "American criminal law has long considered a defendant's intention — and therefore his moral guilt — to be critical to 'the degree of his criminal culpability,' Mullaney v. Wilbur .... and the Court has found criminal penalties to be unconstitutionally excessive in the absence of intentional wrongdoing." Enmund, at 800 (quoting Mullaney v. Wilbur, 421 U.S. 684, 698 (1975)). The Court cited Robinson v. California, 370 U.S. 660, 667 (1962) (punishing narcotics addiction violates Eighth Amendment) and Weems v. United States, 217 U.S. 349, 363 (1910) (invalidating statute making public official's false entry in public record a crime absent injury or intent to

injure). Justice White thus concluded that the defendant's punishment was impermissible because it was not "tailored to his personal responsibility and moral guilt." Enmund, 458 U.S. at 801.

Applicants contends that not only was he convicted under the hands of one the hands of vicarious but he was also sentenced to murder, the same statute that the actual triggerman was sentenced to. See S.C. Code Ann. § 16-3-10-20. Applicant states that this is a violation of the eighth amendment as well as never been brought forth to no lower court by any of his appellate or PCR counsels and therefore were not properly brought before or preserve for the record.

Applicant contends that he was sentenced to Life without the Possibility of Parole and this hereby prejudiced me because the State or Respondent did not sentenced me as allowed

by either The S.C. Code Ann. §16-3-20; §16-11-330(A); or The Murder Act of 1965. Applicant states that the Circuit Court did not set a minimum term but, yet imposed the maximum term possible. This is totally against the Criminal Justice Act 2003, later amending Section 27 in 2015.

CONCLUSION

Wherefore, having made this motion, Applicant respectfully request that this Honorable Court correct its previous order and grant the Applicant an evidentiary hearing or a new trial based on the above-cited legal authorities.

April 4, 2017

Respectfully Submitted,
#315014
Angelo Hum #315014
L.C.I./FS#278
990 Wisacky Hwy
Bishopville, S.C. 29010

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
Angelo Bernard Ham, S.C.D.C. No. 315014, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2014-CP-16-00202 **RETURN TO APPLICANT'S MOTION PURSUANT TO RULE 59(e), SCRCP**

In response to "Applicant's Motion for Reconsideration Under Rule 59(e), SCRCP" by Angelo Bernard Ham ("Applicant") dated April 4, 2017, and filed April 12, 2017, Respondent would show this Court:

I.

This matter originally came before the Court by way of an application for post-conviction relief filed March 18, 2014. Responded made its return on or about March 10, 2015, requesting the application be summarily dismissed as untimely and successive.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Court issued a Conditional Order of Dismissal signed March 16, 2016, and filed March 24, 2016, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Applicant timely responded and the Court, after considering Applicant's response, issued a Final Order of Dismissal signed February 3, 2017, and filed February 15, 2017, dismissing this action with prejudice. Attached to this return and

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2017 APR 17 PM 1:27
SCOTT SWEGO
CLERK OF COURT/C.O.D.
DARLINGTON COUNTY, S.C.

incorporated herein by reference is an Affidavit of Service dated March 9, 2017, serving the above-mentioned Final Order of Dismissal on Applicant.

II.

In his motion, Applicant asks the Court to reconsider its ruling pursuant to Rule 59(e), SCRCP. Applicant's motion for reconsideration should be denied as untimely. "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. Applicant received written notice on Thursday, March 9, 2017; therefore, Applicant had until Monday, March 20, 2017, to serve a motion pursuant to Rule 59(e). Applicant's motion is dated April 4, 2017, was not received by Respondent until April 7, 2017, and was not filed until April 12, 2017—all after the Rule 59(e) deadline. Accordingly, Applicant's motion was not timely served and should be denied.

Furthermore, the Court's Final Order of Dismissal and Conditional Order of Dismissal contain the required findings of fact and conclusions of law necessary to dispense with Applicant's allegations as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCP; see also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Accordingly, the Court properly ruled on all issues before it, and Applicant's motion should be denied.

{Conclusion and signature on following page}

III.

WHEREFORE, Respondent respectfully requests the Court deny Applicant's motion for reconsideration.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

14 April, 2017

FILED
2017 APR 17 PM 1:27
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2014-CP-16-0202
ANGELO HAM, #315014	)	
	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return to Applicant's Motion Pursuant to Rule 59(e), SCRCP** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Angelo Ham, #315014
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

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2017 APR 17 PM 1:23
SCOTT B. SUGGS
CLERK OF COURT/R.O.D
DARLINGTON COUNTY, S.C.

DATED this 14th day of April, 2017.

Mallory Morris, Legal Assistant
For Respondent

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, the Director of the South Carolina Department of Corrections has designated _____ (*Server*) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT OF PERSONAL SERVICE**
COUNTY OF LEE)

On this 9th day of March **2017**, I served the **Final Order of Dismissal**, on *Inmate* **Angelo Ham, #315014,** by delivering personally and leaving a copy of the same at ~~*Allendale*~~ LEE *Correctional Institution,* ~~99 Wisacky Highway~~. Deponent is not a party to this action.

s/ _____
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME
this 9 day of March, **2017**

_____ (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/3/2024

FILED
2017 APR 17 PM 1:27
SCOTT D. BRIGGS
CLERK OF COURT/P.O.
DARLINGTON COUNTY, S.C.

ADMISSION OF SERVICE

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the South Carolina Department of Corrections (LEE ***Correctional Institution***), 99 Wisacky Highway, LEE County, SC this 9th day of March, 2017.

s/ _____
Inmate
SCDC *Inmate #:* 315014

2014-CP-16-0202

State of South Carolina } IN THE COURT OF COMMON PLEAS
} FOR THE FOURTH JUDICIAL CIRCUIT
County of Darlington }
} C/A No.: 2014-CP-16-00202
Angelo Hart, #315014, }
Applicant, } APPLICANT'S REPLY
} TO RESPONDENT RETURN
vs. } TO APPLICANTS MOTION
State of South Carolina, } FOR RECONSIDERATION
Respondent. } PURSUANT TO RULE 59(e),
} SCRCP

Applicant, Angelo Hart, hereby submit this Reply in response to the Respondents Return to Applicants Motion For Reconsideration Pursuant to Rule 59(e), SCRCP" filed in this Honorable Court on April 14, 2017 or some date thereafter.

Applicant states that in this Motion, the Respondent alleges that "the Applicants... motion for reconsideration should be denied as untimely." Applicant opposes this statement on the account that

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2017 APR 28 AM 11:39
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

1.) He was served a certified copy of the notice to "file and serve

a Notice of Appeal within 30 days of the service of this ORDER to secure appellate review" SEE FINAL ORDER of Dismissal dated February 3, 2017.

2.) Nothing in the FINAL ORDER of Dismissal or the Affidavit of Personal Service advised me of my statutory right to file a motion to alter or amend the judgment.

ON March 20, 2017, which is the same date that the Applicant was supposed to file his motion to alter or amend the judgment, the Applicant filed a motion for Continuance requesting for a thirty ("30") extension to file this motion. This motion for Continuance was filed in this Honorable Court on March 20, 2017.

Not hearing nothing in return from either the Respondent or Judge, I filed a motion for Reconsideration pursuant to Rule 59(e), SCRCP on April 4, 2017 pursuant to mailing services and filed in this Honorable

Court on April 12, 2017.

Furthermore, based on the fact that the Applicant did file a motion for Continuance in this Honorable Court on March 20, 2017, i.e., the same day deadline as the motion to alter or amend judgment, the Applicants Motion for Reconsideration should not be denied and should be GRANTED to fix the errors of its Final Order of Dismissal.

CONCLUSION

Wherefore, Applicant respectfully requests this Honorable Court to GRANT Applicants Motion for Reconsideration.

April 24, 2017

Respectfully Submitted,

[signature] #315

Angelo Hart #315

L.C.I. / F5 # 278

990 Wisacky Hall

Bishopville, S.C. 29010

FILED
2017 APR 28 AM 11:40
SCOTT B. SKINNER
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

State of South Carolina
County of Darlington

IN The Court of Common Pleas
For the Fourth Judicial Circuit

C/A No.: 2014-CP-16-00202

Angelo Ham, #315014,
Applicant,

vs.

State of South Carolina,
Respondent.

CERTIFICATE OF SERVICE

I, Angelo Ham, hereby declare and certify that a copy of "Applicants Reply to Respondent Return to Applicants Motion For Reconsideration Pursuant to Rule 59(e), SCRCP", in the above-cited matter was this day served on the Respondent by depositing a copy of the same in the U.S. Mail, postage prepaid, to the following address:

Office of The Attorney General
P.O. Box 11549
Columbia, S.C. 29211

FILED
2017 APR 28 AM 11:40
SCOTT BASSES
CLERK OF COURT/C.O.D.
DARLINGTON COUNTY, S.C.

April 24, 2017

#315014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
Angelo Bernard Ham, S.C.D.C. No. 315014,	)	Case No.: 2014-CP-16-00202
Applicant,	)	
v.	)	**ORDER GRANTING EXTENSION, DENYING APPLICANT'S MOTION PURSUANT TO RULE 59(e), SCRCP**
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of Applicant's *pro se* documents titled "Applicant's Notice and Motion for Continuance" and "Applicant's Motion for Reconsideration Under Rule 59(e), SCRCP" by Angelo Bernard Ham ("Applicant") filed March 20, 2017, and April 12, 2017, respectively. The Respondent made its Return to Applicant's motion requesting it be dismissed.

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2017 MAY -8 PM 2:40
SCOTT B. SUGGS
CLERK OF COURT/R.C.
DARLINGTON COUNTY, S.C.

I.

This matter originally came before the Court by way of an application for post-conviction relief filed March 18, 2014. Responded made its return on or about March 10, 2015, requesting the application be summarily dismissed as untimely and successive.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Court issued a Conditional Order of Dismissal signed March 16, 2016, and filed March 24, 2016, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Applicant timely responded and the Court, after considering Applicant's response, issued a Final Order of Dismissal signed February 3, 2017, and filed

February 15, 2017, dismissing this action with prejudice. Applicant actually received the Final Order on March 9, 2017.

II.

In his motion filed March 20, 2017, Applicant timely requests an additional 30 days to file his Motion for Reconsideration. That request is granted.

The Final Order of Dismissal in this matter was signed by this Court on February 3, 2017. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's response and objections, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Final Order of Dismissal, which was signed and then filed February 15, 2017, shall stand as it was written.

AND IT IS SO ORDERED this 28th day of April, 2017.

Roger E. Henderson
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

Chesterfield, South Carolina

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2017 MAY -8 PM 2:40
SCOTT B. SUGGS
CLERK OF COURT/C.O.D.
DARLINGTON COUNTY, S.C.

RECEIVED
OCT 31 2017
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From The Darlington
County Court of Common Pleas

Roger E. Henderson, Chief Admin. Judge

C/A No.: 2014-CP-16-0202

Angelo Hum,

PETITIONER,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

NOTICE OF INTENT TO
APPEAL

ANGELO HUM, appeals the dismissal of both of his PCR and/ his Motion For Reconsideration. Honorable

Roger C. Henderson issued the Court's Final Order of Dismissal on February 3, 2017 and issued the Court's Order Granting Extension, Denying Applicants Motion Pursuant to Rule 59(e), SCRCP on April 28, 2017. Attached hereto are copies of those orders.

October 23, 2017

#315814

Angelo Hom, #315014
MCCI / F3 # 118
386 Redemption Way
McCormick, S.C. 29889

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
Certiorari to Darlington County

Roger E. Henderson, Chief Admin. Judge

C/A No.: 2017-002254

Angelo Hom,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Angelo Hom, #315014
MCCI/F3#118
386 Redemption Way
McCormick, S.C. 29899

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ISSUE(S) PRESENTED

1.) WHETHER PCR COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY PRESERVE ISSUES FOR REVIEW?

2.) WHETHER DEFECTS REGARDING THE ADJOURNMENT OF THE COURTS TERM AND/OR TRUE BILL OR NO BILL OF INDICTMENT WHEN THE COURT IS NOT IN SESSION BY STATUTE OR COURT ORDER AFFECTS THE SUBJECT MATTER JURISDICTION OF THE COURT?

STATEMENT OF THE CASE

On April 17, 2006, petitioner appeared before the Honorable John M. Milling in Darlington County and pled guilty to murder, armed robbery, and criminal conspiracy. On that same date, he was sentenced to five (5) years imprisonment for criminal conspiracy. On September 14, 2007, he was sentenced to life without parole for murder and to twenty-five (25) years for armed robbery. Henry M. Anderson, Jr., Esq. was plea counsel.

Petitioner filed an application for PCR on November 21, 2008. An evidentiary hearing was held on September 13, 2010 before the Honorable Thomas A. Russo. Petitioner was represented by Gary I. Finkel, Esq. Respondent was represented by Karen C. Ratigan, Assistant Attorney General. Both petitioner and plea counsel testified at the hearing. On December 7, 2010, Judge Russo issued an order denying and dismissing petitioner's application for PCR.

Petitioner filed a petition for writ of certiorari on September 21, 2011 which was transferred to the S.C. Court of Appeals and later dismissed on March 11, 2014.

Petitioner then filed a second application for PCR on March 18, 2014. No evidentiary hearing was held and the Honorable Roger E. Henderson denied and dismissed with prejudice this application on February 3, 2017. Petitioner then filed a motion pursuant to Rule 59 (e) at which was also denied on April 28, 2017.

This petition follows.

ARGUMENT(S)

1.) PCR Counsel was ineffective for failing to properly preserve Petitioners issues for review.

Petitioner contends that Honorable Henderson denied and dismissed this issue without holding an evidentiary hearing alleging that "Applicants contention that he received ineffective assistance of PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application." See App. pg. 55.

Although petitioners claims could have been brought forth in his first PCR application, Petitioner contends that his PCR counsel did not properly raised them nor filed a Motion pursuant to Rule 59(e) to ensure that they be raised or brought to the attention

of the courts. However, after the appeal was taken from Petitioners PCR and before the S.C. Court of Appeals ruled on the petition, Petitioner moved before the Court of Appeals and the Darlington County Court of Common Pleas on a Motion For Relief From Judgment under Rule 60(b)(5) to have those issues properly heard and ruled on but, however, the Court dismissed the petition for writ of certiorari which resulted in the Darlington County Court to dismiss the Motion.

Petitioners contends that "when an applicant is not assisted by a PCR attorney inserting forth all grounds to support his claim of ineffective assistance of trial counsel in his initial application, he or she should not be barred thereafter from submitting a second application to include additional grounds for a court review." Cuttis v. Lucey, 469

U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985); Coleman v. Thompson, 111 S.Ct. 2546, 2568 (1991). See also Robertson v. State, 418 S.C. 505, 795 S.E.2d 29 (S.C. 2016) (citing McCoy v. State, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013)).

Therefore, the lower courts decision regarding this issue should be reversed and remanded.

ARGUMENT(S)

2.) Trial Court lacked subject matter jurisdiction by true-billing petitioners indictments when not prescribed by statute or court order.

Petitioner contends that the Honorable Roger C. Henderson denied and dismissed with prejudice this issue stating "the chief administrative judge for each circuit schedules terms of the grand jury in each county. The Applicant has failed to sufficiently challenge the legality and sufficiency of the Harris County Grand Jury process. Further, the Applicant has failed to provide any evidence that the Grand Jury did not convene in April 2000 as indicated on his true-billed indictment. Because the Applicant has failed to state with any specificity the evidence supporting his claim, this Court summarily

dismisses this allegation with prejudice." See App. pg. 56.

Petitioner contends that he was not indicted by a Horry County Grand Jury and was his indictments true-billed in April 2000. He further states that the alleged crime happened on September 9, 2004 in the county of Darlington. See App. pgs. 84-89.

As can be seen on these documents, they were true-billed by Grand Jury Foreman Sherry H. Edwards on October 20, 2005 and sworned before a Darlington County Court on October 24, 2005. However, no court, by statute or court order, were opened in the Darlington County Court of General Sessions or Common Pleas.

If neither Court was open by statute or Court order then the law is very clear that the court lacks subject matter jurisdiction

to convene on any civil or criminal case. See State v. Best, 257 S.C. 361, 186 S.E.2d 572 (S.C. 1972)("the circuit court loses jurisdiction with the adjournment of the term.") And, it is very clear that the Grand Jury can only convene to determine if the indictment should be true-billed or no billed during the Court of General Sessions while the Court is in session. See S.C. Code Ann. Section 14-9-210.

Petitioner further points the Courts attention to the facts that no Court in the County of Darlington was opened on October 20, 2005 when the Darlington County Grand Jury convened and true-billed his indictments. See App. pg. 90.

Therefore, the lower courts decision regarding this issue should be reversed and

remanded.

CONCLUSION

PETITIONER'S WRIT SHOULD BE GRANTED and his guilty plea SHOULD BE VACATED.

Respectfully submitted,

NOVEMBER 29, 2017

Angelo Horn
MCCI/F3#118
380 Redemption Way
McCormick, S.C. 29899

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
Certiorari To Darlington County

Roger E. Henderson, Chief Admin. Judge

CA No.: 2007-002254

Angelo Horn,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF
SERVICE

I, Angelo Horn, hereby certify that an Original copy of the "Petitioner's Petition For Writ of Certiorari", in the above-cited matter was this day served on the

Respondent by depositing a copy of the same in the U.S. Mail, postage prepaid, to the following address:

S.C. Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211-1549

November 29, 2017 #315814

RECEIVED

NOV 29 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari To Darlington County

Roger C. Henderson, Chief Admin. Judge

9/A No.: 2017-002254

Angelo Hunt,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

APPENDIX

Angelo Hunt, #315014
MCI/FS #118
386 Redemption Way
McCormick, S.C. 29899

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The South Carolina Court of Appeals

Angelo Bernard Ham, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-182627

ORDER

This matter is before the Court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief.

Petitioner's counsel asserts the petition is without merit and requests permission to withdraw from further representation. Petitioner has filed a pro se petition.

After careful consideration of the entire appendix as required by *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

March 11, 2014

cc: Robert M. Pachak
Karen Christine Ratigan
Angelo Bernard Ham

COPY

FORM 5

14CP160202

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
County of Darlington)

Angelo Hom #315014)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR)
POST-CONVICTION RELIEF)

FILED
2014 MAR 18 AM 11:32
SCOTT B. SUGGS
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution

2. Name and location of Court which imposed sentence Darlington County Clerk of Court; 1 Public Square, Am B-4; Darlington, S.C. 29540

3. Name(s) of co-defendant(s) (if any) Anthony Robinson and Dennis Hunter

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2005-GS-16-1909 ("Murder")

(b) 2005-GS-16-1970 ("Armed Robbery")

TRUE CERTIFIED COPY.
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

(c) 2005-GS-16-1971 ("CRIMINAL CONSPIRACY")

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

(a) 9/14/07

(b) " "

(c) " "

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2014 MAR 18 AM 11:3
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty

(c) after a plea of nolo contendere

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

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

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

i. S.C. Court of Appeals

ii. [illegible]

iii.

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

i. WITHDRAWN

ii.

iii.

(c) the date of each such result:

i. JUNE 9, 2008

ii.

iii.

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

i.

ii.

iii.

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

(a)

(b)

(c) _____

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

(a) Ineffective Assistance of PCR counsel

(b) Ineffective Assistance of Plea Counsel

(c) Denied Confrontation Rights

(d) Guilty Plea not valid

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

(a) Failed to raise properly claim

(b) ineffective during critical stage of adversarial process

(c) I was denied the right to cross-examine witnesses

(d) all elements couldn't be proved by state and I had a justifiable defense

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

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

i. PCR

ii. Writ of Certiorari

iii. _____

iv. _____

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

i. Darlington County Court of Common Pleas

ii. S.C. Supreme Court but transferred to Court of Appeals

iii. _____

iv. _____

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2011 MAR 18 AM 11:33
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

(c) the disposition thereof:

i. Dismissed with prejudice

ii. Denied

iii.

iv.

(d) the date of each such disposition:

i. December 7, 2010

ii. March 11, 2014

iii.

iv.

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

i. 2008-CP-10-1006

ii. 2011-182027

iii.

iv.

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

Yes

2014 MAR 18 AM 11:33
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.
FILED

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

(a) which grounds have been presented:

i. 11(b)

ii.

iii.

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

i. The issue was not raised or argued properly

ii.

iii.

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

(a) _____

(b) _____

(c) _____

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

(a) your arraignment and plea? ✓

(b) your trial, if any? _____

(c) your sentencing? ✓

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

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

_____

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

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

i. Henry M. Anderson / P.O. Box 1904 / Florence, S.C. 29503

ii. Robert Sidek / SCCID
Robert Pachak / SCCID

iii. Gary T. Finklea / P.O. Box 317 / Florence, S.C. 29503

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

i. Plea & Sentencing

ii. Direct Appeal
Writ of certiorari

iii. PCR

2014 MAR 18 AM 11:33
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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

Vacation of Sentence

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

NO

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Darlington)

I, Angelo Horn, being duly sworn upon ~~my~~ oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 13th day of March, 2014.

