

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge  
\_\_\_\_\_

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S.C. Supreme Court

JAMES WESLEY BOONE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-000263

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )

COURT OF GENERAL SESSIONS

STATE, )  
PLAINTIFF, )

TRANSCRIPT OF RECORD  
C/A #: 2007-GS-43-0640

v. )  
JAMES WESLEY BOONE, )  
DEFENDANT. )

September 15, 2009  
Sumter County Courthouse  
Sumter, South Carolina

BEFORE:

HONORABLE GEORGE C. JAMES, PRESIDING

APPEARANCES:

Harry Conner, Esquire  
Sumter County Assistant Solicitor  
Attorney for The State of South Carolina

Lauren Stevens, Esquire  
Sumter County Public Defender  
Attorney for Defendant

TAKEN BY MELISSA R. SINGLETARY  
CERTIFIED VERBATIM REPORTER

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EXHIBITS

(There were no exhibits marked at this hearing)

HEARING

3

1 Mr. Conner: May it please the Court.

2 The Court: Yes, sir.

3 Mr. Conner: Ms. Stevens has indicated that the  
4 Defendant, Mr. Boone, is going to enter a plead to Armed  
5 Robbery on indictment 2007-GS-43-0640. I assume you  
6 still have the indictment.

7 The Court: Yes, sir. I do. Without any  
8 recommendation?

9 Mr. Conner: Without any recommendations, that's  
10 correct.

11 **James Wesley Boone was sworn in**

12 The Court: All right. Ms. Stevens, you represent  
13 Mr. Boone, is that correct?

14 Ms. Stevens: Yes, sir, Your Honor, I do.

15 The Court: Mr. Conner indicates that you've  
16 indicated that your client wants to plead guilty, is that  
17 correct?

18 Ms. Stevens: Yes, sir, Your Honor, it is.

19 The Court: Does he understand that the plea is  
20 without recommendations?

21 Ms. Stevens: He does, Your Honor.

22 The Court: All right. His body language tells me  
23 otherwise.

24 Ms. Stevens: He understands it. He's not happy  
25 about it but he understands it.

HEARING

4

1 The Court: Do you understand?

2 Mr. Boone: Yes, sir. I understand.

3 The Court: All right. Do you think based on your  
4 knowledge of the facts and circumstances of this case  
5 that the jury that has been selected or any jury would  
6 find Mr. Boone guilty of Armed Robbery?

7 Ms. Stevens: Yes, sir.

8 The Court: Overall do you agree with his decision?

9 Ms. Stevens: Yes, sir.

10 The Court: Do you have any concerns about his  
11 competency?

12 Ms. Stevens: No, sir.

13 The Court: All right. What was handed up to me  
14 yesterday was a May 1, 2007 letter and an evaluation  
15 arising from an April 3, 2007 interview with Mr. Boone,  
16 do you have any concerns arising from that?

17 Ms. Stevens: No, sir, Your Honor. The main reason  
18 that we wanted to have the evaluation was because Mr.  
19 Boone was in a car accident, had a head wound and was in  
20 a comma for several months and we just wanted to make  
21 sure that there wasn't any permanent brain damage that  
22 may have affected his ability to control his actions.

23 The Court: And that accident occurred some years  
24 back and this evaluation was done in conjunction with  
25 previous charges?

HEARING

5

1 Ms. Stevens: No, with these charges, Your Honor.

2 The Court: With these charges?

3 Ms. Stevens: Yes, sir.

4 The Court: All right.

5 Mr. Conner: Based upon our conversation yesterday, I  
6 believe, it was indicated that he had the wreck on 2003.  
7 This case happened in 2006.

8 The Court: All right. I'll make this copy a court's  
9 exhibit and I read it and it appears that the examiner  
10 felt that Mr. Boone was able to understand right from  
11 wrong and able to assist counsel in his defense?