Angelar. Smith (L.S.)
Notary Public

My Commission Expires: 9/30/2023

2014 MAR 18 AM 11:33
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

14CP160202

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

I, [redacted] Angelo Hunt, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this 13th day of March, 2014.

Angela V. Smith
Notary Public

My Commission Expires: 9/30/2023

FILED
2014 MAR 18 AM 11:33
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

COPY

State of South Carolina

County of: Darlington

Angelo Horn, #315014,
Applicant,

vs.

State of South Carolina,
Respondent.

In the Court of Common Pleas
Fourth Judicial Circuit
C/A No.: 2014-CP-16-0202

NOTICE OF DEFAULT

This matter comes before this Honorable Court pursuant to Rule 55(a) of the South Carolina Rules of Civil Procedure.

On March 18, 2014, the Applicant filed his Application For Post-Conviction Relief respectfully with the Darlington County Clerk of Court.

Pursuant to Rule 12(a) of the South Carolina Rules of Civil Procedure, the State of South Carolina was suppose to serve its return within 60 days after service of the PCR application because the Applicant pled guilty. However, the State failed to do such and have, by law; went into default.

Respectfully Submitted,

Angelo Horn #315014

L.C.I. Is, W#62

990 Wisacky Highway

Bishopville, S.C. 29010

FILED
2014 DEC -9 AM 11:29
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

COPY

State of South Carolina
County of: Darlington

Angelo Hom, #315044,
Applicant,

vs.

State of South Carolina,
Defendant.

In the Court of Common Pleas
Fourth Judicial Circuit
C/A No.: 2014-CP-16-0202

CERTIFICATE OF SERVICE

I, Angelo Hom, hereby certify that an original copy of the "Notice of Default", in the above-cited matter was this day served on the Respondent by depositing a copy of the same, in the U.S. Mail, postage prepaid, to the following address:

Darlington County Clerk of Court
ATTN: Mr. Scott B. Suggs, Clerk
1 Public Square, Rm #B-4
P.O. Box 1177
Darlington, S.C. 29540

S.C. Office of Attorney General
P.O. Box 11549
Columbia, S.C. 29211

FILED
2014 DEC -9 AM 11:30
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY.
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

December 5, 2014

Angelo Hom #315044

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	)	IN THE COURT OF COMMON PLEAS OF THE FOURTH JUDICIAL CIRCUIT
Angelo Bernard Ham, S.C.D.C. No. 315014, Applicant, v.	)	Case No.: 2014-CP-16-0202 **RETURN AND MOTION TO DISMISS**
State of South Carolina, Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief filed March 18, 2014, would respectfully show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Darlington County Clerk of Court's orders of commitment. The Darlington County Grand Jury indicted the Applicant at the October 2005 term of General Sessions for murder (2005-GS-16-1969), armed robbery (2005-GS-16-1970) and criminal conspiracy (2005GS-16-1971). Henry M. Anderson, Jr., Esquire represented the Applicant.

On April 17, 2006, the Applicant pled guilty to all three (3) charges, but was only sentenced on criminal conspiracy, due to further issues with a co-defendant on the other charges. The Honorable John M. Milling sentenced the Applicant to five (5) years imprisonment for criminal conspiracy. The Applicant did not file an appeal from the criminal conspiracy guilty plea or sentence.

On September 14, 2007, the Applicant was sentenced on the murder and armed robbery charges. Judge Milling sentenced the Applicant to concurrent terms of life imprisonment without parole for murder and twenty-five (25) years for armed robbery.

A timely Notice of Appeal was filed at the South Carolina Court of Appeals in order to challenge the convictions and sentences for the murder and armed robbery charges. The

Applicant, however, chose to withdraw his appeal. The Court of Appeals dismissed the case and issued the remittitur by order dated June 9, 2008.

II.

First PCR Application (2007-CP-16-0811)

In his first application for post-conviction relief, filed on September 11, 2007, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
   a. Failed to ask if he wanted to file a notice of appeal
2. "Conflict of interest (honorable judge)"
3. Statements from co-defendants is [*sic*] void."

Respondent filed a return and partial motion to dismiss on or about November 1, 2007. Applicant filed a motion to dismiss on or about November 12, 2007, as well as a motion for summary judgment on or about November 14, 2007, and a motion to alter or amend on April 21, 2008. On or about July 11, 2008, it an amended PCR application was filed by the Applicant. An evidentiary hearing was convened on the matter on October 15, 2008 before the Honorable Larry B. Hyman, Jr. at the Darlington County Courthouse. Applicant was represented by Charles T. Brooks, Esquire, and Respondent was represented by Karen C. Ratigan, Esquire, of the South Carolina Office of the Attorney General. At the hearing, Applicant represented that he wished to withdraw his application, and this was done with prejudice. An order to this effect was signed by Judge Hyman on November 4, 2008.

Second PCR Application (2008-CP-16-1006)

In his second application for post-conviction relief, filed on November 21, 2008, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
   a. Failed to object to the videotape that was allowed into evidence during the plea hearing.
2. Violations due to illegal indictments.

a. The plea judge did not have subject matter jurisdiction of the armed robbery charge.

3. Illegal waiver from juvenile to adult.
   a. The Family Court illegally waived jurisdiction to the Court of General Sessions.

Respondent filed a return on or about February 25, 2009. Applicant filed a motion to alter or amend on June 29, 2009, a request for production of documents on August 3, 2009, a second motion to alter or amend on July 27, 2009, and a third motion to alter or amend on February 16, 2010.. Of these motions, relief was granted via an order granting limited discovery issued October 19, 2009 by the Honorable Paul M. Burch. The Honorable Thomas A. Russo convened an evidentiary hearing into the application on September 13, 2010 at the Darlington County Courthouse. Applicant was present at the hearing and represented by Gary I. Finklea, Esquire. Judge Russo denied the application by written order filed December 10, 2010. Applicant filed a timely notice of appeal from the denial of his application, and Robert M. Pachak, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of a Johnson[1] petition for writ of certiorari. The Court of Appeals denied the petition on March 11, 2014, and returned the remittitur on March 27, 2014.

Applicant also filed a motion for relief pursuant to SCRCP 60(b)(5), which provides that the Court may relieve a party from a final judgment where the judgment "has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." Judge Burch found Applicant's arguments to be ineffective, particularly in that he had "not shown how the legal and factual basis of Judge Russo's order has been reversed or

[1] Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988),

otherwise vacated, or that it is no longer equitable to enforce the order denying PCR. " The order was signed on May 12, 2014.

Third PCR Application (2013-CP-16-0248)

In his third application for post-conviction relief, filed March 20, 2013 by and through Elizabeth Franklin-Best, Esquire, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Applicant's sentence of life without parole, imposed for a crime he committed when he was a juvenile, violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution;
2. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution as an excessive and cruel and unusual punishment because he was both a juvenile and a person who did not kill or intend to kill the victim;
3. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution, because the proceedings which led to its imposition were both procedurally and substantively inadequate; and
4. Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§3 and 14 of the South Carolina Constitution because Applicant's counsel failed to develop and present mitigating evidence which would have warranted a sentence of less than life without parole.

Contemporaneously with the application, Applicant filed a motion to stay proceedings pending the South Carolina Supreme Court's resolution of Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572, regarding the sentencing of juveniles to life without parole. Ms. Franklin-Best also filed a motion for appointment of counsel on this date. Respondent filed a return and motion to dismiss on May 14, 2013, alleging that the application should be summarily dismissed due to its nature as successive and filed outside of the statute of limitations. On or about May 28, 2013, Applicant's counsel filed a document entitled "Response to AG's Return and Motion to Dismiss," which argued that, due to the pending litigation in Aiken, holding these proceedings in abeyance was the proper tactic; further, Applicant argued that a PCR was the proper vehicle

to raise his claim under S.C. Code Ann. §17-27-45(b), which extends the filing timeframe if relevant cases are pending before a court whose rulings are binding on South Carolina. Respondent filed a return on or about August 16, 2013 to this response, in which it concedes that this matter should be held in abeyance until the South Carolina Supreme Court ruled on Aiken. This matter is still pending before this Court.

III.

In his fourth and current application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel
   a. Failed to raise properly [*sic*] claim
2. Ineffective assistance of plea counsel
   a. Ineffective during critical stage of adversarial process
3. Denied confrontation rights
   a. I was denied the right to cross-examine witnesses.
4. Guilty plea not valid
   a. All elements couldn't be proved [*sic*] by state and I had a justified defense.

For the purpose of this return, Respondent incorporates the Darlington County Clerk of Court's records regarding the subject convictions, South Carolina Department of Corrections records, Applicant's previous PCR orders, and the filings regarding this PCR. Respondent reserves the right to amend this return upon receipt of any relevant materials.

IV.

This Court should summarily dismiss Applicant's current PCR application because it is successive to his previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can present a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450,409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant failed to establish any sufficient reason why he did not raise his current grounds for relief in a previous application. Respondent moves to summarily dismiss Applicant's current application because it is successive to his previous applications.

V.

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court held the one-year statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offenses he challenges on April 17, 2006. Therefore, Applicant was required to file his PCR application on or before April 18, 2007. Applicant filed this application on March 18, 2014, nearly seven (7) years after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). S.C. Code Ann. Section 17-27-70(c) authorizes the circuit court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent moves to summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

VI.

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

Remainder of page intentionally left blank.

VII.

WHEREFORE, Respondent moves to summarily dismiss this application because it is untimely and successive to Applicant's prior applications.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General
S.C. Bar #77889

By: _____
Attorneys for the Respondent
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

Columbia, South Carolina

March 10, 2015

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON ANGELO BERNARD HAM, 315014 Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	IN THE COURT OF COMMON PLEAS 2014-CP-16-0202 AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return and Motion to Dismiss** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Angelo Bernard Ham, 315014
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

DATED this 10th day of March, 2016.

Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	IN THE COURT OF COMMON PLEAS OF THE FOURTH JUDICIAL CIRCUIT
Angelo Bernard Ham, S.C.D.C. No. 315014, Applicant, v. State of South Carolina, Respondent.	Case No.: 2014-CP-16-0202 **CONDITIONAL ORDER OF DIMISSAL**

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Angelo Ham (Applicant) on March 18, 2015. The State (Respondent) made its return, requesting the application be summarily dismissed.

TRUE CERTIFIED COPY
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Darlington County Clerk of Court's orders of commitment. The Darlington County Grand Jury indicted the Applicant at the October 2005 term of General Sessions for murder (2005-GS-16-1969), armed robbery (2005-GS-16-1970) and criminal conspiracy (2005GS-16-1971). Henry M. Anderson, Jr., Esquire represented the Applicant.

On April 17, 2006, the Applicant pled guilty to all three (3) charges, but was only sentenced on criminal conspiracy, due to further issues with a co-defendant on the other charges. The Honorable John M. Milling sentenced the Applicant to five (5) years imprisonment for criminal conspiracy. The Applicant did not file an appeal from the criminal conspiracy guilty plea or sentence.

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CLERK OF COURT/C.O.D.
DARLINGTON COUNTY, S.C.

On September 14, 2007, the Applicant was sentenced on the murder and armed robbery charges. Judge Milling sentenced the Applicant to concurrent terms of life imprisonment without parole for murder and twenty-five (25) years for armed robbery.

A timely Notice of Appeal was filed at the South Carolina Court of Appeals in order to challenge the convictions and sentences for the murder and armed robbery charges. The Applicant, however, chose to withdraw his appeal. The Court of Appeals dismissed the case and issued the remittitur by order dated June 9, 2008.

Attached herewith and incorporated herein by reference are the records of the Darlington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, the sentencing transcript, and the appellate records.

First PCR Application (2007-CP-16-0811)

In his first application for post-conviction relief, filed on September 11, 2007, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
    a. Failed to ask if he wanted to file a notice of appeal
2. "Conflict of interest (honorable judge)"
3. Statements from co-defendants is [*sic*] void."

Respondent filed a return and partial motion to dismiss on or about November 1, 2007. Applicant filed a motion to dismiss on or about November 12, 2007, as well as a motion for summary judgment on or about November 14, 2007, and a motion to alter or amend on April 21, 2008. On or about July 11, 2008, it an amended PCR application was filed by the Applicant. An evidentiary hearing was convened on the matter on October 15, 2008 before the Honorable Larry B. Hyman, Jr. at the Darlington County Courthouse. Applicant was represented by Charles T. Brooks, Esquire, and Respondent was represented by Karen C. Ratigan, Esquire, of the South Carolina Office of the Attorney General. At the hearing, Applicant represented that he wished to withdraw his application, and this was done with prejudice. An order to this effect was signed by Judge Hyman on November 4, 2008.

Second PCR Application (2008-CP-16-1006)

In his second application for post-conviction relief, filed on November 21, 2008, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
    a. Failed to object to the videotape that was allowed into evidence during the plea hearing.
2. Violations due to illegal indictments.
    a. The plea judge did not have subject matter jurisdiction of the armed robbery charge.
3. Illegal waiver from juvenile to adult.
    a. The Family Court illegally waived jurisdiction to the Court of General Sessions.

Respondent filed a return on or about February 25, 2009. Applicant filed a motion to alter or amend on June 29, 2009, a request for production of documents on August 3, 2009, a second motion to alter or amend on July 27, 2009, and a third motion to alter or amend on February 16, 2010.. Of these motions, relief was granted via an order granting limited discovery issued October 19, 2009 by the Honorable Paul M. Burch. The Honorable Thomas A. Russo convened an evidentiary hearing into the application on September 13, 2010 at the Darlington County Courthouse. Applicant was present at the hearing and represented by Gary I. Finklea, Esquire. Judge Russo denied the application by written order filed December 10, 2010. Applicant filed a timely notice of appeal from the denial of his application, and Robert M. Pachak, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of a Johnson[1] petition for writ of certiorari. The Court of Appeals denied the petition on March 11, 2014, and returned the remittitur on March 27, 2014.

Applicant also filed a motion for relief pursuant to SCRCP 60(b)(5), which provides that the Court may relieve a party from a final judgment where the judgment "has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or

[1] Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988),

otherwise vacated, or it is no longer equitable that the judgment should have prospective application." Judge Burch found Applicant's arguments to be ineffective, particularly in that he had "not shown how the legal and factual basis of Judge Russo's order has been reversed or otherwise vacated, or that it is no longer equitable to enforce the order denying PCR. " The order was signed on May 12, 2014.

Third PCR Application (2013-CP-16-0248)

In his third application for post-conviction relief, filed March 20, 2013 by and through Elizabeth Franklin-Best, Esquire, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Applicant's sentence of life without parole, imposed for a crime he committed when he was a juvenile, violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution;
2. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution as an excessive and cruel and unusual punishment because he was both a juvenile and a person who did not kill or intend to kill the victim;
3. Applicant's sentence of life without parole violates the Eighth Amendment to the United States Constitution and Article I, §15 of the South Carolina Constitution, because the proceedings which led to its imposition were both procedurally and substantively inadequate; and
4. Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§3 and 14 of the South Carolina Constitution because Applicant's counsel failed to develop and present mitigating evidence which would have warranted a sentence of less than life without parole.

Contemporaneously with the application, Applicant filed a motion to stay proceedings pending the South Carolina Supreme Court's resolution of Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572, regarding the sentencing of juveniles to life without parole. Ms. Franklin-Best also filed a motion for appointment of counsel on this date. Respondent filed a return and motion to dismiss on May 14, 2013, alleging that the application should be summarily dismissed due to its nature as successive and filed outside of the statute of limitations. On or about May 28, 2013, Applicant's

counsel filed a document entitled "Response to AG's Return and Motion to Dismiss," which argued that, due to the pending litigation in Aiken, holding these proceedings in abeyance was the proper tactic; further, Applicant argued that a PCR was the proper vehicle to raise his claim under S.C. Code Ann. §17-27-45(b), which extends the filing timeframe if relevant cases are pending before a court whose rulings are binding on South Carolina. Respondent filed a return on or about August 16, 2013 to this response, in which it concedes that this matter should be held in abeyance until the South Carolina Supreme Court ruled on Aiken. This matter is still pending before this Court.

II.

In his fourth and current application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel
   a. Failed to raise properly [*sic*] claim
2. Ineffective assistance of plea counsel
   a. Ineffective during critical stage of adversarial process
3. Denied confrontation rights
   a. I was denied the right to cross-examine witnesses.
4. Guilty plea not valid
   a. All elements couldn't be proved [*sic*] by state and I had a justified defense.

Before this Court are the Darlington County Clerk of Court's records regarding the subject convictions, South Carolina Department of Corrections records, Applicant's previous PCR orders, and current PCR records.

III.

This Court finds Applicant's current PCR application must be summarily dismissed because it is successive to his previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a

subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can present a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450,409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

This Court finds Applicant failed to establish any sufficient reason why he did not raise his current grounds for relief in a previous application. This Court must summarily dismiss Applicant's current application because it is successive to his previous applications.

IV.

This Court finds this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. See S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court held the one-year statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offenses he challenges on April 17, 2006. Therefore, Applicant was required to file his PCR application on or before April 18, 2007. Applicant filed this application on March 18, 2014, nearly seven (7) years after the statutory filing period expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2003). Section 17-27-70(c) authorizes this Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court must summarily dismiss this application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

Pursuant to section 17-27-70(b) of the South Carolina Code, this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this order upon him to show why this order should not become final.

Applicant shall file any reasons he may have with the Horry County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Jessica E. Kinard, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 16th day of March, 2016.

THE HONORABLE ROGER E. HENDERSON
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

Conway, South Carolina

Angelo Horn #315014
L.C.I. II-I #1140
990 Wisacky Highway
Bishopville, S.C. 29010

May 16, 2016

Darlington County Clerk of Court
P.O. Box 1177
Darlington, S.C. 29540

Re: Angelo Horn #315014 v. State of South Carolina
CA No.: 2014-CP-16-0200

Dear Honorable Suggs.
Enclosed please find "Applicants Response to the Conditional Order of Dismissal," in the above-cited matter.
With personal kindest regards, I am

Sincerely,

cc: Attorney General

FILED
2016 JUN 20 PM 12:58
CLERK OF COURT
DARLINGTON, S.C.

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

State of South Carolina County of Darlington Angelo Lam, #315014, Applicant, vs. State of South Carolina, Respondent.	In the Court of Common Pleas Fourth Judicial Circuit C/A No.: 2014-CP-16-0202 Applicants Response To the Conditional Order of Dismissal

This response is in opposition to the Conditional Order of Dismissal filed in this Honorable Court on March 24, 2016 and served on the Applicant on April 20, 2016.

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CLERK OF COURT
DARLINGTON, S.C.

ISSUE 1

Applicant contends that he was denied his 6th and 14th Amendment rights to effective assistance of appellate counsel, where PCR counsel failed to amend Applicants PCR Application or Rule 59(e) motion to include all grounds and/or arguments presented in the present application.

Applicant states that S.C Supreme Court Rules 50(5) and 71.1(d) makes it mandatory that post-conviction attorneys make sure all available grounds are raised in PCR proceedings.

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Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

After filing a pro se post-conviction application and after being given court appointed counsel, a pro se litigant cannot thereafter file any further pleadings, and any amendments to his application must be made by counsel. State v. Sanders, 269 S.C 215, 237 S.E.2d 52 (1977); Foster v. State, 298 S.C 306, 379 S.E.2d 907 (1989). Thus, if PCR counsel does not amend the pro se application, the Applicant has no way to have all supporting grounds and/or arguments heard.

After preparing and submitting his pro se application for PCR, the Applicant was appointed Gary I. Finklea to represent him in this matter. Thereafter, the Applicant wrote his attorney and verbally asked him to amend his pro se application to include the supporting grounds of ineffective assistance of trial counsel which appears in the present application. However, PCR counsel failed to do so and did not raise same during the Applicants evidentiary hearing. As a result of the Applicant being a layman, he did not know how to present these claims in his pro se application or at the evidentiary hearing, and as a result these grounds were not heard or ruled upon, even though they could have resulted in the Applicants case being reversed and remanded back to the Family Court for a proper ruling consistent with the Federal Juvenile Delinquency Act.

Since State v. Covington, 277 S.C. 309, 286 S.E.2d 384 (1982) and State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986) prohibits S.C. litigants from raising claims of ineffective assistance of trial counsel during their initial/direct appeals, the PCR proceeding must be viewed as the first appeal as of right on that particular claim. The S.C. Supreme Courts decision in Case v. State, 309 S.C. 2d 592 (1990), holding that there is no constitutional right to counsel in state PCR proceedings is based on a far-stretched reading of the Supreme Court decision in Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The decision in Finley merely held that there is no constitutional right to counsel in state court discretionary appeals after the appellate stage has been exhausted. Id., 107 S.Ct. at 1993.

Because the claim of ineffective assistance of counsel cannot be exhausted until an application for PCR is filed, South Carolina litigants clearly have a right to effective assistance of counsel in presenting their claims of ineffective assistance of trial counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985); Coleman v. Thompson, 111 S.Ct. 2546, 2568 (1991). As a result, when an applicant is not assisted by a PCR attorney in setting forth all grounds to support his claim of ineffective assistance of trial counsel in his initial application, he or she should not be barred thereafter from

submitting a second application to include additional grounds for a court's review.

In Cotton v. State, 293 S.C 508, 362 S.E.2d 20 (1987), and again in Aice, supra, the S.C. Supreme Court cited Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Land v. State, 274 S.C 243, 262 S.E.2d 735 (1980) and the S.C. Code of Laws sections 17-27-90 for the general proposition, that successive applications are viewed with disfavor and that the applicant has the burden of showing that a new ground for relief could not have been raised in a previous application. However, Aice, supra, does not give attention to the courts decision in Case v. State, 277 S.C. 474, 289 S.E.2d 413 (1982), which held that if the applicant meets the burden, a hearing must be afforded despite the successiveness of the application. The facts in Case established that Case had no attorney in his first application, and that it was highly doubtful whether, in point of fact, that he could have raised the appropriate argument. Aice, supra; Id., 409 S.E.2d at 394.

In a situation where a PCR Applicant is not assisted by his PCR attorney is properly amending his first application to include all supporting grounds underlying a claim of ineffective assistance of Trial Counsel, and does not know of such grounds, or does not know

how to waive them, and is barred from presenting those pleadings in light of State v. Sanders, supra, and Foster v. State, supra, he or she must be seen to be "without counsel" and in the same position as that of the applicant in Case v. State, supra. The Court, under such circumstances should find that the second application should be heard despite its successiveness because the first application lacked specificity, unless it can find that the Applicant intentionally waived his or her right to have the grounds stated in the subsequent application heard in the first

If South Carolina litigants are entitled to appeal from denials of PCR under Austin v. State, 409 S.E.2d 395 (1991), if they can establish that they did not voluntarily waive their right to appeal, then they should also be allowed to file a subsequent application alleging that all grounds supporting claim of ineffective assistance of trial counsel were not presented in the first application due to ineffective assistance of PCR counsel, who in reality is not PCR counsel on such claim, but instead is an appellate attorney in the first appeal as of right on that particular claim.

Accordingly, the Applicant states that he should be allowed to file this subsequent application

for PCR due to the fact that his first PCR counsel was ineffective.

ISSUE(S) 2, 3, and 4

Applicant contends that Issues 2, 3, and 4 are attached hereto marked as exhibit 1. See "Motion For Relief From Judgment under Rule 60 (b) (5) dated December 27, 2013."

Applicant begs this Honorable Court to reflect to this exhibit because he only recieves 10 sheets of paper a month and does not have any funds to pay for anymore paper. To such extent that this Honorable Court do not accept this attachment then please grant the Applicant with an extension (i.e., 30 days) so that he may get the paper so that he can write out everything and then submit the final copies.

ISSUE 5

Applicant contends that the trial court lacked subject matter jurisdiction to accept his guilty plea. Applicant furthers contends that he did not allege this issue in his application and the Respondent did not have

it in their response but this is an issue that cannot be waived.

As a general rule, "a defendant's knowing and intelligent guilty plea forecloses independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Tollett v. Henderson, 411 U.S. 258, 267, 93 S.Ct. 1602, 1608, 36 L.Ed.2d 235 (1973). There are exceptions to this rule, however; a person may, despite a valid guilty plea, pursue a certain type of claim that has been variously defined as a claim that attacks "the State's power to bring any indictment at all," United States v. Broce, 488 U.S. 563, 575, 109 S.Ct. 757, 765, 102 L.Ed.2d 927 (1989), that protects a defendants "right not to be haled into court," Blackledge v. Perry, 417 U.S. 21, 30, 94 S.Ct. 2098, 2104, 40 L.Ed.2d 628 (1974), and that, "the charge is one which the State may not constitutionally prosecute," Menna v. New York, 423 U.S. 61, 62 n.2, 96 S.Ct. 241, 242 n.2, 46 L.Ed.2d 195 (1975) (per curiam).

In South Carolina, "subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." Pierce v. State, 338 S.C. 139, 150, 526 S.E.2d 222, 227 (2000); S.C. Const. art. V § 11 ("the Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such

appellate jurisdiction as provided by law."

S.C. Code Ann. §14-9-210 provides, in pertinent part that "the county solicitor shall prepare and, through the presiding judge of the court of general sessions, submit to the grand jury, while in attendance upon the court of general sessions, bills of indictment in all cases pending in the county court in which the punishment may exceed a fine of five hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the grand jury...

S.C. Code Ann. §14-5-650 provides, in pertinent part that "the courts of the fourth judicial circuit shall be held as follows:

1) Courts of General Sessions:
at Darlington for Darlington County
on the third Monday in February,
the second Monday in April, the
third Monday in June and the
third Monday in September.

2) Courts of Common Pleas:
at Darlington for Darlington County
on the second Monday in January
for two weeks, the third Monday
in March for two weeks, the fourth
Monday in April, the fourth Monday

in June, the fourth Monday, in October for two weeks."

The S.C. Supreme Court held that "under our judicial system, the presiding judge in the Circuit Court loses jurisdiction with the adjournment of the term." State v. Best, 257 S.C. 361, 186 S.E.2d 272 (S.C. 1972).

Applicant states that the Darlington County Grand Jury true billed his indictments for Murder, Armed Robbery, and Criminal Conspiracy on October 20, 2005 and reported their finding to the presiding Judge of the Court of General Sessions on October 24, 2005. (See exhibits 2, 3, and 4).

Although the Applicant does not challenge the October 24, 2005 Court of General Sessions term, the Applicant do hereby object to the October 20, 2005 term. Evidence shows that the Darlington County Court of General Sessions was not in session on October 20, 2005. (See exhibit 5).

So, therefore, how could the Darlington County Grand Jury return a true bill of indictment when in accordance to S.C. Code Ann. §14-9-210, the Court of General Sessions must be in session in order for the county solicitor to submit a bill of indictment to the grand jury so that the grand jury can act on it to find a true bill or no bill of indictment

Based upon the evidence presented by the Applicant, the trial court lacked subject matter jurisdiction to accept the Applicants guilty plea.

CONCLUSION

Wherefore, having submitting this response, the Applicant respectfully prays that this Honorable Court DENY the Respondents request to summarily dismiss Applicants PCR Application and GRANT the Applicant an evidentiary hearing.

Respectfully Submitted,

#315014

Angelo Hom #315014
L.C.I./F.I #1140
990 Wisacky Highway
Bishopville, S.C. 29010

May 16, 2016

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

State of South Carolina
County of: Darlington

Angelo Bernard Horn,
S.C.S.C. No. 31504,
Applicant,

vs.

State of South Carolina,
Respondent.

In the Court of Common Pleas
Fourth Judicial Circuit
C/A No.: 2008-CP-16-1006

MOTION FOR RELIEF FROM JUDGMENT UNDER RULE 60(b)(5)

(Hearing Requested)

Please take notice that the Applicant files this motion based on the rulings in McQuiggen v. Perkins, 133 S.Ct. 1924 (2013) as well as Martinez v. Ryan, 132 S.Ct. 1309 (2012). The Court should review the merits of this motion to determine if PCR counsels' failure to raise these issues at hearing or address in motion violates its own state rules which support Martinez ruling under state law. S.C. Code Ann. §17-27-90 requires counsel to do so and counsels' failure to address issues constitutes as cause under state law as follows:

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SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Question One:

Whether counsel rendered ineffective assistance of counsel during critical stage of post-conviction proceedings

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DARLINGTON COUNTY, SC

The Supreme Court recognized in both Strickland and Cronic that in certain circumstances "prejudice is presumed" because prejudice "is so likely that case-by-case inquiry... is not worth the cost." Cronic v. United States, 466 U.S. at 658, 104 S.Ct. 2039. In Cronic, the Court identified three distinct situations in which a presumption of prejudice is appropriate. First, prejudice is presumed when the defendant is completely denied counsel "at the critical stage of his trial." Cronic, 466 U.S. at 658. Second, per-se prejudice occurs if there has been a constructive denial of counsel. This happens when a lawyer "entirely fails to subject the prosecutions case to meaningful adversarial testing," thus, making "the adversarial process itself presumptively unreliable." Id. Third, the Court identified certain instances "when although counsel is available to assist the accused during a trial, the likelihood that any lawyer even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." Id.

Although the Applicant understand that the transfer order is not immediately appealable to the Supreme Court, Applicant states that the proper order in which he was entitled to appeal this transfer order was by perfecting a notice of appeal in the circuit court. Contrary to the Respondent argument that this order is not automatically appealable to S.C. Supreme Court is conceded by Applicant. But, this is not the Applicants argument and it is being misconstrued by Respondent. The argument is simple, that counsel should have appealed the order to the circuit court

which is who had jurisdiction over this decision. THEN, and only THEN, could it be appealed to the S.C. Supreme Court.

The 'Smith' court also held that the justifications for allowing the immediate appeal of transfer orders remain the same regardless of whether the appeal is based on an alleged procedural or substantive deficiency. UNITED STATES V. SMITH, 851 F.2d 706, 708 (4th Cir. 1988).

The United States Supreme Court held in 'Roe' that, "In those cases where the defendant neither instructs counsel to file an appeal nor asks that an appeal not be taken, we believe the question whether counsel has performed deficiently by not filing a notice of appeal is best answered by first asking a separate, but antecedent, question: "whether counsel in fact consulted with the defendant about an appeal." We employ the term "consult" to convey a specific meaning — advising the defendant about the advantages and disadvantages of taking an appeal, and making a reasonable effort to discover the defendant's wishes. If counsel has consulted with the defendant, the question of deficient performance is easily answered: "Counsel performs in a professionally unreasonable manner only by failing to follow the defendants express instructions with respect to an appeal." If counsel has not consulted with the defendant, the court must then ask a second, and subsidiary, question: "whether counsels failure to consult with the defendant itself constitutes deficient performance." That question lies at the heart of this case: Under what circumstances does counsel have an obligation to consult with the defendant about an appeal? Because the

decision to appeal rests with the defendant, we agree with Justice SOUTER that the better practice is for counsel routinely to consult with the defendant regarding the possibility of an appeal." Id. at 478-79, 120 S.Ct. at 1035

Applicant states that the plea record is clear as the plea counsel specifically stated, "... I do not remember discussing with him his right to appeal that order..." SEE App. pg. 18, lines 21-25; pg. 19, line 1. By plea counsel failing to discuss with the Applicant a filing a notice of appeal, the Applicants' plea counsel representation fell below an objective standard of reasonableness.

Applicant also states that plea counsel performance prejudiced him. After a review, had plea counsel filed a notice of appeal from the transfer order and presented all testimonies as cited above, the Circuit Court would have reversed and remanded this matter back to the Family Court so that the Applicant could receive the appropriate rehabilitative programs in the state juvenile system because, according to the state's own expert witness, "... state juvenile systems would serve the Applicant better than the adult system." SEE App. pg. 19, lines 11-24; pg. 20, lines 1-13.

The lack of appeal to the circuit court waived any chance of Applicant appealing this case to the S.C Supreme Court. Thus, without such appeal and counsel abandoning the Applicant at critical stage of process was prejudicial to his case.

The Supreme Court directed that, prior to transfer, a hearing must be held in which certain rights are afforded

to a juvenile. In an appendix to its opinion in 'Kent', the Supreme Court quoted, with approval, a District of Columbia policy memorandum which recited eight (8) factors to be considered by the Juvenile Court in making a transfer decision. Although the Supreme Court did not explicitly hold that these factors must be followed by lower courts, this court believes that these factors provide excellent general guidance. Patton v. Jay, 867 F.Supp. 356, 362 (D.S.C. 1994). Juvenile waiver hearings must measure up to the essentials of due process and fair treatment. Application of Gault, 387 U.S. 1, 30, 87 S.Ct. 1428, 1445, 18 L.Ed.2d 527 (1967) (quoting from Kent v. United States, 383 U.S. 541, 560-62, 86 S.Ct. 1045, 1057, 16 L.Ed.2d 84 (1966)).

Applicant states that a waiver hearing pursuant to 'Kent' was held on July 18, 2005. The State presented testimonies from expert witness, Dr. Joel Hefner, who is and was, at that time, the chief psychologist for the S.C. Dept. of Juvenile Justice for the Pee Dee Region, App. pg. 5, lines 14-15, and, from Investigator Colvin Jackson of the Darlington County Sheriff's Office, App. pg. 27, line 11, who was the investigator assigned to this case, App. pg. 27, lines 23-24; pg. 28, line 1.

Plea counsel was ineffective for failing to obtain the Applicants school records from the Darlington High School and for failing to interview some of the Applicants teachers and principals.

Applicants states that by failing to interview the Applicant teachers and principals of the Darlington High

School, at which, the Applicant was attending at the time he was an accomplice to the offense in court, plea counsel was unable to formulate any defense to strengthen the testimony of the states expert witness and to show that the Applicant has somewhat rehabilitated himself from the rehabilitative programs. Counsel was unable to strengthen the states expert witness testimony and refute the Judge's opinion by showing that the Applicant could be rehabilitated and that the programs Applicant needs can not be obtained from TDC. Similarly, there is no evidence to support the judges' decision when expert as well as evaluation show something contrary to this order.

These above facts not only made plea counsel ineffective for waiver hearing but these facts made him ineffective during waiver hearing as well because testimony would have refuted the [redacted] Honorable Roger C. Henderson opinion as he stated, "It is the opinion of the Court that it is not likely that Defendant could be rehabilitated, in part due to prior attempts to rehabilitation by the Department of Juvenile Justice."

The 'Kent' court held, "The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment.

Applicant states that not only did the states expert

witness recommend that he remain in the Family Court but the states expert witness also stated that the Applicant could better rehabilitate himself from the DJJ programs than the SCDC programs. **SEE** App. pg. 20-25.

Applicant states that "when counsel's constitutionally deficient performance deprives defendant of appeal that he otherwise would have taken, defendant has made out successful ineffective assistance of counsel claim entitling him to an appeal." Roe, 528 U.S. 470, 120 S.Ct. 1029 (2000).

Question Two:

> Whether Applicant was denied his Sixth Amendment right under the Confrontation Clause to cross-examine?

Applicant states that his constitutional right to confrontation under Crawford v. Washington, 541 U.S. 36 (2004) were violated when the state admitted out-of-court statements into evidence at the juvenile waiver hearing and did not allow the Applicant the opportunity to cross-examine the out-of-court declarants nor a prior attempt to such.

Applicant states that the right to be present and to confront witnesses applies in juvenile court proceedings in the same manner as in criminal court proceedings.

IN THE INTEREST OF DWAYNE M., 339 S.E.2d 130 (S.C. 1986) (quoting IN RE GAULT, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967)).

Applicant states that the State, by and through investigator Colvin Jackson, presented testimonies from James Robinson, App. pg. 29, lines 21-24; pg. 30, lines 1-13, from Anthony Robinson, App. pg. 35, lines 8-24; pg. 36, lines 1-5, from Dennis Hunter, App. pg. 36, lines 6-24; pg. 37, lines 1-14; and, from Brian Willis Jackson, App. pg. 34, lines 18-24; pg. 35, lines 1-3.

Applicant states that the Confrontation Clause applies only to that portion of a criminal proceeding that can be classified as the trial. Gerstein v. Pugh, 420 U.S. 103, 119-20 (1975). Applicant states that the waiver hearing is considered as not only a trial but is considered as a critical stage that requires the full panoply of adversary safeguards — counsel, confrontation, cross-examination, and compulsory process. Id.

Applicant states that the Confrontation Clause is violated when the Court or State admits testimonial statements but fail to call those witnesses to be cross-examined. U.S. v. Powers, 500 F.3d 500, 506 (6th Cir. 2007). The Confrontation Clause is also violated by the admission of a co-defendant's statement during interrogation if offered to prove truth of matter asserted. U.S. v. Williams, 445 F.3d 724 (4th Cir. 2006); U.S. v. Tuyet Thi-Bich Nguyen, 565 F.3d 668, 674-75 (9th Cir. 2009). Anthony Robinson and Dennis Hunter were the

Applicants co-defendants in this matter, of which, the state used these testimonies to prove their allegation and to contradict Applicant. App. pg. 165, lines 9-19.

Applicant states that these testimonies were hearsay, of which, is "a statement, other that one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

In Crawford v. Washington, 541 U.S. at 53-54, the Supreme Court distinguished between "testimonial" and "nontestimonial" hearsay evidence. 'Crawford' held that the admission of a testimonial hearsay statement violates the Confrontation Clause unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant. Id. at 68.

Applicant states that a witness is considered "unavailable" if the government is unable, despite good faith efforts, to procure that witness attendance at trial. Ohio v. Roberts, 448 U.S. 56, 74 (1980).

Applicant states that the state did not make good-faith efforts to procure these witnesses attendance at trial because both Anthony Robinson and Dennis Hunter were incarcerated within the Darlington County Detention Center, of which, is the Darlington County property. Barnett v. Ivingood, 269 F.3d 629, 641 (6th Cir. 2001) (good-faith effort not established because, though witness incarcerated in another state, means existed for obtaining presence at trial).

Applicant states that he neither had the prior opportunity to cross-examine the declarants.

Although the harmless error analysis is subject to violations of the Confrontation Clause, that analysis do not apply in this case because (1) the states main evidence was the confessions from Anthony Robinson and Dennis Hunter, App. pg. 165, lines 9-19; (2) the state used the testimonies of Anthony Robinson and Dennis Hunter to increase the value and/or weight against Applicant; (3) there was presence of contradiction because Applicant stated that Anthony Robinson robbed the store, App. pg. 37, lines 17-24; pg. 38, lines 1-10; and, Brian Willis Jackson stated that Anthony Robinson told him that he robbed the store, App. pg. 42, lines 1-24; pg. 43, lines 1-20; (4) counsel was only able to cross-examine the investigator, of which, wasn't very familiar with Brian Willis Jackson nor the statement that Brian Willis Jackson gave, App. pg. 42, lines 1-12; and, (5) the states strength of the overall case was weak and only consisted of statements from these witnesses.

Applicant states that having shown that this error was not harmless and that these hearsay testimonies was actually the states case, Applicants Confrontation right to cross-examine these witnesses face-to-face resulted in a violation of the Confrontation Clause. Del. v. Van Arsdall, 475 U.S. 673, 684 (1986).

QUESTION THREE:

WHETHER APPLICANTS' GUILTY PLEA KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY ENTERED?

Applicant states that his constitutional right under Lafler v. Cooper, 132 S.Ct. 1376 (2012); Hill v. Lockhart, 474 U.S. 52 (1985); and U.S. v. Mooney, 497 F.3d 397 (4th Cir. 2007) were violated when plea counsel advised Applicant to plead guilty instead of adequately investigating Applicants' justification and/or duress defense. SEE: State v. Crawford, 608 S.E.2d 886 (2005).

Applicant states that where there has been a guilty plea, a criminal defendant may only attack the nature of the advice of counsel and the voluntariness of the plea. Once he plead guilty on the advice of counsel, he must demonstrate that the advice was not 'within the range' of competence demanded of attorneys in criminal cases.

Applicant states that the record clearly reflects the fact that he plead guilty upon the advice of counsel. SEE: App. pg. 75, lines 20-25; pg. 76, line 1. The record also reflects the fact that Applicants' plea counsel was aware of the fact that the Applicant wanted to raise the justification and/or duress defense. App. pg. 98, lines 21-25; pg. 99, lines 1-25; pg. 100, lines 1-10.

"The duty to investigate is part of a defendants right to reasonably competent counsel. The principle is so fundamental that the failure to conduct a pretrial investigation may in itself amount to ineffective assistance of counsel." Elmore v. Ozmint, 661 F.3d 783 (4th Cir. 2011).

Applicant states that plea counsel did not seek an independent investigation to uncover the facts that were hidden in Applicants codefendant, Anthony Robinson, statement. Plea counsel was aware from three different sources of the justification or duress defense but, however, plea counsel failed to interview or obtain an investigator to interview Anthony Robinson about this situation.

Applicant contends that instead of conducting a proper investigation into the situation at hand, plea counsel stated that, "It is my understanding that the defense of you doing something because someone made you do it by force is not a defense in this case. It may a defense in other cases; however, it is not in the case of murder. You can not kill someone just because someone tells you that they are going to shoot you or kill you. That is not an acceptable defense." SEE: correspondence dated July 25, 2006.

Although Applicant understands the above-cited language and the language that's cited in Dixon v. U.S., 126 S.Ct. 2437 (2006), and in, State v. Rochester, 425 S.E.2d 32 (S.C. 1993), Applicant clearly points out that he did not shot anybody nor

kill anybody and that Anthony Robinson clearly confessed to being the trigger man. App. pg. 36, lines 6-11.

With these words in mind, its no where possible that plea counsel could have said that, "this is not an acceptable defense." And, the defense of justification or duress could have been used by the Applicant. SEE: State v. New, 640 S.E.2d 871 (2007).

Counsel's erroneous advice to plead guilty was not within the range of competence demanded of attorneys in criminal cases. Also, looking at the facts that plea counsel failed to adequately investigate duress or justification defense was prejudicial because defendant likely would not have pleaded guilty had he been properly advised on this issue.