12 Ms. Stevens: Yes, sir.

13 The Court: All right. If I asked you this, I  
14 apologize. Do you agree with his decision to plead  
15 guilty?

16 Ms. Stevens: Yes, sir, Your Honor, I do.

17 Questions by The Court:

18 Q: Is your name James Wesley Boone, Jr.?

19 A: No, sir. I'm not a Junior, it's James Wesley Boone.

20 Q: Does your social security number end in 2760?

21 A: Yes, sir.

22 Q: All right. So, you're not a junior?

23 A: No, sir.

24 The Court: Any objection to the indictment being  
25 amended in that respect?

HEARING

6

- 1 Ms. Stevens: No, sir, Your Honor.
- 2 The Court: Counts two and three are dismissed?
- 3 Mr. Conner: That's correct.
- 4 Q: How old are you, Mr. Boone?
- 5 A: 26.
- 6 Q: How far did you go in school?
- 7 A: I went to the 10th and dropped out and got my GED in
- 8 '07 in the County jail.
- 9 Q: What kind of work have you done?
- 10 A: Roofing, landscaping, build, brick masonry, mostly
- 11 construction.
- 12 Q: Who is this lady that is here with you today?
- 13 A: This is my mother and this is my sister.
- 14 Q: All right. Have you ever been treated for alcohol
- 15 abuse?
- 16 A: No, sir.
- 17 Q: Drug abuse?
- 18 A: Probation had me going for marijuana to New
- 19 Alternatives.
- 20 Q: Are you on probation now?
- 21 A: No, sir.
- 22 Q: Did you complete the New Alternatives program?
- 23 A: No, sir.
- 24 Q: Why is that?
- 25 A: The reason behind that I was in the country and I

HEARING

7

1 didn't have a ride and every time I told them I didn't  
2 have a ride they told me that was no excuse. So, I just  
3 ...

4 Q: When was that, approximately?

5 A: That was like after I got in '08, the beginning of '08.

6 Ms. Stevens: Your Honor, just for the record. He spent  
7 22 months before he bonded out.

8 The Court: On this charge?

9 Ms. Stevens: Yes, sir. So, he didn't bond out until  
10 2008.

11 Q: Do you take medication?

12 A: No, sir.

13 Q: Have you ever been treated for any mental problems?

14 A: No, sir.

15 Q: Are you thinking clearly today?

16 A: Yes, sir.

17 Q: Are you under the influence of drugs or alcohol?

18 A: No, sir.

19 Q: Is there anything about you at all that will keep you  
20 from being able to understand what you're doing?

21 A: No, sir.

22 Q: The indictment in this case says that on or about  
23 September 13, 2006 you and a co-Defendant did, while armed  
24 with a deadly weapon, specifically a pistol, commit a armed  
25 robbery of the Twin Dragon Restaurant and take goods or monies

HEARING

8

1 from that restaurant. Do you understand that charge?

2 A: Yes, sir.

3 Q: That carries up to thirty years in prison, do you  
4 understand that?

5 A: Yes, sir.

6 Q: A minimum of ten, do you understand that?

7 A: Yes, sir.

8 Q: This is also what the law calls a most serious offense.  
9 You have certain categories and defenses and you have a two  
10 strikes law and a three strikes law. If you are convicted of  
11 two most serious offenses during your life time you would be  
12 facing mandatory life without parole. The prosecutor would be  
13 required to seek it and wouldn't be able to withdraw that  
14 notice. So, you understand that if I accept your plea this  
15 will be one strike against you under our two strikes law?

16 A: Yes, sir.

17 Q: We also have a three strikes law. So, if you were ever  
18 convicted in the future of two additional serious offenses in  
19 conjunction with this most serious offense, you would be  
20 facing life without parole, do you understand that?

21 A: Yes, sir.

22 Q: This is also classified as a violent crime, a no parole  
23 crime and do you understand that you would have to serve at  
24 least 85 percent of your sentence before you would be eligible  
25 to get out?

HEARING

9

1 A: Yes, sir.

2 Q: Whatever time I sentence you to you would have to assume  
3 that you would serve that entire amount of time in prison, do  
4 you understand that?

5 A: Yes, sir.

6 Q: You will receive credit for the time you serve but I  
7 don't calculate that, the Department of Corrections will  
8 calculate that. Do you understand that?

9 A: Yes, sir.

10 Q: When you plead guilty Mr. Boone you give up several  
11 constitutional rights and I want to go over those with you.  
12 First of all, you give up your right to remain silent, do you  
13 understand that?