CONCLUSION

Wherefore, Applicant respectfully request that this Honorable Court review the merits of this motion and these issues presented and grant a hearing to determin if the Applicant is entitled to relief from judgment.

December 19, 2013

Respectfully Submitted,
#31504
Angelo Horn, #31504
L.I.S.I.U #600
Scott B. Suggs 900 Wisacky Highway
Hartsville, S.C. 29010

TRUE CERTIFIED COPY
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

State of South Carolina

County of: Darlington

Angelo Horn, #315014,
Applicant,

vs.

State of South Carolina,
Respondent.

In the Court of Common Pleas
Fourth Judicial Circuit

C/A No.: 2014-CP-16-0202

Certificate of Service

I, Angelo Horn, hereby certify that a copy of the "Applicants Response to the Conditional Order of Dismissal", in the above-cited matter was this day served on the Respondent by depositing a copy of the same in the U.S. Mail, postage prepaid, to the following address:

S.C. Office of Attorney General
P.O. Box 11549
Columbia, S.C. 29211-1549

May 16, 2016

#315014

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
Angelo Bernard Ham, #315014, Applicant, v. State of South Carolina, Respondent.	)	2014-CP-16-0202 **FINAL ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 18, 2014. The Respondent made its return on or about March 10, 2015, requesting the application be summarily dismissed based upon expiration of the statute of limitations and the presumption against successive applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed March 16, 2016 and filed March 24, 2016, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated April 26, 2016, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

TRUE CERTIFIED COPY,
CLERK OF COURT/MC
DARLINGTON COUNTY, SC

Applicant filed a document titled "Applicant's Response to the Conditional Order of Dismissal" on May 20, 2016, in which Applicant states "that he should be allowed to file this subsequent application for PCR due to the fact that his first PCR counsel was ineffective" in that he failed to amend the PCR application to include all grounds. Applicant further argues that the trial court lacked subject matter jurisdiction because the "Darlington County Court of General

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DARLINGTON COUNTY, SC
2016 MAY 31 AM 10:25

Sessions was not in session" when indictments were true billed. Applicant, to address issues 2, 3 and 4 in the Conditional Order of Dismissal, attached a document titled "Motion for Relief from Judgment Under Rule 60(b)(5)" that was filed in Applicant's second PCR cases 2008-CP-16-1006.

This Court has reviewed Applicant's responses to the Conditional Order of Dismissal in their entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final. This Court finds Applicant's responses do not give rise to any genuine issue of material fact that would require an evidentiary hearing and therefore have failed to provide sufficient reasons why the Conditional Order of Dismissal should not become final.

This Court finds that Applicant's claim of ineffective assistance of PCR counsel is dismissed, as it is not a cognizable claim for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). Once a PCR Applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). Further, Kelly v. State explicitly states, "that the holding in *Martinez*[1] is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions." Kelly v. State, 404 S.C. 365, 365, 745 S.E.2d 377 (2013). Consequently, pursuant to Rule 12(b)(6), SCRCP, Applicant's contention that he received ineffective assistance of PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application.

[1] Martinez v. Ryan, __ U.S. ___, 132 S.Ct. 1309 (2012) (holding ineffective assistance of collateral counsel may constitute "cause" to excuse procedural default in federal habeas corpus actions under the federal "cause and prejudice" standard)

This Court finds that Applicant's allegation that the trial court lacked subject matter jurisdiction because the Grand Jury did not meet during the time his indictment was true-billed is denied. Defects in the indictment do not affect subject matter jurisdiction. However, an Applicant may challenge the subject matter jurisdiction of the trial court and such a claim may be raised at any time. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777. The circuit court obviously has subject matter jurisdiction to try criminal matters. Therefore, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the Circuit Court had subject matter jurisdiction.

The Court submits further that a challenge to the legality and sufficiency of the process of the state grand jury does not implicate the subject matter jurisdiction of the circuit court. Evans v. State, 363 S.C. 495, 509-10, 611 S.E.2d 510, 518 (2005). Further, a defendant must challenge the legality and sufficiency of the process before the jury renders a verdict in order to preserve the issue for appellate review. Id. The regularity of grand jury proceedings is presumed absent clear evidence to the contrary. Id. at 514, 611 S.E.2d at 520.

The chief administrative judge for each circuit schedules terms of the grand jury in each county. The Applicant has failed to sufficiently challenge the legality and sufficiency of the Horry County Grand Jury process. Further, the Applicant has failed to provide any evidence that the Grand Jury did not convene in April 2000 as indicated on his true-billed indictment. Because the Applicant has failed to state with any specificity the evidence supporting his claim, this Court summarily dismisses this allegation with prejudice.

This Court submits that the doctrine of *res judicata* bars all of Applicant's claims listed in his attached "Motion for Relief from Judgment Under Rule 60(b)(5)". *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

IT IS THEREFORE ORDERED that for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE.**

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within 30 days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 243, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 3rd day of February 3rd, 2017.

TRUE CERTIFIED COPY,
CLERK OF COURT/RMC
ARLINGTON COUNTY, SC

ROGER E. HENDERSON
Chief Administrative Judge
Fourth Judicial Circuit Court

Chesterfield, South Carolina.

FILED
2017 FEB 15 AM 10:28
SCOTT B. SIGGS
CLERK OF COURT/RMC
ARLINGTON COUNTY, S.C.

State of South Carolina
County of Darlington

IN THE Court of Common Pleas
FOR THE FOURTH JUDICIAL Circuit

Angelo Hom, #315014,
Applicant,

vs.

State of South Carolina,
Respondent.

C/A No.: 2014-CP-16-0202

APPLICANTS NOTICE AND MOTION FOR CONTINUANCE

TRUE CERTIFIED COPY.
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

PLEASE TAKE NOTICE THAT the Applicant hereby moves before this Court respectfully requesting for a thirty ("30") day extension in submitting the Applicants Motion For Reconsideration in the above cited matter. Applicant contends that this Honorable Court issued its Final Order in this case on February 3, 2017, at which, Applicant was served with a copy of such on March 9, 2017. Since this day, the Applicant has been reviewing his case files and the appropriate case law as well as drafting the Motion For Reconsideration to be submitted to this Court. Being that the SCDC does not photocopy hand generating material, Applicant is forced to hand generate every copy which will take longer than the ten ("10") day that's allotted

for filing such motions. Applicant further contends that by granting this Motion, the Respondent will not be prejudiced as a result.

TRUE CERTIFIED COPY
Scott B. Suggs
CLERK OF COURT/FMC
DARLINGTON COUNTY, S.C.

CONCLUSION

WHEREFORE, having made this Motion the Applicant hereby respectfully pray that this Honorable Court grants this Motion.

March 15, 2017

Respectfully Submitted,
[redacted] #315014
Angelo Horn #315014
L.C.I./F5 #278
990 Wisacky Highway
Bishopville, S.C. 29010

FILED
2017 MAR 20 PM 1:30
SCOTT B. SUGGS
CLERK OF COURT/R.D.D.
DARLINGTON COUNTY, S.C.

State of South Carolina County of Darlington	In the Court of Common Pleas For the Fourth Judicial Circuit
Angelo Horn, #315014, Applicant, vs. State of South Carolina, Respondent.	C/A No.: 2014-CP-16-0202 CERTIFICATE OF SERVICE

TRUE CERTIFIED COPY,
S. B. Suggs
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

I, Angelo Horn, hereby certify that a certified copy of the "Applicants Notice and Motion For An Continuance", in the above cited matter was this day served on the Respondent by placing a copy of the same in the U.S. Mail, postage prepaid to the following addresses:

Darlington County Clerk of Court
P.O. Box 1177
Darlington, S.C. 29540

S.C. Attorney General
P.O. Box 11549
Columbia, S.C. 29211

FILED
2017 MAR 20 PM 1:30
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

March 15, 2017

#315014

State of South Carolina County of Darlington	IN THE Court of Common Pleas FOR THE Fourth Judicial Circuit
ANGELO HAM, #315014, Applicant, VS. STATE of South Carolina, Respondent.	C/A No.: 2014-CP-16-0202 APPLICANTS MOTION FOR RECONSIDERATION UNDER RULE 59(e), SCRCP

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, Applicant, Angelo Ham (also referred to herein as "Ham") hereby submit this motion for reconsideration of the Court's Final Order dated February 3, 2017

This Motion for Reconsideration is divided into several sections as set forth, each section provides multiple grounds for reconsideration of the Courts Order. Collectively, pursuant to these grounds for reconsideration, Applicant seeks ruling on matters that the Court did not address in its order, Ham seek the Courts reasons for deciding certain matters where no reasons are given, and Ham seek for the court to reconsider its ruling and correct its errors based on the record and the law.

TRUE CERTIFIED COPY,
CLERK OF COURT, DMC
DARLINGTON COUNTY, SC

FILED
2017 APR 12 AM 11:59
SCOTT B. CUGGS
CLERK OF COURT, R.O.D.
DARLINGTON COUNTY, S.C.

ISSUE 1.

GROUNDS FOR RECONSIDERATION BASED ON THE RESPONDENTS DEFAULT AND WAIVER.

ISSUE 2.

GROUNDS FOR RECONSIDERATION BASED ON INEFFECTIVE ASSISTANCE OF PCR COUNSEL NOT A COGNIZABLE CLAIM FOR RELIEF.

ISSUE 3.

GROUNDS FOR RECONSIDERATION BASED ON PCR COUNSEL FAILING TO PRESERVE APPLICANTS CLAIMS FOR REVIEW.

The Fourth Circuit has recognized three grounds for amending an earlier judgment under Federal Rule of Civil Procedure 59(e): (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Pac. Ins. Co. v. Am. Nat. Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). A Rule 59(e) motion "may not be used to relitigate old matters, or to raise [redacted] arguments or present evidence that could have been raised prior to the entry of judgment." Exxon Shipping Co. v. Baker, 554 U.S. 471, 486 n.5 (2008). Further, "mere disagreement [with a district court's ruling] does not support a Rule 59(e) motion." Hutchinson v. Staton, 994 F.2d 1076, 1082 (4th Cir. 1993). "In general reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." Pac. Ins. Co., 148 F.3d at 403. A motion for reconsideration "is not a license for a losing party's attorney to get a second bite at the apple." Bey v. Shapiro Brown & Alt, LLP, 997 F.Supp.2d 310, 321 (D. Md. 2014)

(citing Shields v. Shetter, 120 F.R.D. 123, 125-26 (D. Colo. 1988)).

ISSUE 1.

GROUNDS FOR RECONSIDERATION BASED ON THE RESPONDENTS DEFAULT AND WAIVER.

Applicant contends that he filed the above cited application with the Darlington County Clerk of Court on March 18, 2014. After failing to adequately to this application by way of an answer, summary judgment, etc., Applicant filed a Notice and Motion for Default in the Darlington County Clerk of Court on December 9, 2014, pursuant to Rule 55(a) of the S.C. Rules of Civil Procedure.

Applicant further contends that after the Respondent still failed to respond to the Applicants Notice and Motion for Default, Applicant submitted a correspondence to the Honorable David Shearouse of the S.C. Supreme Court advising him of this situation, at which time, the Honorable Shearouse

contacted this Honorable Court advising them to respond to this application. Respondent does not dispute these facts, nor has any default hearing been held to attest to these facts or motion.

Based on the above-mentioned legal issues and facts, Applicant states that not only has the Respondent waived their asserted rights to defend his claims but the Applicant would be prejudiced as a result of not having his claims properly heard to preserve his issues for review by the high court or on appeal. **SEE** Regions Bank v. Owens, 402 S.C. 642, 648, 741 S.E.2d 51, 54 (Ct. App. 2013)

ISSUE 2.

GROUNDS FOR RECONSIDERATION BASED ON INEFFECTIVE ASSISTANCE OF PCR COUNSEL NOT A COGNIZABLE CLAIM FOR RELIEF.

Applicant contends that the Respondent and this Honorable Court dismissed his PCR

under Pennsylvania v. Finley, 481 U.S. 551 (1987); Acee v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991); Kelly v. State, 404 S.C. 365, 365, 745 S.E.2d 377 (2013); and Rule 12(b)(6), SCRCP alleging that ineffective assistance of PCR counsel is not a cognizable claim for relief, nor does it raise any genuine issue of material fact for this Court to consider in evaluating the application.

Although this is controlling case law in this State, Applicant contends that this case is somewhat different because not only was not afforded with a proper adjudication of the merits of his case but PCR counsel failed to properly preserve his issues for review by failing to file a Rule 59(e) motion like Applicant advised him to do. The Supreme Court has well settled this issue by remanding cases to the PCR court for PCR counsels' failure to file a Rule 59(e) motion. SEE McCullough v. State, 464 S.E.2d 340, 341 (S.C. 1995) (remanding matter to PCR court, despite the fact that no Rule 59(e) motion had been filed, and admonishing all parties to carefully prepare and review PCR orders to ensure that they specifically address

the issues raised and make conclusions of law.) The Court considered this as a "second bite of the apple" that is cited in Bey v. Shapiro Brown & Alt, LLP, 997 F. Supp. 2d 310, 321 (D. Md. 2014) (citing Shields v. Shetler, 120 F.R.D. 123, 125-26 (D. Colo. 1988)).

Based on the above-cited facts, Applicant states that he is entitled to have the PCR Court to properly rule on each of his issues so that they can be properly preserve for review.

ISSUE 3.

GROUNDS FOR RECONSIDERATION BASED ON PCR COUNSEL FAILING TO PRESERVE APPLICANTS CLAIMS FOR REVIEW.

Applicant contends that at his first PCR Hearing, his PCR Counsel, Gary I. Finkel, Esq., raised seven ("7") grounds for post conviction relief. Those grounds are as follow:

1.) Trial counsel was ineffective in failing to move to withdraw his guilty plea, when Defendant requested withdrawal and in writing (see Exhibit 7) and orally to counsel and then in court (transcript at p. 35+). See Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009)

2.) Applicant's indictments were improper and void since they were true billed before the Grand Jury convened. The indictments were true billed October 20, 2005 but the grand jury did not convene until October 24, 2005 - Exhibit 5. See S.C. Code Ann. Section 14-7-1750 that provides in order to return a true bill of indictment the grand jury must find that probable cause existed. Also S.C. Code Ann. Section 14-7-1140 provides that any irregularity in the grand jury process must be made by a motion to quash the indictment. See Evans v. State, 363 S.C. 495 (2005) Counsel was ineffective for failing to discuss this irregularity with the Defendant and for failing to move to quash.

3.) Trial counsel was ineffective for failing to advise the Defendant of the trial/sentencing judge's relationship with the victim. Though the court, made some disclosure concerning its relationship with the victim, counsel failed to follow up with any questions to the judge in this regard or discuss the matter with the applicant. Had the Defendant known the trial judge and victim were from the same town, crossed paths in business, the judge had personal knowledge regarding the victims funeral (see page 14, line 2-4) and that he could have his plea and sentencing conducted by another judge, he would have objected to the trial judge participating. See Transcript page 8, line 21 - page 9, line 23.

4.) Trial counsel failed to object to the admission of videotape containing clips of the victim's birthday party that was allowed in to evidence during the sentencing phase. See Rule 401, SCRE

5.) Trial counsel was ineffective for failing to object to applicant's illegal detention - See Rule 3, SCRCrimP stated that once a defendant is arrested and detained, an arrest warrant shall be brought forth within 15 days - arrest warrant was not served until 10 months later.

6.) The Family Court erroneously waived jurisdiction to the Court of General Sessions (04-JU-16-233, 234 and 235) despite the findings in the pre-waiver evaluation report and testimony of Dr. Heffler. Counsel was ineffective for failing to appeal this ruling; for failing to ask Judge Henderson of any connection with the victim and further in failing to ask him to recuse; and failing to adequately present evidence regarding the defendants ability to rehabilitate and the State's failure to follow its own suggestions. See "Needs and Recommendations" of Vanessa Galvarino Hiers, MSW, LMSW dated 12-7-01 - Exhibit 11.

7.) Trial counsel was ineffective for failing to investigate the applicant's case and therefore the defendant was inadequately prepared to make a decision as to his plea or request for trial.

Applicant contends that noticing the above-cited issues that his PCR counsel raised in his PCR, Issues 2, 6, and 7 were not fully preserved for review because PCR counsel failed to properly raised them correctly.

Noticing Issue 2, PCR counsel failed to put forth evidence, i.e., Grand Jury calender (SEE attached exhibit 1), that would have showed the Courts that the Darlington County Grand Jury did not actually convened on October 20, 2005 as stated on the indictments. Not only does the indictments show these facts but the statute clearly reflect that neither the Darlington County Court of General Sessions or Court of Common Pleas was in session on October 20, 2005. Applicant states that the S.C. Code Ann. §14-9-210 only allow the Grand Jury to

convene to hear evidence to determine if the indictment should be "TRUE BILL" or "NO BILL" during the Court of General Sessions while the Court is in session. And, the S.C. Supreme Court held in State v. Best, 257 S.C. 361, 186 S.E.2d 572 (S.C. 1972) that "the Circuit Court loses jurisdiction with the adjournment of the term." The term was not in session by statute or by Court order on October 20, 2005 which makes or mean that the Grand Jury or the Circuit Court lacked jurisdiction to "TRUE BILL" the Applicants indictments.

In the Courts Order of Dismissal dated December 7, 2010 (See C/A No. 2008-CP-16-1006), the Circuit Court addressed this issue but, however, gave a frivilous reason for denial, at which, Applicants PCR Counsel should have filed a Rule 59(e) motion to asked the Court to correct its reasons for denial and to give the correct law. However, PCR Counsel failed to do such.

Further, in the Courts Final Order dated February 3, 2007 (See C/A No. 2014-CP-16-0202), the Circuit Court stated "the Chief administrative judge for each

circuit schedules terms of the grand jury in each county. The Applicant has failed to sufficiently challenge the legality and sufficiency of the Horry County Grand Jury process. Further, the Applicant has failed to provide any evidence that the Grand Jury did not convene in April 2000 as indicated on his true-billed indictment. Because the Applicant has failed to state with any specificity the evidence supporting his claim, this Court summarily dismisses this allegation with prejudice."

However, Applicant was not indicted or charged in Horry County, his crimes was not committed in the year of 2000, and, during his first PCR, trial counsel testified to the facts that not only did he not noticed this violation but if he did, this violation would have had some different bearing on his representation for the Applicant. The Applicant not only plead guilty upon the advice of counsel but, during his [redacted] PCR, the Applicant's PCR counsel received his trial counsel entire file on this case but did not received copies of the Applicants indictment or arrest warrants as trial

admitted to not having those documents.

Therefore, this shows that both trial counsel and PCR counsel failed to either investigate Applicants case during a critical stage and failed to properly litigate the facts of Applicants case.

Noticing Issue 6, PCR counsel failed to properly preserve Applicants claims by not only failed to contest the Circuit Court denial but also failed to raise every issue that the Applicant told him to raise. As such, PCR counsel failed to filed a Rule 59(e) motion. In the Order of dismissal dated December 7, 2010 (See C/A No. 2008-CP-16-10006), the Circuit Court stated "This Court finds the Applicant failed to meet his burden of proving plea counsel should have appealed the family court Judge's decision to transfer the case to general sessions. Such a transfer order is interlocutory and not immediately appealable. See Sanders v. State, 281 S.C. 53, 56 n. 1, 314 S.E.2d 319, 321 n. 1 (1984)(citing State v. Lockhart, 275 S.C. 160, 267 S.E.2d 720 (1980)). That decision, therefore, must be appealed at the conclusion

of the resulting guilty plea at trial. Plea counsel did file a notice of appeal in this case. At that point, the Applicant could have pursued the transfer issue. Instead, the Applicant chose to voluntarily withdraw his appeal."

Applicant contends that the courts in United States v. Smith, 851 F.2d 706 (4th Cir. 1988) clearly held that "the justifications for allowing the immediately appeal of transfer orders remain the same regardless of whether the appeal is based on an alleged procedural or substantive deficiency." Id. at 708; In re J.L.W., 136 N.C. App. 596, 599, 602, 525 S.E.2d 500, 502, 504 (2000) (transfer order is a "final order" and appealable under State v. T.D.R., 347 N.C. 489, 496, 495 S.E.2d 700, 703 (1998), but a finding of "probable cause, on the State's motion to transfer jurisdiction" is not appealable immediately); United States v. A.W.J., 804 F.2d 492, 492-93 (8th Cir. 1986) ("orders transferring juveniles for adult prosecution," although "reviewable after trial," are also immediately appealable by accused "under the collateral order exception of Cohen v. Beneficial

Industrial Loan Corp., 337 U.S. 541 (1949)").

Therefore, knowing that the federal courts specifically recognize the juvenile transfer order as an order that is immediately appealable under 'Cohen', Applicant contends that his PCR counsel was ineffective for failing to file a Rule 59(e) motion to allow the Circuit Court to correct its errors as mandated by this Rule.

Nothing Issue 7, PCR counsel failed to put forth any adequate evidence showing how Applicants plea counsel failed to investigate the case so that the Applicant could have adequately plead guilty or went to trial.

Applicant contends that he was convicted under the hands of one the hands of all theory which is actually the "felony-murder rule." Applicant did not have the intent to kill, nor in possession of a deadly weapon before, during, or after the commission of the crime. However, he was convicted for murder in the first degree, Armed Robbery, and Criminal Conspiracy for the purpose of planning an Armed Robbery. The elements of Armed Robbery

is undisputedly "robbery with a deadly weapon." The elements of murder is "premeditation and/or the intent to kill." Applicant did not have either one.

Applicant does not dispute the fact that under the hands of one the hands of all that all persons participating is guilty as a principal but, however, plea counsel nor trial judge advised Applicant of the different degrees of principal nor was the Applicant aware of the fact that he could not be equal offenders with the actual perpetrator, the one who had the intent to kill or the one who did the killing.

Applicant states that some courts have ~~avoided~~ avoided the prohibitions of Mullaney v. Wilbur, 421 U.S. 684 (1975) and Sandstrom v. Montana, 442 U.S. 510 (1979) by construing the felony-murder rule as not requiring intent or malice aforethought. These courts, however, generally have failed to consider the constitutional implications of imposing several penalties for a crime without a mens rea element. The Supreme Court

recently has addressed this issue in two closely related line of cases, and these holdings indicate that imposition of severe punishments for nonregulatory crimes without a finding of culpability violates constitutional guarantees of the eighth amendment and the due process clause.

In Enmund v. Florida, 458 U.S. 782, 788-801 (1982), the Supreme Court held that the imposition of the death penalty for a nontriggerman convicted of felony-murder violates the eighth amendment prohibition of cruel and unusual punishment. Justice White, writing for the majority, stressed two factors in holding the punishment unconstitutional: the lack of a legitimate penological justification and the lack of a justifiable retribution interest.

The Court found that the death penalty would not deter "one who does not kill and has no intention or purpose that life will be taken.... If a person does not intend that

life be taken.... the possibility that the death penalty will be imposed for vicarious felony murder will not 'enter into the cold calculus that precedes the decision to act.'" Id. at 799 (quoting, in part from Gregg v. Georgia, 428 U.S. 153, 180 (1976)). Justice White proceeded to analyze the statistical data and agreed with those "competent observers who have concluded that there is no basis in experience for the notion that death so frequently occurs in the course of a felony for which killing is not an essential ingredient that the death penalty should be considered as a justifiable deterrent to the felony itself." The majority thus concluded that no legitimate deterrent effect justified imposing the death penalty for felony murder.

Justice White's second rational was the lack of a retribution justification. He found it unconscionable to treat nontriggermen and triggermen

alike because "it is fundamental that 'causing harm intentionally must be punished more severely than causing the same harm unintentionally.' Enmund, 458 U.S. at 798 (quoting H. Hart, Punishment and Responsibility 182 (1968)). Relying on noncapital cases, Justice White asserted: "American criminal law has long considered a defendant's intention — and therefore his moral guilt — to be critical to 'the degree of his criminal culpability.' Mullaney v. Wilbur .... and the Court has found criminal penalties to be unconstitutionally excessive in the absence of intentional wrongdoing." Enmund, at 800 (quoting Mullaney v. Wilbur, 421 U.S. 684, 698 (1975)). The Court cited Robinson v. California, 370 U.S. 660, 667 (1962) (punishing narcotics addiction violates Eighth Amendment) and Weems v. United States, 217 U.S. 349, 363 (1910) (invalidating statute making public official's false entry in public record a crime absent injury or intent to

injure). Justice White thus concluded that the defendant's punishment was impermissible because it was not "tailored to his personal responsibility and moral guilt." Enmund, 458 U.S. at 801.

Applicants contends that not only was he convicted under the hands of one the hands of vicarious but he was also sentenced to murder, the same statute that the actual triggerman was sentenced to. See S.C. Code Ann. § 16-3-10-20. Applicant states that this is a violation of the eighth amendment as well as never been brought forth to no lower court by any of his appellate or PCR counsels and therefore were not properly brought before or preserve for the record.

Applicant contends that he was sentenced to Life without the Possibility of Parole and this hereby prejudiced me because the State or Respondent did not sentenced me as allowed

by either the S.C. Code Ann. §16-3-20; §16-11-330(A); or the Murder Act of 1965. Applicant states that the Circuit Court did not set a minimum term but yet imposed the maximum term possible. This is totally against the Criminal Justice Act 2003, later amending Section 27 in 2015.

CONCLUSION

Wherefore, having made this motion, Applicant respectfully request that this Honorable Court correct its previous order and grant the Applicant an evidentiary hearing or a new trial based on the above-cited legal authorities.

April 4, 2017

Respectfully Submitted,
#315014
Angelo Hum #315014
L.C.I./FS#278
990 Wisacky Hwy
Bishopville, S.C. 29010

GROUNDS FOR POST CONVICTION RELIEF

1. Trial counsel was ineffective in failing to move to withdraw his guilty plea, when Defendant requested withdrawal and in writing (see Exhibit 7)and orally to counsel and then in court (transcript at p. 35+). *See* Rolen v. State, 384 S.C. 409, 683 S.E.2d 471 (2009)

2. Applicant's indictments were improper and void since they were true billed before the Grand Jury convened. The indictments were true billed October 20, 2005 but the grand jury did not convene until October 24, 2005 – Exhibit 5. See S.C. Code Ann Section 14-7-1750 that provides in order to return a true bill of indictment the grand jury must find that probable cause existed. Also S.C. Code Ann Section 14-7-1140 provides that any irregularity in the grand jury process must be made by a motion to quash the indictment. See Evans v. State, 363 S.C. 495 (2005). Counsel was ineffective for failing to discuss this irregularity with the Defendant and for failing to move to quash.

3. Trial counsel was ineffective for failing to advise the Defendant of the trial/sentencing judge's relationship with the victim. Though the court, made some disclosure concerning its relationship with the victim, counsel failed to follow up with any questions to the judge in this regard or discuss the matter with the applicant. Had the Defendant known the trial judge and victim were from the same town, crossed paths in business, the judge had personal knowledge regarding the victims funeral (See page 14, line 2-4.) and that he could have his plea and sentencing conducted by another judge, he would have objected to the trial judge participating. See Transcript page 8, line 24 – page 9, line 23.

4. Trial counsel failed to object to the admission of videotape containing clips of the victim's birthday party that was allowed in to evidence during the sentencing phase. *See* Rule 401, SCRE

5 Trial counsel was ineffective for failing to object to applicant's illegal detention – See Rule 3, SCRCrimP stated that once a defendant is arrested and detained, an arrest warrant shall be brought forth within 15 days – arrest warrant was not served until 10 months later

6 The Family Court erroneously waived jurisdiction to the Court of General Sessions (04-JU-16-233, 234 and 235) despite the findings in the pre-waiver evaluation report and testimony of Dr. Heffler. Counsel was ineffective for failing to appeal this ruling; for failing to ask Judge Henderson of any connection with the victim and further in failing to ask him to recuse; and failing to adequately present evidence regarding the Defendants ability to rehabilitate and the State's failure to follow its own suggestions. See "Needs and Recommendations" of Vanessa Galvarino Hiers, MSW, LMSW dated 12-7-01 – Exhibit 11.

7. Trial counsel was ineffective for failing to investigate the applicant's case and therefore the Defendant was inadequately prepared to make a decision as to his plea or request for trial.

TRUE CERTIFIED COPY
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

FILED
2017 APR 12 PM 12:00
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

WITNESSES

Jackson

DCSD

ARREST WARRANT #:

H850102

Arrested on July 20, 2005

ACTION OF GRAND JURY

True Bill

Foreman: Sherry H. Edwards
Grand Jury

OCT 20 2005

VERDICT

Foreman: _____
Petit Jury

Date: _____

DOCKET #: 05GS16-1969

THE STATE OF SOUTH CAROLINA

County of Darlington

COURT OF GENERAL SESSIONS

Term: October, 2005

THE STATE

vs.

Angelo Ham

I N D I C T M E N T F O R

0116

MURDER

16-3-10

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/ RMC
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)
) INDICTMENT #05GS16-1969
County of Darlington)

At a Court of General Sessions, convened on October 24, 2005 the Grand Jurors of Darlington County present upon their oath:

COUNT: MURDER
16-3-10

That Angelo Ham in the County of Darlington on or about September 09, 2004, along with co-defendants, feloniously, wilfully and with malice and aforethought, kill one Richard Griggs by means of shooting him with a .22 Caliber Pistol and that the said Richard Griggs did die in Darlington County as a proximate result thereof.

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

SOLICITOR: _____

WITNESSES

Jackson

DCSD

ARREST WARRANT #:

H850101

Arrested on July 20, 2005

ACTION OF GRAND JURY

True Bill

Foreman: Sheryl H. Edwards
Grand Jury

OCT 20 2005

VERDICT

Foreman: _____
Petit Jury

Date: _____

DOCKET #: 05GS16-1970

THE STATE OF SOUTH CAROLINA

County of Darlington

COURT OF GENERAL SESSIONS

Term: October, 2005

THE STATE

vs.

Angelo Ham

I N D I C T M E N T F O R

0139

ARMED ROBBERY

16-11-330 (A)

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/ RMC
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)
) INDICTMENT #05GS16-1970
County of Darlington)

At a Court of General Sessions, convened on October 24, 2005 the Grand Jurors of Darlington County present upon their oath:

COUNT: ARMED ROBBERY
16-11-330 (A)

That Angelo Ham in the County of Darlington on or about September 09, 2004, along with co-defendants, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to wit: a .22 Caliber, did feloniously take from the person in the presence of Richard Griggs, by means of force or intimidation goods or monies of the said Richard Griggs, such goods or monies being describes: Cash Monies.

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

SOLICITOR: _____

WITNESSES

Jackson

DCSD

W Edwards

ARREST WARRANT #:

H850100

Arrested on July 20, 2005

ACTION OF GRAND JURY

True Bill

Foreman: Sherry H. Edwards
Grand Jury

OCT 20 2005

VERDICT

Foreman: _____
Petit Jury

Date: _____

DOCKET #: 05GS16-1971

THE STATE OF SOUTH CAROLINA

County of Darlington

COURT OF GENERAL SESSIONS

Term: October, 2005

THE STATE

vs.

Angelo Ham

I N D I C T M E N T F O R

0049

CONSPIRACY/CRIMINAL CONSPIRACY

(16-17-410)

STATE OF SOUTH CAROLINA)
) INDICTMENT #05GS16-1971
County of Darlington)

At a Court of General Sessions, convened on October 24, 2005 the Grand Jurors of Darlington County present upon their oath:

COUNT: CONSPIRACY/CRIMINAL CONSPIRACY (16-17-410)

That Angelo Ham in the County of Darlington on or about September 09, 2004, violate Section 16-17-410 of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully, willfully, knowingly, wickedly and feloniously unite, combine, conspire, confederate, agree between and among and have tacit understanding with each other and with divers other persons whose names are unknown to the Grand Jurors for the purpose of committing the crime of Armed Robbery.

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

SOLICITOR: _____

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/ RMC
DARLINGTON COUNTY, S.C.

Terms of Circuit and Family Court
October 2005

Circuit Number	10/3/2005	10/10/2005	10/17/2005	10/24/2005	10/31/2005
4	General Sessions Chesterfield Lockemy, James NO CR NEEDED 3 GORDON 4, 5, 6 NO CR NEEDED 7	Common Pleas Non-Jury/PCR Burch, Paul GORDON 10, 11, 12 NO CR NEEDED 13, 14 General Sessions Marlboro Lockemy, James HARRIS	General Sessions Dillon Lockemy, James GORDON	General Sessions Darlington Lockemy, James HARRIS	General Sessions Marlboro Cottingham, Edward MCCALL 31, 1, 2, 3 NO CR NEEDED 4 Common Pleas Darlington Lockemy, James

CERTIFIED TRUE COPY.

By _____

South Carolina Court Administration

State of South Carolina
County of Darlington

In The Court of Common Pleas
For The Fourth Judicial Circuit

Angelo Horn, #315014,
Applicant,

vs.

State of South Carolina,
Respondent.

C/A No.: 2014-CP-16-00202

CERTIFICATE OF SERVICE

I, Angelo Horn, hereby certify that a certified copy of the "Applicant's Motion For Reconsideration Under Rule 59(e), SCRCP," was served this date upon the Respondent by depositing a copy of the same, in the U.S. Mail, ~~postage~~ prepaid, to the following address:

Darlington County Clerk
P.O. Box 1177
Darlington, S.C. 29540

S.C. Attorney General
P.O. Box
Columbia, S.C. 29201

TRUE COPY,
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

FILED
2017 APR 12 PM 12:00
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

April 4, 2017

#315014

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
Angelo Bernard Ham, S.C.D.C. No. 315014, Applicant, v. State of South Carolina, Respondent.	Case No.: 2014-CP-16-00202 **RETURN TO APPLICANT'S MOTION PURSUANT TO RULE 59(e), SCRCP**

In response to "Applicant's Motion for Reconsideration Under Rule 59(e), SCRCP" by Angelo Bernard Ham ("Applicant") dated April 4, 2017, and filed April 12, 2017, Respondent would show this Court:

I.

This matter originally came before the Court by way of an application for post-conviction relief filed March 18, 2014. Responded made its return on or about March 10, 2015, requesting the application be summarily dismissed as untimely and successive.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Court issued a Conditional Order of Dismissal signed March 16, 2016, and filed March 24, 2016, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Applicant timely responded and the Court, after considering Applicant's response, issued a Final Order of Dismissal signed February 3, 2017, and filed February 15, 2017, dismissing this action with prejudice. Attached to this return and

incorporated herein by reference is an Affidavit of Service dated March 9, 2017, serving the above-mentioned Final Order of Dismissal on Applicant.

II.

In his motion, Applicant asks the Court to reconsider its ruling pursuant to Rule 59(e), SCRCP. Applicant's motion for reconsideration should be denied as untimely. "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. Applicant received written notice on Thursday, March 9, 2017; therefore, Applicant had until Monday, March 20, 2017, to serve a motion pursuant to Rule 59(e). Applicant's motion is dated April 4, 2017, was not received by Respondent until April 7, 2017, and was not filed until April 12, 2017—all after the Rule 59(e) deadline. Accordingly, Applicant's motion was not timely served and should be denied.

Furthermore, the Court's Final Order of Dismissal and Conditional Order of Dismissal contain the required findings of fact and conclusions of law necessary to dispense with Applicant's allegations as required by S.C. Code Ann. § 17-27-80 and Rule 52(a), SCRCP; see also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Accordingly, the Court properly ruled on all issues before it, and Applicant's motion should be denied.

{Conclusion and signature on following page}

III.

WHEREFORE, Respondent respectfully requests the Court deny Applicant's motion for reconsideration.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
Assistant Attorney General

By: Johnny E. James Jr.
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

14 April, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2014-CP-16-0202
ANGELO HAM, #315014	)	
	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return to Applicant's Motion Pursuant to Rule 59(e), SCRCP** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Angelo Ham, #315014
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

DATED this 14th day of April, 2017.

Mallory Morris, Legal Assistant
For Respondent

State of South Carolina County of Darlington Angelo Ham, #315014, Applicant, vs. State of South Carolina, Respondent.	In the Court of Common Pleas For the Fourth Judicial Circuit C/A No.: 2014-CP-16-00202 APPLICANT'S REPLY TO RESPONDENT RETURN TO APPLICANTS MOTION FOR RECONSIDERATION PURSUANT TO RULE 59(e), SCRCP

Applicant, Angelo Ham, hereby submit this Reply in response to the Respondents Return to Applicants Motion for Reconsideration Pursuant to Rule 59(e), SCRCP" filed in this Honorable Court on April 14, 2017 or some date thereafter.

Applicant states that in this Motion, the Respondent alleges that "the Applicants Motion for Reconsideration should be denied as untimely." Applicant opposes this statement on the account that

1.) He was served a certified copy of the notice to "file and serve

a Notice of Appeal within 30 days of the service of this Order to secure appellate review" See Final Order of Dismissal dated February 3, 2017.

2.) Nothing in the Final Order of Dismissal or the Affidavit of Personal Service advised me of my statutory right to file a motion to alter or amend the judgment.

On March 20, 2017, which is the same date that the Applicant was supposed to file his motion to alter or amend the judgment, the Applicant filed a Motion for Continuance requesting for a thirty ("30") extension to file this motion. This Motion for Continuance was filed in this Honorable Court on March 20, 2017.

Not hearing nothing in return from either the Respondent or Judge, I filed a Motion for Reconsideration pursuant to Rule 59(e), SCRCP on April 4, 2017 pursuant to mailing services and filed in this Honorable

Court on April 12, 2017.

Furthermore, based on the fact that the Applicant did file a Motion for Continuance in this Honorable Court on March 20, 2017, i.e., the same day deadline as the Motion to alter or amend judgment, the Applicants Motion for Reconsideration should not be denied and should be GRANTED to fix the errors of its Final Order of dismissal.

CONCLUSION

Wherefore, Applicant respectfully requests this Honorable Court to GRANT Applicants Motion for Reconsideration.

April 24, 2017

Respectfully submitted,
#315014
Angelo Hom #315014
L.C.I./F5#278
990 Wisacky Hwy
Bishopville, S.C. 29010

State of South Carolina County of Darlington Angelo Ham, #315014, Applicant, vs. State of South Carolina, Respondent.	In the Court of Common Pleas For the Fourth Judicial Circuit C/A No.: 2014-CP-16-00202 CERTIFICATE OF SERVICE

I, Angelo Ham, hereby declare and certify that a copy of "Applicants Reply to Respondent Return to Applicants Motion For Reconsideration Pursuant to Rule 59(e), SCRCP", in the above-cited matter was this day served on the Respondent by depositing a copy of the same in the U.S. Mail, postage prepaid, to the following address:

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

April 24, 2017

#315014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
Angelo Bernard Ham, S.C.D.C. No. 315014,	)	Case No.: 2014-CP-16-00202
Applicant,	)	
v.	)	**ORDER GRANTING EXTENSION, DENYING APPLICANT'S MOTION PURSUANT TO RULE 59(e), SCRCP**
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by way of Applicant's *pro se* documents titled "Applicant's Notice and Motion for Continuance" and "Applicant's Motion for Reconsideration Under Rule 59(e), SCRCP" by Angelo Bernard Ham ("Applicant") filed March 20, 2017, and April 12, 2017, respectively. The Respondent made its Return to Applicant's motion requesting it be dismissed.

FILED
2017 MAY -8 PM 2:40
SCOTT S. SIMMS
CLERK OF COURT/RCPC
DARLINGTON COUNTY, S.C.

I.

This matter originally came before the Court by way of an application for post-conviction relief filed March 18, 2014. Responded made its return on or about March 10, 2015, requesting the application be summarily dismissed as untimely and successive.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Court issued a Conditional Order of Dismissal signed March 16, 2016, and filed March 24, 2016, provisionally denying and dismissing this action, while giving the Applicant 20 days from the date of service of said Order in which to show why the dismissal should not become final. Applicant timely responded and the Court, after considering Applicant's response, issued a Final Order of Dismissal signed February 3, 2017, and filed

February 15, 2017, dismissing this action with prejudice. Applicant actually received the Final Order on March 9, 2017.

II.

In his motion filed March 20, 2017, Applicant timely requests an additional 30 days to file his Motion for Reconsideration. That request is granted.

The Final Order of Dismissal in this matter was signed by this Court on February 3, 2017. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's response and objections, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Final Order of Dismissal, which was signed and then filed February 15, 2017, shall stand as it was written.

AND IT IS SO ORDERED this 28th day of April, 2017.

Roger E. Henderson
Chief Judge for Administrative Purposes
Fourth Judicial Circuit

Chesterfield, South Carolina

FILED
2017 MAY -8 PM 2:40
SCOTT BASKIN
CLERK OF COURT/R.D.
DARLINGTON COUNTY, S.C.

RECEIVED

NOV 29 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari To Darlington County

Roger C. Henderson, Chief Admin. Judge

C/A No.: 2017-002254

Angelo Horn,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent,

CERTIFICATE OF SERVICE

I, Angelo Horn, hereby certify that an Original copy of the "Appendix", in the above-cited matter was this day served upon the Respondent by depositing a copy of the same in the

U.S. Mail, postage prepaid, to the following address:

S.C. Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211-1549

November 22, 2017 /s/ Scott Y

The Supreme Court of South Carolina

Angelo Bernard Ham, Petitioner,

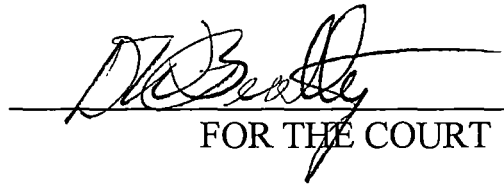
v.

State of South Carolina, Respondent.

Appellate Case No. 2017-002254
Lower Court Case No. 2014-CP-16-00202

ORDER

In the explanation required by Rule 243(c) of South Carolina Appellate Court Rules (SCACR), petitioner has failed to show that there is an arguable basis for asserting that the determination by the lower court was improper. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.



C.J.