14 A: Yes, sir.

15 Q: You do have the right under the constitution to say  
16 nothing. Nobody can make you testify at the trial or the  
17 hearing and you do have the right to be silent. Do you  
18 understand that right?

19 A: Yes, sir.

20 Q: You also would have to give up your right to have a jury  
21 trial. That means you give up your right to have this jury or  
22 perhaps down the line another jury decide whether or not  
23 you're guilty or not guilty. In order for you to be convicted  
24 you must be found guilty. This jury or any jury that is  
25 picked in your case would have to conclude beyond a reasonable

HEARING

10

1 doubt that you were guilty. That would be that all 12 people  
2 would have to agree. You would not have to proof anything,  
3 you would not have to disapprove anything. The State would  
4 carry this whole burden of proof and again you wouldn't have  
5 to prove a thing, do you understand that?

6 A: Yes, sir.

7 Q: You also have to give up your right to plead guilty and  
8 confront witnesses the State would call against you. Which  
9 means you would give up your right to listen to those  
10 witnesses testify. You would give up your right to look at  
11 them and you'd give up your right to have your lawyer cross  
12 examine them. Also, you would , though you do not have to,  
13 you do have the right to present your own witnesses and your  
14 own defense. Do you understand all those rights I just  
15 explained to you?

16 A: Yes, sir. I do.

17 Q: Do you want to give up each one of those rights and  
18 plead guilty today?

19 A: Yes, sir.

20 Q: Also, if you have any defenses to this charge, if you  
21 plead guilty, do you understand that you give up those  
22 defenses?

23 A: Yes, sir.

24 Q: In other words, there is no such thing as pleading  
25 guilty and then turning right around a few minutes from now

HEARING

11

1 and saying well, I'm pleading guilty but I really didn't do  
2 it. Do you understand that?

3 A: Yes, sir.

4 Q: I won't accept your plea if you say that?

5 A: Yes, sir.

6 Q: If you gave any statements to the police that would  
7 incriminate you, if you plead guilty you give up the right to  
8 challenge the admissibility of those statements, do you  
9 understand that?

10 A: Yes, sir.

11 Q: All right. Mr. Boone, are you guilty or not guilty of  
12 Armed Robbery?

13 A: Guilty.

14 Q: Tell me what you did.

15 A: On that morning, I was at my house. The co-Defendant and  
16 his girl come over. I was kind of in a bind, light bill,  
17 child support, rent due, no money, no job. He was in the same  
18 position. Talking about money, he needs money, I need money.  
19 He talked about he know somebody we can rob. An old man that  
20 stays off Old Manning Road. Me being a dummy followed up,  
21 okay, take me, we'll do that. Okay. We go there. It don't  
22 work out. The old man don't come to the door, we leave. He  
23 say okay, how about that Chinese restaurant. So, I'm like  
24 follow him up, okay, well, let's go, see if we can do it. We  
25 pulled up at Showcase Video right behind it. Okay. We all

HEARING

12

1 three sit there and planned it. All right.

2 The Court: On 378?

3 A: Yes, sir. All three of us talked about okay, ya'll sit  
4 right here. I'm going to go do this and come back and we're  
5 gone. Okay. Everybody agreed to it so I went and did. I got  
6 back in and then the driver, which was the girl, she was in  
7 the Showcase Video like she, I got back in the car she was in  
8 the video store.

9 Q: Buying a video?

10 A: Yeah. They didn't have any money from the start with.  
11 I'm like Andy why she in there, ya'll ain't got no money. Oh,  
12 she went to get a membership. I'm like okay, well, we got to  
13 go. So, he slides over and get to my house. We get to my  
14 house and he's like I just left my girl at the video store,  
15 how am I going to get her home and he goes to the lady behind  
16 me and gets her to go pick her up from the video store and I  
17 guess she must have told the lady and then I guess the lady  
18 must have called Crime Stoppers or whatever and that's how  
19 they come to me to start. When they came to me, I felt bad  
20 after it happened anyway. I felt remorseful.