FOR THE COURT

Columbia, South Carolina
January 18, 2018

cc:
Johnny Ellis James, Jr., Esquire
Angelo Bernard Ham, 00315014

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

February 05, 2018

The Honorable Scott B. Suggs
1 Public Sq Rm B4
Darlington SC 29532-3213

REMITTITUR

Re: Angelo B. Ham v. State
Lower Court Case No. 2014CP1600202
Appellate Case No. 2017-002254

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Daniel E. Shearouse
BS

CLERK

cc:
Johnny Ellis James, Jr., Esquire
Angelo Bernard Ham, 00315014

STATE OF SOUTH CAROLINA)	THE COURT OF GENERAL SESSIONS
)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON)	
)	
Angelo Ham, SCDC 315014)	Indictment No. 2005-GS-16-1969
)	
Applicant,)	**MOTION FOR RESENTENCING**
vs.)	**PURSUANT TO *AIKEN V. BYARS***
)	
State of South Carolina,)	1-850102
)	
Respondent.)	
)	

Defendant, Angelo Ham, by and through undersigned counsel,[1] hereby moves for a new sentencing proceeding pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), *cert. denied*, ___U.S.___, 135 S.Ct. 2379 (2015).

In *Aiken v. Byars*, the Supreme Court of South Carolina determined that *Miller v. Alabama*, 567 U.S.___, 132 S. Ct. 2455 (2012) (holding that imposing a life without parole sentence on a juvenile offender without considering the hallmark characteristics of juveniles in general and the particular mitigating circumstances in the defendant's individual case in particular violated the Eighth Amendment), applied retroactively in South Carolina. 410 S.C. at 540, 765 S.E. 2d at 575. The Court next opined that applying the constitutional principles articulated in *Miller* to South Carolina's pre-*Miller* sentencing practices, all life without parole sentences imposed on juveniles in this State prior to *Miller* and *Aiken* constituted cruel and unusual punishment. 410 S.C. at 545, 765 S.E. 2d at 577. For that reason, the Court ordered that all juveniles sentenced to life

[1] Undersigned counsel was appointed by the Honorable Roger E. Henderson to represent Mr. Ham on April 25, 2016 (a copy of the appointment order is attached).

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

without parole in South Carolina prior to *Aiken* were "entitled to resentencing to allow the inmates to present evidence specific to their attributes of youth and allow the judge to consider such evidence in the light of its constitutional weight." *Id.* at 544; 765 S.E.2d at 577. Finally, on July 23, 2015, following the United States Supreme Court's denial of the Attorney General's petition for writ of certiorari, the South Carolina Supreme Court entered an order permitting any individual "affected by our holding in *Aiken* [to] file a motion for resentencing within one year of the date of this order in the court of general sessions where he or she was originally sentenced." *Aiken v. Byars*, Appellate Case No. 2012-213286 (July 23, 2015) (copy of order attached).

The defendant in this case is eligible for the benefit of *Aiken v. Byars*, because he was sentenced to life without parole for an offense committed when he was seventeen (17) years old, and this motion is timely filed. Therefore, he is entitled to a new sentencing proceeding conducted in conformity with the state and federal constitutional principles set forth in *Miller* and *Aiken v. Byars*.

For the foregoing reasons, the defendant requests, that after allowing counsel adequate time to conduct an appropriate investigation to gather, marshal and present all evidence relevant to the determination of the appropriate sentence, this Court conduct a new sentencing hearing conducted in conformity with *Aiken v. Byars*.

Respectfully Submitted,

Elizabeth A. Franklin-Best
Blume Norris & Franklin-Best, LLC
900 Elmwood Avenue, Ste. 200

2016 JUN -8 AM 11:21

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

Columbia, South Carolina 29201
(803) 7675-1044
betsy@blumelaw.com

6/6/16.
Columbia, South Carolina.

2016 JUN -8 AM 11:21
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	Court of General Sessions
	)	Fourth Judicial Circuit
COUNTY OF DARLINGTON	)	2022-CP-16-0347

ANGELO HAM,	)	
	)	
Plaintiff,	)	
vs.	)	Transcript of Record
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	
	)	

Chesterfield, SC
March 3, 2022

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. Robert Gilliard, Esquire
Attorney for the Plaintiff

Mr. Kernard Redmond, Esquire
Attorney for the Defendant

Recorded by: Court Monitor/ DCRP

Transcribed by: Lisa Carter, Court Reporter

I N D E X

WITNESSES	PAGE
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EXHIBITS

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P-1	Transcript from April 17, 2006	6
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P-7	Photo	35
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THE COURT: All right, Mr. Redmond, if you would identify this matter please.

MR. REDMOND: Thank you, Your Honor. May it please, the Court? Before you at this time is seated at the defense table is Angelo Ham with this attorney Robert Gilliard from Charleston County Bar. He's before you on 2005-GS-16-1969 that being an indictment murder; 2005-GS-16-1970, 1970 is an indictment for armed robbery.

He pled guilty to these charges on April 17, 2006. The incident -- this incident arises from the murder on September 9, 2004. He was indicted in 2005. A plea took place in April, April 17, 2006 and the sentencing took place on September 14, 2007. The reason being at the time, Anthony Robinson, this was a capital case to co-defendant with Anthony Robinson, one being the defendant here and another co-defendant Dennis Hunter. They were both –- they both pled at that time. They were both sentenced, as you've seen the transcripts that we provided to the court, but just for the record. And, of course, their sentencing was withheld until a disposition on Mr. Robinson. Mr. Robinson did subsequently plead, was sentence. Then we brought these, both of them back including this defendant for sentencing. That took place in front of

Judge Milling on the 14th of September, 2007.

We are here for the purposes of a re-sentencing pursuant to Aiken v. Byers. Our Supreme Court has indicated that because the defendant was a juvenile at the time that he is to be, I guess, sentence in accordance with the, with the, with these terms set forth in Miller v. Alabama, a US Supreme Court case. So with that said, Your Honor, we do have representatives of the family of Mr. Richard Griggs, he was the victim in his case, as well as the community in and around Brydtown in the Hartsville area of Darlington County. I did fail to mention this is, of course, a Darlington County matter and so the defense has made a motion pursuant to Aiken v. Byers to have the sentence reviewed. So at this point I will yield to Mr. Gilliard on his motion.

THE COURT: Mr. Gilliard?

MR. GILLIARD: Yes. May it please, the Court? Your Honor, what I'd like to do is take some testimony from the pastor of the defendant who knew him prior to his sentencing and prior to this issue coming up. I'd also like the Court to hear from the defendant and then I would make some closing remarks.

THE COURT: All right. And you have no problem with jurisdiction being in Chesterfield County,

correct?

MR. GILLIARD: None, Your Honor. We're fine with that.

THE COURT: Okay.

MR. REDMOND: And, judge, just for the record I had marked some exhibits and at this point because we have sent the Court the transcripts of both the plea and the sentencing, I'd like to introduce the State's Exhibits 1 and 2, into the record that being transcripts from April 17, 2006 being State's 1. State's 2 being the transcript from September 14, 2007.

THE COURT: Okay.

(Whereupon, the Transcript from April 17, 2006 has been marked and entered into evidence as State's Exhibit No. 1)

(Whereupon, the Transcript from September 14, 2007 has been marked and entered into evidence as State's Exhibit No. 2)

MR. REDMOND: And, Your Honor, pursuant to that normally, I would give a factual background, but if the court would allow me to defer until our presentation because the court has had the chance to review the transcripts and it does set out what happened.

THE COURT: Yes, sir. Mr. Gilliard, you may proceed?

MR. GILLIARD: Yes, Your Honor. Just as a matter of court economy I'm certain that the Court realizing what the facts were. You reviewed the transcripts before coming here and we don't want to kind of assume piling on by going through the gory details of what happened.

THE COURT: Well, I've read the transcript but sometimes you lose something in the transcript reading it. I'll let him proceed. If he gets too far field or if I feel like he's piling on, I'll stop him.

MR. GILLIARD: Your Honor, I would call Pastor Calvin Daniels to the stand.

THE CLERK: Mr. Daniels, if you'd please place your left hand on the Bible and raise your right. Do you solemnly swear or affirm the testimony about to get the court in this matter shall be the truth, the whole truth, and nothing but the truth so help you God?

MR. DANIELS: I do.

THE CLERK: Please take your seat.

CALVIN DANIELS, first being duly sworn, testified as follows:

Direct Examination by Mr. Gilliard:

Q. Pastor Daniels, would you tell the Court a little bit about your background, where you pastor, and where you grew up, and how you know if the defendant?

A. Yes. I am the 37 year tenure pastor of the New Hopewell Missionary Baptist Church in Darlington, South Carolina. I grew up in Pamplico, South Carolina. And we have been pastoring, again, for 38, 38 years. And I know the defendant from our youth ministry when he was a youth at New Hopewell.

Q. And tell the Court what your experiences with Angelo and your youth ministry?

A. Our experience was that Angelo was a troubled child. And what we do at the church is try to find troubled children youth in the community and to help them in the developmental of life skills.

Q. Well, kind of explained to us what you mean by troubled child? That mean different things to different people.

A. Well, we had what is called an A-Team in the community of New Hopewell. The elementary school which is Rosenwald Elementary in Society Hill, our church adopted it. And the children there, we again, the A-Team was our ministry that if the children in school had a problem they would go into the school

and would have have the relationship with the school before they were expelled. The ministry would go in to minister, to tutor the children. So that's what I mean when I say troubled youth if they had problems in school and there were some problems in the community with death of lawnmowers and stuff. Sso that's what I mean when I say a troubled child.

Q. And how did Angelo come to your program?

A. Again, we reached out into the community through the school and parents and community, individuals and Angelo came and was attached to the ministry through that effort. And in that effort, a couple within the church, in agreement with Angelo's mother, Angelo was actually brought into this couple's home and we saw a marked difference. And ---

Q. All right. Now, he was placed in the home of some of the parishioners, is that correct?

A. That's correct. They voluntarily ---

Q. Can you tell the Court about how old he was at that time, if you remember?

A. I can’t definitively say how old, but he was probably a young teenager I would say at that point.

Q. Okay. Tell us what happened when he came to live with this, I’d say foster family at that time?

A. Again, there was a marked difference in attitude.

The grades in school improved. He joined the choir at the church. So we were having a positive effect as we believe we were. And for some reason he was placed, well, taken out of the home by the parent. And from that time we kind of lost contact.

Q. All right. Now, so your testimony to the Court is that he was troubled. You were able to get him and you have some positive influences, but then he was put back in the same situation, is that correct?

A. That's correct.

Q. Okay. And do you know what happened to him when he got back to his prior situation?

A. Just, and I say this just from a distance I know because as a result we, we now, we're now here. So we feel that by going back into the environment was detrimental.

Q. Do you have any opinions about any negative influences in the family or in the community on Angelo?

MR. REDMOND: Your Honor ---

A. Not definitively. I don’t

MR. REDMOND: Your Honor, I would not object to much as –- I need to know more of a foundation whether it’s based on his own knowledge or whether it's based on hearsay, something along those lines.

So if Mr. Gilliard can rephrase that question so that the foundation laid more clearly.

THE COURT: I agree, Mr. Redmond. Give some more foundation Mr. Gilliard.

Q. Okay. Pastor Daniels, you had an opportunity to observe Angelo in the community, is that correct?

A. Correct.

Q. And you identified him as a, as you described it, a troubled youth, is that right?

A. Correct.

Q. And that was based upon behavior that you observed yourself, is that correct?

A. Correct.

Q. And you had the opportunity to see how he reacted when you took him out of that situation and put him with foster people in the church, is that right?

A. Correct.

Q. So you had the opportunity to observe his prior situation with his family and what happened when he came to you, is that right?

A. Correct.

Q. Okay. And so you have an idea of what kind of influences he had in the community prior to coming to his you, is that right?

A. Correct.

Q. Okay. Would you kind of tell the Court what your opinion is about the influences on him in the community prior to him coming to you and then after him living?

A. Sure. Again, our effort as the church is to help young people. We –- young people develop life skills and that's life skills includes attitude, character, personality. And when we observe what we term “a problem” and certainly maybe a more appropriate response would be “at risk” children, then that's where we put forth our effort from the church. We have a very strong youth ministry so, yes, we are observing. Some knowledge comes from observation. So we observe the difference between a “at risk” child in the community because, yes, we do have some insight as to what the varying degree of structure is in the community in which we pastor. So then based upon that observation I would feel comfortable saying that our effort from the church was positive and had a positive impact, influence on, in this particular case, the defendant. Observing that positiveness during that duration that this family took me in and observing that attitude behavior once placed back into the original environment there is a marked difference.

Q. Okay.

MR. GILLIARD: Now, Your Honor, I would not have any other questions for Pastor Daniels at this point.

THE COURT: Thank you, Mr. Gilliard. Mr. Redmond?

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

Cross-Examination by Mr. Redmond:

Q. How long would you say that, and if I missed it I apologize, how long would you say that first part is, how long was he in your program, in the “at risk” program that the church operated?

A. And again, I would have guess, two, three years

Q. Okay. And about how long was he in the, in the program for – not program. How long was he in the, I guess, in the parishioners home that he'd gone into before he was taken out by his parents?

A. And again, I can't definitively say I would guess and it would be a guess, probably six to eight months, but it was long enough that the duration that he was there had a positive impact in the structured environment.

Q. And do you recall, and this is important for some other reasons that we’ll get into later, but do you remember what years this was or what year?

A. I can't definitively say. No.

Q. Okay. So in other words, can you tell us whether it was before or after he had gone into the Department of Juvenile Justice? Were you aware of him having any contact with the Department of Juvenile Justice?
A. I was not.
Q. Okay.
A. Not prior to.
Q. I'm sorry?
A. Not prior to.
Q. Okay. So, in essence, would it be fair to say that you're not sure whether or not your interaction with him would have occurred before or after his contact with Department of Juvenile Justice?
A. I'm sorry, say that ---
Q. In other words, can you say for sure whether or not your, him being involved in your program happened before or after any contact he had with the Department of Juvenile Justice?
A. To my knowledge there was no contact with Juvenile Justice prior to our inaction.
Q. Thank you.
MR. REDMOND: That's be all the questions I have.
THE COURT: Anything else, Mr. Gilliard?
MR. GILLIARD: No, Your Honor.

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

(Whereupon, the witness steps down)

MR. GILLIARD: Your Honor, I would ask the Court to hear a statement from the defendant at this point.

THE COURT: All right, sir.

MR. GILLIARD: Does he need to come up and be sworn or could he just ---

THE COURT: Yes, sir. Let's –- let's let it be a sworn statement.

MR. GILLIARD: Okay.

THE COURT: And he'll be subject to cross-examination.

MR. GILLIARD: Absolutely.

THE CLERK: Mr. Ham, if'd you please place your –- yes, raise your right hand. Do you solemnly swear or affirm that the statement that you're about to give the court shall be the truth, the whole truth, and nothing but the truth so help you God?

MR. HAM: Yes, ma'am.

THE CLERK: Thank you. Please take your seat.

ANGELO HAM, first being duly sworn, testified as follows:

Direct Examination by Mr. Gilliard:

Q. Good morning, Mr. Ham, how are you doing?

A. I'm doing okay. And yourself?
Q. Good. Just a couple preliminary questions prior to you giving your statement. Would you tell the court how old you were when the incidences that we're here today took place?
A. I was 15.
Q. Fifteen?
A. Yes, sir. Fifteen-years-old.
Q. And you have some co-defendants, is that correct?
A. Yes, sir.
Q. And what were the ages of the co-defendants?
A. I want to say 19 and 17.
Q. Okay. So you were the youngest in the group, is that correct?
A. Yes, sir.
Q. Now, had you been involved in any kind of felonies prior to this incident?
A. Like I committed crimes, but it was none like this right here. No, sir.
Q. And you had then, at some point, been to Juvenile Justice System, is that right??
A. Yes, sir.
Q. Okay. Now, tell the Court how far you had gone in school?
A. At, at that time or....

Q. Yes, at that time.
A. I had a third grade reading level.
Q. And had you gone as far as high school or had you dropped out?
A. No, I went to high school.
Q. What was the last grade you completed?
A. I was currently in 10th grade.
Q. Okay. And you say you were about 15-years-old, is that correct?
A. Yes, sir.
Q. Now, have you had an opportunity to prepare a statement to give to the Court regarding your situation at that time?
A. Yes, sir.
Q. All right. Would you now be able to give that statement to the Court?
A. Yes, sir. Thank you for giving me this opportunity to express the remorse I have towards the victim and his family. I sincerely apologize for the hurt that I've caused. Early on in life I chosen a path that was corrupt and inhumane that caused me to give up hope, lose my faith, and transform into a person that I didn't want to be or live in. From cursing my mother to stealing people's property, from doing drugs to sell it. I’ve been down that same road

that my mother once traveled. Throughout my childhood, she would always tell me to don't do this, and don't do that. But the same things that she would tell me not to do she would do, not behind my back but in my face. Nobody here today can tell you things that I went through growing up or to my mental state at that time better than I can. From seeing it being with my mother when she went to the clubs in the neighborhood at night to stabbing her boyfriend that I once that was my real father to actually being in the same room and house when she did her drugs. These are just a few things that I went through growing up with her. But for me not understanding her real message I lost out on what she was really telling me. Her message was simple and precise, don't do the same things that I'm doing because it will only hurt you later. Your life is worth more than that. And that's exactly what happened. I did what my mother did, chose negative friends.

So over the years I've learned I wasn't fully comprehended what was the best thing to do and what was the worst thing and as a result it took me 18 and a half years to get back in front of this court which was the same court that waive me to be treated as an adult because family court didn't have the adequate

nor appropriate programs that could have a rehabilitation and transform me into being a productive and upstanding person in this community. So giving me this right to allocate only opens the door for me to express my gratitude not only to this Court but also to every family member that's in this court today hearing these words. I apologize for what happened that night. If I could take back the hands of time, I would. Believe me I would! But my forgiveness is only given to me when I asked for and when I receive it. So I ask for your forgiveness in this matter not only because my mind at that time wasn't fully developed, but I honestly did not know that he was going to kill the victim. I did not know that the victim had a gun. I did not have a gun. Things that night happened so fast and I honestly cannot sit here and tell you every detail about what happened. But what I can say is that I did not intend to hurt or kill anybody nor would I have pled guilty to murder without me knowing that I had to have that intent. I would have pled guilty to a manslaughter because this murder was only done through my negligent actions over assisting someone else in a robbery. Again, I did not kill the victim. Ultimately, that happened and I'm sorry, but I did

not kill anyone nor would I have participated in the crime had I known that a murder was going to happen. My thoughts at that time was to go with them specifically just to rob. I never did nothing like this before. Every crime that I've ever committed as a juvenile was never violent nor against anyone, but always against property. I was never a violent person nor am I violent now. I never possessed a weapon during this incident, before, during nor after it. But I thank this Court for starting the process in my life that showed and transformed me into knowing that in order to be productive in this community I have to put myself around productive people. People who are there to encourage me and help me when the help is needed. And most important, me asking and seeking for that help.

For the last 18 and a half years, I have successfully completed anger management, conflict resolution, social communication and contract, jumpstart and [indiscernible].... For the last 18 months I have stood as the inmate representative for the dorm I’m in where we have monthly meetings with the institution administrator staff advocating for the needs of the inmate population to improve, to include programs ---

MR. REDMOND: Your Honor, I'm gonna and this is —- and I've talked to Mr. Gilliard about this, if he's gone go down this road, I do have a document from the Department of Corrections. Now, the way I understand this is based on what, how things stood at the time of the sentence. And so I'm prepared -- that's what I'm prepared to do. But I also warn Mr. Gilliard at if we go down that rabbit hole, I do have a list of infractions, most of which started within the last several years, that I would also deem to introduce. So I'm, basically -- again, because there's not much guidance on how to conduct these hearings, I'm just wanting to make things real clear. My understanding is that we're going back, in essence, to 2007 as things stood at that time. But again, out of an abundance of caution, I did pull his disciplinary record from SCDC, was not gonna get into it and explained that to Mr. Gilliard so if he needs a second to consult with his client to see whether they want to go further down that rabbit hole, I would ask that they be given that opportunity.

MR. GILLIARD: Well, Your Honor, I don't know that we need any time to do that. We, of course, are in agreement. This is a re-sentencing hearing and to the extent that anything is mentioned as to

accomplishments once he's been incarcerated, we'd asked the Court to just strike those.

THE COURT: Well, I agree that, you know, we're here to determine how things were back in 2007, at the time of sentencing. However, he has opened the door some what already with regards to his accomplishments since he’s been at SCDC. You know, all that goes to rehabilitation which is one of the factors I have to consider in re-sentencing. If he wants to go down that whole as Mr. Redmond said, I’ll certainly let Mr. Redmond counter with anything that he might have. So if you need to consult with your client, I give you the opportunity.

MR. GILLIARD: Well ---

THE COURT: But he’s making a statement and he continues ---

MR. GILLIARD: Your Honor, we would just ---

THE COURT: ——- if he continues with his statement, we will see where we go with it.

MR. GILLIARD: We would just strike anything that continues to rehabilitation and as far as under the case law, we would disagree that you need to consider rehabilitation since the sentencing. We ---

THE COURT: Well, I’m looking right at the case Aiken v. Byers, one of the factors “the possibility

of rehabilitation."

MR. GILLIARD: Okay.

THE COURT: Factor number five.

MR. GILLIARD: I agree about the possibility, but we don't want to get into the actual what has happened since his relieve, since he was sentenced. So there's a distinct line there when we talk about the possibility then that would come up with his age and maturity and the fact that he would have an opportunity to be rehabilitated his behavior rather than he has because of what he has accomplished since he was ---

THE COURT: I understand what you're saying, but we can't ignore the fact that time has taken place and tbat he's had opportunities for rehabilitation whether he's, you know, accomplished that or not, you know, we'll have to see or we need to stay away from it. That's up to you, excuse me, up to you.

MR. GILLIARD: We're gonna stay away from there.

THE COURT: Okay. You better make sure your client doesn't read anything else about that then.

MR. GILLIARD: No that -- we're gonna stay away from that.

Q. To the extent, Mr. Ham, that you have anything regarding certificates and Bible study and that kind

of stuff since you were -- we'd just ask that you strike that from your statement and if you see it on there, complete it at that. I would only ask you one or two more questions and then let the prosecutor go through this cross-examination.

A. The last thing I would like to say is that I'm just asking this Court and the victim family for a second chance. A second chance to live my life on the outside of prison. A second chance to show that I am not irreparable corruption.

THE COURT: Is that it?

MR. HAM: Yes, sir.

Q. Now, Mr. Ham, I believe that you indicated that you were the youngest in the group of three actually convicted of committing this crime, is that correct?

A. Yes, sir.

Q. And in community did you generally hang out with people who were older than you?

A. Always.

Q. Always?

A. Yes, sir.

Q. And they did not always provide positive influence for you, is that correct?

A. Yes, sir.

Q. And so you hung out with a lot older people who

have negative influences upon you, is that right?

A. Yes, sir.

MR. GILLIARD: Your Honor, I would not have any other questions for Mr. Ham.

THE COURT: Mr. Redmond?

MR. REDMOND: I beg the Court’s indulgence. Your Honor, May it please, the Court?

THE COURT: Yes, sir.

MR. REDMOND: I actually won’t be difficult –- I won’t be long, excuse me, since we don’t have, we’ll have our chance to address certain other issues. But I do want to ask him a couple of things based on his testimony.

Cross-Examination by Mr. Redmond:

Q. Now, if I heard you right and could you –- and if you need to refer to notes please feel free. But if I've heard right, you say something about family court not having the capability to provide certain services or something?

A. Yes, sir.

Q. Could you repeat that part? I want to make sure I heard it right.

A. I say, “and as a result it took me 18 and a half years to get back in front of this Court which was the same court that waived me to be treated as an

adult because the family court didn't have the adequate nor appropriate programs that could have rehabilitate and transform me into being a productive and upstanding person in this community."

Q. So you've had a chance to review the waiver evaluation that was done back at that time?

A. Yes, sir.

MR. REDMOND: I beg the Court's indulgence. I've already shown Mr., and I'll get into this later, but I've shown Mr. Gilliard State's 10, that being the waiver evaluation. Since that's been referenced, I would move that into evidence at this time.

THE COURT: Received without objection.

(Whereupon, the Waiver Evaluation has been marked and entered into evidence as State's Exhibit No. 10)

Q. Now, and like I said I'll address that later in the State's presentation, but going back to the things that you had said in your testimony, you've said you would've played to manslaughter as opposed to murder. First, I'm gone ask you and this is a bit unusual but this whole situation is, why would you have played to manslaughter versus murder? I'm gonna curious as to your rationale on that?

A. Because I didn't actually have the intent to hurt or kill anyone. And ---

Q. But didn’t you –- oh, go ahead, I’m sorry. I interrupted you. Go ahead.
A. From my understanding, murder was a, is a premeditated offense.
Q. And well –- and again, I’m asking you the question, but would it surprise you that murder in South Carolina does not require premeditation? It's only with malice aforethought which is different than premeditation.
A. Okay.
Q. So would it surprise you to know that that's actually what murder is in South Carolina?
A. Well, I ---
Q. Would it also surprise you to know -- and I know you've heard -- you’ve been in 18 years, I guess, you said ---
A. Mmm, hmm.
Q. You know about the accomplice liability or as we call it “the hand of one, hand of all?”
A. Yes, sir.
Q. Did you not just admit that you can plan with another two individuals to go and rob this Mr. Griggs?
A. Yes, sir.
Q. And so it stands the reason that under the hand

of one, hand of all, accomplice liability, that if one person does something while y'all are committing the robbery, you're all response?

A. Yes, sir. We're all responsible for a crime. Yes, sir. Q. Exactly. For what ultimately happened.

A. Okay.

Q. And in this situation, did it not result in the death of Richard Griggs ---

A. Yes, sir.

Q. And ---

A. Through negligent actions ---

Q. —-- in his work ---

A. Yes, sir.

Q. Okay. And part of that action was the robbery?

A. Yes, sir.

Q. Now, let's talk about the robbery a little bit more 'cause you admit you're involved. But you didn't, as you were talking to the family, I guess, and talking to the Court, you didn't tell this Court and acknowledge the fact that you knew Mr. Griggs, didn't you?

A. Yes, sir, I did.

Q. And, in fact, part of the reason that he opened the door because isn't it also true that he had closed the store?

A. No, sir. The store was not closed that night.
Q. You entered the store ---
A. He was coming -- he was coming to your door as we was coming up to the door.
Q. Okay. But the store was in the process of closing?
A. Well ---
Q. You saw –- you seen into evidence –- you've seen the statement ---
A. I'm assume he was in the process of closing ---
MR. GILLIARD: Your Honor, I have to object. We don't wanna retry the case. He's already pled and been sentenced, I don't know that it's germane something in a re-sentencing hearing to go back to a dispute about the facts of what happened that night.
MR. REDMOND: Your Honor, I would argue that it goes directly to the issue of whether he shown remorse because at this point, it is obvious in the State's opinion that there's some minimization going on. I think that is absolutely relevant on the issue of whether or not he's, in fact, showing remorse. And I'm not gonna belabor this point, but I do would ask the court to be allowed to at least finish this part of my discussion and then I'll move on.
THE COURT: All right. I'mma over the objection.

This is a re-sentencing. If this were the initial sentencing hearing I'd be hearing these things. It's a lot more effective for me to hear something rather than having to read it off a transcript. So I'mma let you go into this, Mr. Redmond.

MR. REDMOND: Thank you, Your Honor.

Q. So again, back on the issue of the store closing, can we agree that he was in the process of closing the store?

A. Yes, sir.

Q. Okay. With that being said, he knew you. You came up to the door and isn't it true, he allowed y'all to come in?

A. Well, I wasn't the only one ---

Q. I didn't say that ---

A. --- that participated that he knew ---

Q. I did not say you were the only one. Please listen to my question. I said didn't you know him and as a result of him knowing you, you —- let me back up, you been to that store several times?

A. Yes, sir.

Q. He knew you, so as a result doesn't it stand the reason that he –- doesn't it stand the reason that because he knew you because I think it was you and Anthony Robinson that went into the store, right?

A. Yes, sir.
Q. Dennis Hunter stayed outside?
A. Yes, sir.
Q. So doesn't it stand the reason that part of the reason that he allowed y'all in the store because he knew you?
A. Yes, sir.
Q. Is all I'm asking.
A. Well, I can't say that but I'mma assume that, yes, sir.
Q. Now, speaking of him knowing you, and again that's – and as I indicated you, been in that store several times and despite that you've decided to participate in this robbery, right?
A. Yes, sir.
Q. Okay. And speaking of the –- let me show you what's been marked as State's 3, I'll just go in order, State's 3, do you recognize State's Exhibit 3? And I have shown these to Mr. Gilliard. And I ask you, isn't State's 3 a picture of the inside of Griggs Grocery?
A. Yes, sir. It look like it.
THE COURT: Speak up for me.
A. Yes, sir. It do look like it.
MR. REDMOND: I would move to introduce as State's

3?

MR. GILLIARD: Your Honor, again, I do have to object. We are at a re-sentencing hearing, all of this is gonna re-trying the case. He's already pled and been found guilty and sentenced and I don't know again if it’s germane to go back through what’s a, I consider a highly prejudicial pictures showing the victim, the store and that kind of stuff.

THE COURT: Well, I understand it's a re-sentencing but it's a new sentencing for me quite frankly since I’m the re-sentencing judge. I'm sure these were presented at the initial sentencing, were they not?

MR. REDMOND: Yeah –- well, Your Honor, I can’t –- I don’t ---

MR. HAM: No, sir.

MR. REDMOND: ——- I don’t remember if they were presented at the original sentencing.

MR. HAM: No, sir.

MR. REDMOND: But they were available at the original ---

THE COURT: Don’t say anything while we’re talking.

MR. REDMOND: They were available at original sentencing and this is a re-sentencing. In essence,

we are going back in time in essence to 2007. These pictures were actually in –- well, didn't go to trial, they were in evidence. But they were in everyone's possession at that time. And so I think most of the hearing we did verbally, at that time. However, now that we're engaged in re-sentencing I think these are germane to what took place because part of it, one of the factors is the circumstances surrounding the offense, gory as that may be is the fact of the matter is that, yeah, there is some gory in this situation. But it is absolutely germane to the nature of the offense and that is one of the factors outlined in Miller v. Alabama.

THE COURT: As I said, I'm the sentencing judge at this point in time and I need to consider everything, you know, that's relevant and I find that to be relevant so I'll overruled the objection and I'll admit that photograph into evidence.

MR. REDMOND: Thank you, Your Honor. That's State's 3 in evidence.

(Whereupon, the Photo has been marked and entered into evidence as State's Exhibit No. 3)

Q. And I'mma show you State's 4 and does that look like the cash register?

A. Yes, sir. Yes, sir.

Q. Okay. And again, just to be clear for the record, does that look like a cash register?
A. Yes, sir.
Q. Okay.
MR. REDMOND: Judge, the State's 4 we would move into evidence at this time.
THE COURT: I assume the same objection?
MR. GILLIARD: Yes, sir.
THE COURT: I'll overrule and submit it into evidence.
(Whereupon, the Photo has been marked and entered into evidence as State's Exhibit No. 4)
Q. State's 5, and I'll ask you before you look at State's 5, were you present –- isn't it true that you were, in fact, present in the store at the time of the shooting?
A. Yes, sir.
Q. Okay. And I refer you now to State's Exhibit 5, is that a picture representing how Mr. Griggs was positioned after he was shot?
A. Yes, sir.
MR. REDMOND: It'd be State's Exhibit 5.
THE COURT: Admitted into evidence.
(Whereupon, the Photo has been marked and entered into evidence as State's Exhibit No. 5)

Q. And I'mma show you State's 6 and 7 at the same time. And again, you testified that you were –- and I apologize, Your Honor, permission to approach the witness?

THE COURT: Yes, sir.

MR. REDMOND: I forgot to ask.

THE COURT: Certainly, you have permission.

Q. State's 6 and 7, do you recognize those pictures?

A. Yes, sir.

Q. And again, you testified that you were in the store at the time that Mr. Griggs were shot. Are both of those pictures, pictures of Mr. Griggs as you saw him lying in that store?

A. Yes, sir.

MR. REDMOND: Your Honor, I would move State's 6 and 7 into evidence at this time.

THE COURT: Any objection overruled. Received into evidence.

(Whereupon, the Photo has been marked and entered into evidence as State's Exhibit No. 6)

(Whereupon, the Photo has been marked and entered into evidence as State's Exhibit No. 7)

Q. Now, finally and again, I'm gone deal with dthe rest of during the State's presentation, but you also testified that you had, had a juvenile record?

A. Yes, sir.
Q. And, in fact, I think in, just to be clear, in 2001 isn't it true that in –- I think it was in August of 2001, August 16th you pled guilty to a burglary, I yes it was reduced to a burglary second?
A. I don’t really recall the charges.
Q. But does that sound familiar to you?
A. Like if you had more details as far as like what the crime was then, yes. But I honestly quite frankly ---

MR. GILLIARD: Your Honor, we would stipulate to the defendant’s ---

A. ––- don't remember all the charges that I've had ---

THE COURT: When a lawyer makes an objection you need to stop.

MR. HAM: Okay.

THE COURT: Let your lawyer speak. Yes, sir?

MR. GILLIARD: Your Honor, we would stipulate to the defendant’s juvenile record.

MR. REDMOND: And Your Honor ---

MR. GILLIARD: He’s not gonna remember from 2001 what the circumstances were other than where ---

MR. REDMOND: And with that, and I have shown this to Mr. Gilliard, I do have his juvenile record from

DJJ as State's Exhibit Number 9, I would move into evidence at this time.

THE COURT: All right. Received into evidence.

(Whereupon, the Mr. Ham's DJJ Juvenile Record has been marked and entered into evidence as State's Exhibit No. 9)

Q. And so in 2001, according to State's Exhibit 9, a conviction for burglary. Let's move to 2002, you had mentioned about damaging property. And, in fact, in April of 2002, do recall getting a indeterminate sentence on damaging a vehicle and malicious injury to a, malicious injury to property?

A. Yes, sir.

Q. Okay. And you got an indeterminate sentence on that which means you were sent to the Department of Juvenile Justice?

A. Yes, sir.

Q. Okay. So you went to DJJ and it looks like, isn't it true you were paroled around July of 2004?

A. Yes, sir.

Q. Now, let me stop there for just a minute, so July 2004 –- and Your Honor I forgot to publish this to the court, his juvenile record, State's 9. So in July of 2004, you were paroled from the Department of Juvenile Justice. This incident happened on

September 9, 2004, isn't that right?
A. Yes, sir.
Q. So to be clear, less than two months after you got out on parole from the Department of Juvenile Justice, you were involved in this armed, this armed robbery/murder?
A. Yes, sir. And again, the people that I was hanging with, you know, I'm not gonna blame everything on them because I had a mind of my own, but it plays a big part because the people that I'm hanging around is what I'm looking at as friends, who I'm looking at as my associates, but the whole time they really wasn't, you know. But I take, I take ownership of the things that I've done. You know, I'm just here today just trying to, you know, put, put a lot of behind me and speak the truth.
Q. You say you take ownership for things you've done, but you've make clear twice to this court that you think you should have plan to manslaughter as opposed to murder, did I hear something wrong?
A. I'm saying you heard that clearly right.
Q. But yet, you're saying you accept the responsibility?
A. I did.
MR. REDMOND: That'd be all the questions I have.

THE COURT: Anything else, Mr. Gilliard?

MR. GILLIARD: Nothing else from this defendant, Your Honor.

THE COURT: You can step down, Mr. Ham.

MR. GILLIARD: All right. Your Honor, by way of closing argument I would mention to the court ---

THE COURT: I was gonna allow you to make a closing after the ---

MR. GILLIARD: Okay.

THE COURT: --- the State makes it presentation.

MR. GILLIARD: All right.

THE COURT: Does anybody need a break?

MR. REDMOND: Your Honor, we're good.

THE COURT: Okay. Proceed.

MR. REDMOND: Thank you, Your Honor. I think the only exhibit that has not been introduced that I had that was marked was State's 8 that being the autopsy report. I think we've agreed that the autopsy report, obviously, is relevant and pertinent so I would move that into evidence at this time.

(Whereupon, the Autopsy Report has been marked and entered into evidence as State's Exhibit No. 8)

THE COURT: When ever you're ready?

MR. REDMOND: Yes, sir. Your Honor, May it please, the Court? At this time, I would like to, before I

call Rick and Teresa up to the stand, I would just like to address a few matters with the court, if the court would allow. I want to refer to the transcript first. I introduced to transcripts. I'm gonna specifically refer to State's Exhibit Number 2 as it relates to what is in there, as it relates to what the defendant was saying at that time. And in that transcript the defendant actually tried, in essence, was trying withdrawal his plea. And it was obvious and the court noted that the defendant had expressed no remorse and was actually trying to minimize his responsibility. I think they were portions and I'm starting, I think it really starts on Page 35, this whole exchange regarding him wanting to get rid of his attorney, Mr. Anderson at the time and wanting not to go forward with the sentencing. Then he got into a discussion about how, you know, they were all under the influence at the time and that, you know, there was an issue about whether anybody killed anybody and then....so it went on and on where it was obvious that he was one, trying to minimize and actually trying to backtrack. I think the court was absolutely correct and taking that into consideration and in its assessment that defendant showed no remorse at that particular time. Interestingly, we

heard tidbits of that today even though my expectation was, okay, 18 years later, if he were to go down that rabbit hole it would be to, basically, fall on the sword. Well, that didn't happen. Because we had the exchange about the whole manslaughter issue, but I'll get into that in my closing. But as it relates to the, um, as it relates to the transcript I would just ask the court and I want to highlight Pages 35 through 40 and specifically, on Page 38, where I indicate he starts to try to deny responsibility and on Pages 39 and 40, the court indicated that he showed no remorse. That is important because and I would kind of tie that into the waiver evaluation on Page, I believe that's Page 10 of the waiver evaluation, the thing that’s noted as it relates to - and I think I may have given my only copy of that –- oh, no, I don’t. Beg the court’s indulgence. On Page 10 of the waiver evaluation it notes reasons why a person may not be a good candidate for rehabilitation. And, of course, we've introduced his, his criminal history. Number (2) under negative factors: Angelo has a long history of infractions and persons with such patterns, especially if escalated, which we could argue, we could agree that there had been an escalation, are

often difficult to rehabilitate. He –- it reminds me of the old broken mirrors philosophy as it relates to the escalation and here, unfortunately, we have an example of that. Starting out in property crime then moving up to victim/violent crimes. So that's actually one of the negative factors mentioned in the waiver evaluation from back in 2004. Then number (4) it says, “Angelo maintain that he was innocent of the murder charge because he did not have a role in planning it and was forced to participate,” so he said. I added that last part in there. “Persons who are guilty, but who do not admit their wrong doing are less likely to rehabilitate very well.” And we saw some of that today. And again, I'll address some of that in my closing. But again, those are issues that fall directly in the Aiker v. Byers realm.

Now, the pictures are already in evidence and the pictures are self-explanatory as it relates to the nature of what transpired and how violent an incident this was. And that leads me to the –- oh well, actually before I get into the autopsy report, I want to talk about his juvenile record which we've heard. He's testified to it and I’ve talked about it. But again, when you put that with the transcript and you put that with the waiver evaluation and again, the

escalation - and that's not my word that's actually in the waiver evaluation about the escalation - clearly we have that here. But the last thing I'll say before I then yield to, to his son and daughter are the autopsy report. The autopsy report, itself, is pretty compelling in my opinion. On Page 2, if the court what indulge me. In shuffling all of these papers, Your Honor, I've managed to lose –- here we go. On Page 2 of the autopsy report where it says comment and it gives all of the different bullet wounds, but it says, "that rather than 10 bullet wounds they were probably –- rather than 10 shots they will probably seven because the perforated gunshot wounds six, seven, and eight. Six being the, a wound from the right arm; seven being a wound from the left arm; and, eight being a wound from the left hand. So we've got an arm and both, both arms are involved. Both of them perforated wounds e.i. through and through wounds. Both of those wounds entered and exited the arms and ended up in Mr. Griggs's head." So when you talk about the circumstances and what that tells me is that at the time he was shot, he was doing this. He was trying to shield himself as he was being shot several times as we say, at least. So we know there were at least seven shots that were fired

into Mr. Griggs. That again, goes into the circumstances for the court to consider given the nature of this offense. I will also tell the court and it’s in the transcript the fact that the State, that this was actually planned because - and it’s in the transcript - that, that the defendants were aware of the fact that he was armed. Now, of course, Mr. Ham disputes that today, but in the record at that time that was part of the reason why he was shot in the fashion that he was so he would not be able to get to his firearm that was under the counter ---

MR. GILLIARD: Your Honor, I’m gonna object to that characterization. You've got the transcript there and we need to consider and keep in mind that Mr. Ham was convicted under all theory of accomplice liability. And so while I understand that it was a gruesome shooting, we all know and I think the prosecutor should remember that Mr. Ham was not the trigger man, all right. And you talk about planning, there's nothing in the transcript that I’ve read that indicates that they plan to go there and murder this particular victim. Certainly, plan the robbery. The murder came up specifically by the co-defendant. My client is liable by the accomplice liability, not that he went in there and orchestrated the shooting

of someone seven or eight times. That just did not happen.

THE COURT: All right. I'm well aware of that, I mean, the accomplice liability is the reason he was sentence, charged with murder and sentenced to murder. But, you know, I've read it again, the transcript, but, you know, I still want to hear about it.