21 Q: Did you go in the store with the gun?

22 A: Yes, sir. I did.

23 Q: Did you steal money?

24 A: Yes, sir. I did.

25 Q: Who did you rob? This lady here?

HEARING

13

- 1 A: I believe it was that lady there and ...
- 2 Q: All right. We'll come back to the here after in a few
- 3 minutes. Has anybody promised you anything to get you to
- 4 plead guilty, Mr. Boone?
- 5 A: No, sir.
- 6 Q: Has anybody used any threat, force or intimidation?
- 7 A: No, sir.
- 8 Q: Do you understand that there is a jury sitting right
- 9 there in the jury room waiting to try this case?
- 10 A: Yes, sir. I do.
- 11 Q: Is your lawyer making you plead guilty?
- 12 A: No, sir.
- 13 Q: Do you understand if I accept your plea this jury will
- 14 be released and you will stand convicted without a jury trial?
- 15 A: Yes, sir.
- 16 Q: You are pleading guilty based on your own free will?
- 17 A: Yes, sir.
- 18 Q: Have you had enough time to make up your mind?
- 19 A: Yes, sir.
- 20 Q: Are you satisfied with the services that Ms. Stevens has
- 21 provided to you?
- 22 A: Yes, sir.
- 23 Q: Are you satisfied?
- 24 A: Yes, sir.
- 25 Q: Has she represented you properly in every respect?

HEARING

14

1 A: Yes, sir.

2 Q: Have you talked with her long enough and often enough?

3 A: Yes, sir.

4 Q: Have you understood all your conversations?

5 A: Yes, sir.

6 Q: Is Ms. Stevens making you enter this plea?

7 A: She's not making me. I decided myself to man up to it. I

8 did it. I'm ready to accept responsibility for the actions.

9 Q: All right. You do have ten (10) days to appeal this

10 plea, do you understand that?

11 A: Yes, sir.

12 Q: All right. Have you understood everything that we've

13 talked about?

14 A: Yes, sir.

15 The Court: All right. Mr. Conner.

16 Mr. Conner: May it please the Court. This happened

17 back in September 13th of 2006. This lady to my left here, I

18 can't pronounce her name but I'll try. It's Laking Mu(sp) and

19 she uses the name Lee, people call her Lee. She operates a

20 restaurant called the Twin Dragon out there in the Shaw Field

21 vicinity, Your Honor. It's right there on 76 going out that

22 way. Anyway, it happened shortly after 9:00 in the evening.

23 She didn't have many customers at the time. But this young

24 man entered her store, he had on a hooded jacket and he had a

25 white mask on his face. We have an excellent video that she

HEARING

15

1 provided us on the store camera showing what happened there.  
2 He clearly had a pistol in his hand. He had a mask on his  
3 face and he came to the counter there where he demanded money  
4 from here and you can see her handing him money. He left and  
5 went back out and got in the vehicle apparently and left the  
6 area. The police came. I talked with --- we have a statement  
7 from Andrew Scurry, who supposedly drove him away. Mr. Scurry  
8 admitted that he came up. He denied any knowledge of what was  
9 going on as far as the robbery was concerned. He was  
10 accompanied by his girlfriend at the time, that is Mr. Scurry  
11 was, who was Ms. McLeod. She's in the courtroom today, Your  
12 Honor. She indicates that she didn't know anything about the  
13 robbery either and she had gone in the store and she said ---  
14 in the video store which is an adjoining store there in that  
15 area and she came back out and they weren't there but she said  
16 that Boone lived about a mile away and Scurry told her that  
17 Boone wanted to go home and that he had dropped him off at his  
18 house and then he, that Boone came back and picked her up.

19 The Court: Scurry came back or Boone came back and  
20 picked her up?

21 Mr. Conner: Scurry came back and picked here up. She  
22 said she knew something had happened bad because there were a  
23 lot of cops cars there when she came out of the video store.  
24 In any event, this Defendant was picked up about two and a  
25 half weeks after this thing happened on September the 13th.