MR. REDMOND: Yes, sir, Your Honor. And the fact is –- and one of the issues and that kind of segues to something else and again as you heard today. At that time, there was an issue of cooperation that was also taken into account and that was also addressed in the, in the transcript. In fact, the defendant's actions and comments tend to corroborate the fact that the State had dire concerns that the defendant would not cooperate. The co-defendant, Dennis hunter, did cooperate and was willing to cooperate and because of that, that led to Mr. Robinson, ultimately, deciding to plead guilty. And that is something that I highlighted to the court. I think the comments that the defendant made at that time in the transcripts specifically pages, between Pages 35 and 40 highlight the fact that he was not willing to cooperate because of the things that he said at that

time and so, so I did want to address that. But again, the last thing I wanted to just, the nature of the offense and the circumstances surrounding the events are absolutely pertinent pursuant to the Miller v. Alabama factors. And so the manner and the means of circumstances resulting in Mr. Richard Griggs death I would submit are absolutely pertinent for the court to consider and the fact that he was shot as he was shielding himself as opposed to anything else, I think the court is entitled to taking into consideration because hand of one, hand of all, a accomplice liability. They went into that store to rob Mr., Mr. Griggs. Let's say that they didn't plan on doing anything else but rob him. But you entered introduced a weapon into a circumstance like that use the fact that you know him to get into that store, I would submit the court is absolutely entitled to take that into consideration despite the minimization that has taken place regarding the defendant's role. And that minimization is actually I think something that the court can also take into account in its determination. I will shut up for the time being until my closing 'cause I think I'm kind of getting into closing now, so I'm gone actually shut up Your Honor and allow, first, Mr. Teresa

Hendricks, that being the daughter of Mr. Griggs, Mr. Richard Griggs to address the court, if the court so allows.

THE COURT: All right. And I will just want to point out that under the Miller case that as you've already pointed out, Mr. Redmond, the circumstances of the homicide offense are considered, to be considered. That's one of the factors so....

MR. REDMOND: Thank you, Your Honor. Oh, I'm sorry, Your Honor, if I could bring the electric –- they asked me if I could bring the electric and what I'll do is I can bring the microphone over....

THE COURT: If she doesn't want to stand at the stand maybe she can take the witness stand?

(Whereupon, there is conversation about where to stand.

MR. REDMOND: And, Your Honor, again, this is Ms. Teresa Hendricks. She is the daughter of Richard Griggs.

THE COURT: All right. And we'll swear her because Mr. Gilliard may want to examine her.

THE CLERK: Please raise your right hand. Do you solemnly swear or affirm that the testimony about to get the court to be the truth, the whole truth, and nothing but the truth so help you God?

MS. HENDRICKS: Mmm, hmm.

THE CLERK: Thank you.

MR. REDMOND: Your Honor, since they are being sworn and maybe cross-examined just out of an abundance of caution probably be better if they take the witness stand.

THE COURT: I mean, it'd be better for you. It would be better for you if they did.

(Whereupon, the court refers to the court to monitor)

TERESA HENDRICKS, first being duly sworn, testified as follows:

Direct Examination by Ms. Hendricks:

Q. Morning, Your Honor, and to the court. I thank you for this opportunity to speak to you today. For 17 years each day has been a reminder that daddy is not here. There's not been a day that goes by that we don't think of him. Especially when I'm riding down the road and I spot one of those red Dodge trucks. He had a red Dodge truck and he loved that truck. You'd see him riding around town, scooting around town when he needed to go to the bank or places. For a split second though, I think it might be him. And then when I might see a man with –- he had a toupee and he had a mustache and he loved wearing that toupee. And so, if I see somebody I'll immediately think of him for

that split second I have that thought of it being him. It makes me want to reach out and just touch him or hug him or either touch his little crooked hand. He had, had messed up, had a injury and had a little crooked hand and I noticed when he was actually in the coffin, I rubbed his hand and I rubbed that hand until I rubbed that hole clear up where they had put makeup on his had that day. And so, we knew that that had to have been one of his wounds that he had. So we miss so much and we realize that we'll never get to see him again or be able to do these things with him again. He's missed by everybody that that knew him. Everybody that knew him loved him. Even the people in the community. Even the children the, neighborhood children would come to the store to get a biscuit in the morning and he just loved making over the children and they just loved that he made over them. He was just a people person and he would help anybody even to that circumstance that night. Your Honor, I reflect back on the 17 years, I think about my daddy and how he loved his family and he loved gathering with him. He actually had his 70th birthday party. He was determined he was gonna have a birthday party for his 70th birthday. So in June of that year we had a birthday party for him and he, he had the best time.

But he's not been able to see how blessed and successful his children and his grandchildren have become. He instilled in us to be hard workers and to give more than our 100% in any job that we ever took. And this helped us to become the persons and the citizens that we are today. He was blessed with five awesome grandchildren and six wonderful great grandchildren. But he was only given two years to spend with this oldest and she was, she's an awesome beautiful granddaughter. He didn't get to see her pitching softball. She can pitch a softball. She graduated from high school and went straight into college and played college softball. He would –- he loved playing ball. He would even get out in this truck in, in the hay field and he would play golf. He would just, he loved sports. He would loved to be there rooting on his, his children and his, and his grandchildren. So he'd have been so proud of her. He will never get to meet his other five great grands. He'll never get to attend any of their birthday parties or push them in a swing or even get to pick them up and hold them. He didn't and he will not be able to see any of his children or grandchildren play baseball, softball or even drive around in their little remote control cars. He's not here to see

their beautiful smiling faces. He'll never be able to confront them when they fall or help even give them guidance throughout this life. They all have missed out on knowing what a wonderful, caring, and compassionate man he was. We do keep his memory alive by telling them all the wonderful things that he did for us and his family and all the community things that he did. And as you can see our mother's not here today. We lost her in August to a long road of dementia. She loved our daddy more than life itself. She always loved looking at his pictures. That was one constant in her road of dementia that she would look at his pictures and know that that was him and she loved him and she missed her Richard.

So I beg of you today to please review everything and know that the original verdict that was given is the most appropriate for this senseless, senseless violent crime. A wonderful man was taken from this life, his community and especially the family that loved him, he was taken from us way too soon because of such a senseless act. So I sincerely thank you for your time.

THE COURT: Any questions, Mr. Redmond?

MR. REDMOND: No questions, Your Honor.

THE COURT: Mr. Gilliard?

MR. GILLIARD: None, Your Honor.

THE COURT: Okay.

MS. HENDRICKS: Thank you.

THE COURT: Thank you, ma'am.

MS. HENDRICKS: Thank you.

MR. REDMOND: The next –- the State would next call Ricky Griggs.

THE COURT: Okay. Come forward please, sir.

THE CLERK: Do you solemnly swear or affirm that the testimony you're about to give the court in this matter shall be the truth, the whole truth, and nothing but the truth so help you God?

MR. GRIGGS: Yes, ma'am.

THE COURT: Thank you, sir. You can take your seat.

RICKY GRIGGS, first being duly sworn, testified as follows:

Direct Examination by Mr. Griggs:

Q. Thank you, Your Honor.

THE COURT: Yes, sir.

Q. And I hope I can keep it together like Teresa did. First, I just wanted to say thank you for hearing case. Look forward to joining you in retirement. Looking at that in another 30 days or so. Hopefully, we can all go fishing or something like

that and not have to worry about this kind of thing. I want to thank Kernard for everything he's done and for being a friend.

As Teresa stated we lost our mom on August 28th and less than two weeks ago, little over two weeks ago, lost Darlene's mom, my wife, so a lot going on. Actually, the hearing was scheduled last two weeks ago, we hadn't even buried Darlene's mom. But we were gonna be here and we were not gonna let this go without us paying attention to it and getting everything out there. And I tell you about losing my mom because that night when she passed I tell you I did, I cried so hard I actually thought I was gonna be sick. But I finally got it together. Teresa was on the phone with us, but in a much better place and I know that. I tell you that because on September 9, 2004 my brother-in-law called at 10:30, 10:45, he had told me, he was like your dad's been shot and I need to come home - I got it. I'm good, thank you - and I need to come home. He said there loading him in the ambulance right now and, but it doesn't look good so you need to come home. It was a Thursday night I had been to a JV football game. Thursday night a lot of people go out to eat in the Byrdtown community so dad was there. Basically, mom was at the house. My aunt

lives across the road, she was at the beach. Had she been there she would've probably seen these animals over there by the payphone waiting for the cashier to leave. She punched out at 10:11. Dad probably made sure she got to her car. Then they came in, especially this one, 'cause dad knew his face and that would've been the reason he would let y'all in and you know that. You know that! Well, I'm thinking dad's gonna be at the hospital. I get to the hospital. I go in the room and there's Teresa and mom. I'm like, where's dad? Teresa said, he didn't make it. I can remember the walls in the hospital room. They were concrete block with stucco or whatever on it 'cause I wanted to put my hand through the wall and that was the other time I cried so hard. I can take care of you.

THE COURT: Don't say anything like that.

Q. That night it was so bad that I just wanted to just put my hand through the wall. But after I calmed down I knew that I had to go to take care of dad. So when I got to the store, the store, a business he built from scratch, laying the first block in that building. We were all raised in that building and he spoiled it. I mean, Anthony, and you can't tell me you didn't plan to kill him because you would've

walked in there without mask or anything, you knew he'd recognize you and you knew you were telling them probably to kill him. You know Anthony needed money to get out of town because he just shot his girlfriend the day or two before. Police were looking for him then. Y'all got together and said, well, let's rob Griggs's. He can get the money and everything he could get that night. You know –- you were probably the one that convinced him to do that and told him probably you've got to kill him, empty the gun because if he knows me he can identify me and then you didn't want to see it ---

MR. GILLIARD: Your Honor ---

THE COURT: Mr. Griggs, I understand this is emotional ---

MR. GILLIARD: Your Honor ---

THE COURT: Hang on a minute, I'mma –- kind of calm down somewhat. I understand how emotional this is, but try to restrain yourself somewhat.

Q. I'm good.

MR. REDMOND: And Your Honor, I was gonna say if, Ricky, if he needs to take a few minutes ---

Q. No, I'm good.

MR. REDMOND: Okay.

Q. I tell you we cried so hard because we love our

parents. We love our mom and our dad, mother-in-law, father-in-law, but I tell you what you did that night was unforgivable. Unforgivable! If I got to forgive you to get into the gates of heaven I won't make it 'cause there is no way that I can ever forgive you for what y'all did that night. While my dad lying dead there on the floor in a business, like I said, that he built from ground up, where he taught hundreds, hundreds of teenagers how to work, how to become adults that work and knew how to do the right thing. When we had visitation ---

MR. REDMOND: And Your Honor, he's gonna showed pictures. Mr. Gilliard, we have shown him the pictures that –- we're not gonna introduce these because there are personal pictures that he like to get them back, but Mr. Gilliard has seen them.

Q. I think I was. I don't know where they are now. Oh, here they are.

MR. REDMOND: You got them?

Q. Yeah.

MR. REDMOND: Okay.

Q. It's the night of visitation, we stood in line for four hours while people were lined up down the street. As my sister said, everybody loved him. They lined up down the street as you can see in the

pictures and we were standing in lines for four hours to respect the great man. People came by and just told us how much he loved them and how much he meant for the community and everything. My dad, he, he, was a person to get things done. He started a community recreation center. He started the Byrdtown Fire Department. He pushed for rural water for everybody in the community. Everybody! Not just one or two people, everybody! People that were, didn't even have running water, he pushed to get running water to them.

Our dad, he loved people and he loved to help them as my sister said. But as we stated earlier Angelo Ham new are dead. He had been in the store many times. His mom, as he spoke of, she had been in there many times. Dad would've recognized him and that's why he let them in because he knew that he was there. You know, if Angelo Ham had any good in him whatsoever, he could have at least called 911 and not even said anything on the phone just lay it down so somebody would come. But instead, he leaves our dad lying on the floor for a mom to come find. As he's lying dead on the floor bleeding out and not only that, but Angelo -- Anthony Robinson had to come back in the store and get Anthony or Angelo Ham out of the

store because he was standing over our dad stealing cigarettes why my dad, our dad laid on the floor. But he had to come –- the shooter has to come back in and get Angelo out of the store because he stuffing his pockets with cigarettes and things. It just amazing he had no remorse whatsoever. He said here today and read a statement that somebody appeared for him because on the day of sentencing he never said he was sorry. He never addressed the family. He didn't even look at us. He was standing in front of Judge Milling asking Judge Milling what he could say to him so he could get his sentence reduced or not whatsoever. Even in the case of Miller it's in there where he's like, well, we were there, but that doesn't mean we killed anybody or robbed anybody. It's in black and white in the Miller case and it's there. And I'm telling you Robinson probably didn't have enough sense of what to do. Mr. Ham coached this man and told him to pull the trigger as many times as possible. And they killed her dad for $1,620.25. That's what a human beings life was worth to you. That's just ridiculous. That's nothing. Our dad probably would've helped you guys if you needed a job or whatever, but no –- and the re-sentencing, I mean, you're as close to the devil as there ever would be.

MR. GILLIARD: Your Honor, I've listened patiently to this victim, but he's going far field. His comments are to be to the court. He has repeatedly refer to the defendant giving him orders that he can't possibly know. I have listened to him call the defendant an animal. I think the court needs to kind of realm him in a little bit.

THE COURT: I agree with that, Mr. Gilliard. I'mma ask that you not to address the defendant directly.

Q. All right. I'm about finished. I just want to give you actually the obituary of our dad, if you don't mind just for you to review, that's it. But again, as, as my sister stated my dad didn't get to see great grandkids and I wish my uncle was here, but he didn't think he could take it. He's 92 years-old. Dad was killed at 70. That's 22 years that we could have possibly had our dad.

Teresa talks about dad out in the hayfield hitting the ball. And she, she's right he would hit the ball left-handed. Now, he's right-handed and he will golf left-handed. Just a couple of weeks ago our grandson started switch hitting. He's hitting left-handed. It's got to come from my dad. And my son, he rides around with a license type thing on the back that says "never forget, 9-9-2004". And we will never

forget. Never! Ever! Ever forget that night. It's been 17 years and almost 6 months and a few days and I think about it every morning. Every morning! We were almost getting to a point that we could forget your names and then here comes this thing again. I will never forget nor never forgive. That's all I've got to say.

THE COURT: Any questions, Mr. Redmond?

MR. REDMOND: No questions, Your Honor.

THE COURT: Mr. Gilliard?

MR. GILLIARD: None, Your Honor.

THE COURT: Okay. You can step down, Mr. Griggs.

MR. GRIGGS: Thank you. Thank you, judge, for hearing me again.

MR. REDMOND: And Your Honor, that would be the State's presentation short of our closing.

THE COURT: Okay. Let's take a short break before we do closing. Give you gentlemen a chance to reflect your thoughts. We'll stand down probably for at least 10 minutes, maybe 15.

MR. REDMOND: Thank you, Your Honor.

(Whereupon, the court takes a short recess)

THE COURT: All right. Before we hear the closing statements from the attorneys I want to put something on record. The court monitor who monitors our

digital court reporting during the break indicated to me that her stepfather was a Griggs and she was concerned about possibly being related to the victim's family.

She said she might have recognized somebody from a family reunion or something, but she –- and I had Mr. Redmond check with family if there's any relationship apparently is a very distant relationship because she's not really familiar with these folks. And the fact that she is a digital court reporter and just a monitor, I see no problem with, even if she is related because she didn't have anything to do. She's just monitoring what digitally is taken down. It's not like a court reporter who does the transcription typing and are either speaking into the mask. So I don't have a problem. Counsel, I understand you don’t have any problem, do you, gentlemen?

MR. REDMOND: Nothing –- no problem from the State, Your Honor.

MR. GILLIARD: No, Your Honor.

THE COURT: Okay. All right. Then, we will proceed. Mr. Gilliard?

MR. GILLIARD: May it please, the court, Your Honor? As we all know and realize we’re here on a re-sentencing hearing as the court, of course, is aware

Aiken v. Byers and the Miller case that prompted Aiken v. Byers and he needed to recognize to horrific crimes took place and that Angelo was certainly convicted under our theory of accomplice liability to the murder.

Now, the case law clearly states that children constitutionally are different from adults for sentencing purposes and that requires the court to make an inquiry into several areas and it does require an individualized sentencing proceeding. And some of the features that the case law requires the court to consider are hallmark features of youth including lack of maturity, undeveloped sense of responsibility while ability to negative impression including family and peers. And finally, the still evolving character and personality traits of the youth involved. Now, there is one that we need to give particular attention to because we had one person who testified Pastor Calvin Daniels who had an opportunity to observe Angelo Ham in the community. Took him in as what he called a troubled youth. Had an opportunity to observe how he was able to change and get good grades and have a positive outcome in his life as long as he was getting input from the A Group the church and, unfortunately, a mother

demanded that Angelo be returned to her. Well, we understand that she had some problems with drugs and unsavory characters around her and when Angelo returned to her care, then he diverted to the kind of behavior that we all find objectionable. But that we just focus on what courts require, you can see from the Pastor’s testimony and Angelo's behavioral during that time period, that he is someone who would benefit from positive influences because that’s been demonstrated. While I understand the sentencing –- well, I wouldn't call that, the psychological that handed up indicated that he would not. That was speculation. We know already that, that was not the case with Angelo because we can see from the Pastor’s testimony and from the fact that his grades improved he was getting in trouble, that he did benefit from positive influences. And the courts require case law that says, listen, you've got to consider the age difference in the juvenile because there is a big difference. And the court is well aware of one of the greatest influences that we have is the Bible. One thing that was pointed out clearly is that when I was a child I acted as a child. I stayed as a child. But when I became a man, I put away childish things. Clearly, we have to consider as a 14 or 15 or 16

year-old that Angelo was acting as a child and he did what he did under that influences as a child. And we would ask the court to look back in 2005, ‘06, ‘07 at the time this was going on and the sentencing that came about to say, well, we have got to do what the case law says has to be done is to consider him and his juvenility as a child at that point and give him the benefit of the doubt which is the whole purpose of the re-sentencing. Say, listen, we’ve got to make sure that we looked at him as a child and not as an adult. And while these other factors are important we do have a situation here where we can look back and I will glad to find the Pastor and have him come in and give that –- ‘cause that’s the only thing that we have to compare with his juvenile situation was. And we would just ask the court to do what is required which is to explore the impact of his young age and to consider all the factors that they’ve got listed and ask the court to moderate the prior sentence and to give Angelo an opportunity to come up and be a part of society.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Gilliard. Mr. Redmond?

MR. REDMOND: Your Honor, the problem that I have is that moderating the sentences based on what the

defendant said would cause, not just the sentence, but in his mind it should be the offense, itself, should also be modified which I'll get to later as it relates to the factors. But just to segue on what the last thing that Mr. Gilliard said, that –- and I would say that is obviously something this court can take consideration. But before I begin, let me just speak on behalf of Ricky and Teresa and all the folks here who came from Byrdtown and areas around there, I'd like to thank them for being here today. As I recall back in 2007 and up until that time, we always had a large contingent of folks from the community that were here on behalf of the families and specifically on behalf of of the memory of Mr. Richard Griggs. And let me just talk about that. Rick did give you the obituary, but one of the things, ah, a few of the things that I'd, at least, like a highlight as it relates to the person that was taken away. I grew up around Hartville. I grew up on the other side of Hartsville so I didn't have a chance to get over the Byrdtown or as we called it on the Russell Roadside to get crossed the creek over to that area. We didn't really get over there much even though my mom taught at Sonavista on that side of Hartsville. But –- but since I got involved in the

case because I was the original prosecutor, of course, since I got involved in the case, have gotten to know Rick and Teresa, especially, Rick because usually I'll call Rick and we'd talk and as always when we get up, love you, brother. And also we've developed a friendship over the years. And that kind of gets to the point I'm making and I'm probably gonna be admonished for saying this but, of course, I understand I'm in no way contesting what the courts decided in Miller vs. Alabama or Aiken v. Byers. One of the things I think and and especially in light and in the context of what you heard from Rick and the emotion that comes it from. And some -- we'd argue some –- I'm not arguing. We probably agree some may have been not appropriate as the court did caution him. But I kind of when you reopen a wound after 17 and a half years and that's what some of these proceedings do, I would ask the court and anybody that would see what I have to say to take into the account that even though we fully acknowledge the rights that the defendant has and I'm not trying to undermine those. But I also want to at least acknowledge that these are not difficult proceedings for a family to have to go through because sometimes reopening a wound is actually worse than the

infliction of the wound, if that makes sense. And I think this is a case in point of that and so a lot of the raw emotion that you heard from Rick comes from that reopening of a wound and I think he alluded to that.

As it relates to Mr. Griggs, himself, and I don't know if Rick mentioned but you've got the obituary, he was very community active. I mean, he was all county counsel in Darlington County. He was involved in starting the Antioch Fire Department. And, of course, he ran, I think it was 44 years thereabout, that he ran the store before he was killed. And so –- and so, everybody around that community knew –- and like he said, he was willing to open the doors to this defendant. So there was not anybody around there in that community that he knew that he was not willing to do something for. And the fact that he knew this defendant actually, ultimately, got him killed. And that's something that I would also ask the court to consider ---

MR. GILLIARD: Your Honor, I've got to object to that. There is speculation about why the victim opened the door, no one can answer that. He's not ---

MR. REDMOND: With all due ---

MR. GILLIARD: ––- listen, he's not here. We