HEARING

16

1 Specifically, he was picked up on September the 30th with this  
2 charge and a firearm into a dwelling. That was the charge.  
3 That has subsequently been dismissed because the victim moved  
4 and we have not been able to locate. When the police  
5 investigated that case they found a pistol there in his  
6 vicinity which he has admitted is his, a .25 caliber semi-  
7 automatic black pistol. They recovered that and started  
8 talking with him. Quite frankly they had gotten some tips  
9 saying he was the person that had did the robbery and based on  
10 that they talked with him after he was arrested on this  
11 discharging firearm charge and he admitted his involvement in  
12 robbing Ms. Lee. Your Honor, he does have a previous record  
13 for CDV in 2001, that would have been a first offense, hit and  
14 run in 2001 also, a property damage case, he got a fine. I  
15 would assume it was handled in Magistrate's Court. In 2004,  
16 he had a threatening a public official charge and he got three  
17 years suspended to 90 days with two years probation. In 2004,  
18 he got another CDV where he got a Thousand and Eighty Seven  
19 Dollar fine, so I'm assuming that was Magistrate's Court.  
20 Then he had a CDV third offense that he got in 2004 and he got  
21 three years suspended to 90 days and two years probation on  
22 that.

23 The Court: All right. Does the victim want to say  
24 anything?

25 Mr. Conner: Would you like to say anything?

HEARING

17

1 Ms. Lee: No, sir.

2 Mr. Conner: She did tell me in talking with her in the  
3 office, Your Honor, that it was a very frightening occasion to  
4 her and you can see her in the video calling 911 immediately  
5 when he walked out the door. I can imagine it was from what  
6 you see on that video.

7 The Court: Anything from law enforcement?

8 Law Enforcement: No, sir.

9 The Court: Anything else, Mr. Conner?

10 Mr. Conner: Nothing further from us.

11 The Court: All right. I'll accept the plea. It has  
12 been entered freely, voluntarily, knowingly and intelligently.  
13 The victims rights have been protected and there is a factual  
14 basis for it and Mr. Boone is represented by counsel with whom  
15 he is satisfied. Mr. Bradley, you can bring the jury out real  
16 quickly and just have them stand out there.

17 (Jury in)

18 The Court: Thank you, Mr. Bradley. Ladies and  
19 Gentlemen, Mr. Boone, just a few moments ago has entered a  
20 plea of guilty to the charge of Armed Robbery. He has  
21 admitted to essentially holding up the Twin Dragon Restaurant.  
22 I have accepted his plea. I'm going to be sentencing him in  
23 just a moment. You're welcome to stay and watch that or you  
24 are free to leave. I just wanted to let you know the rest of  
25 the jury panel is reporting back at 11:00. So, if you depart

**HEARING**

18

1 now or you depart after the sentencing is concluded you need  
2 to be back in the courtroom where you have been sitting no  
3 later than 11:00. So, if any of you would like to leave at  
4 this time you may do so. All right. Ms. Stevens?

5 Ms. Stevens: Yes, sir, Your Honor.

6 The Court: I'll hear from you.

7 Ms. Stevens: Yes, sir, Your Honor. I've known Jessie  
8 and his family for a long time. I've known Ms. Elaine back  
9 here forever and I've known Ariane(sp) before I knew Jessie.  
10 When I was appointed the case I wanted to do everything I  
11 could to help this family because I do know them. Jessie was  
12 in a car accident in 2003 where someone very close to him was  
13 killed and he had some injuries to his head and was in a  
14 coma for four months, Your Honor. Most of the offenses on  
15 his record occurred right after he got out of that coma and  
16 there was a lot of residual anger at God and everybody else  
17 for taking the life of his cousin. After that, Your Honor,  
18 until this incident he hadn't gotten in any trouble. There is  
19 no excuse for what Jessie did and he understands that and his  
20 family understands that, Your Honor. I do believe him when he  
21 tells me that there was someone else involved. And I don't  
22 mean this in a bad way but I don't think that Jessie has the  
23 skills to plan something like this all by himself and to fool  
24 two other people in the car while he's doing it. And, please  
25 don't think I'm saying it's anybody else's fault but Jessie's

HEARING

19

1 because I'm not. He understands that. He wanted a chance to  
2 say goodbye to his family and as you can see some of them are  
3 here today. I can not imagine what Ms. Lee went through and I  
4 hope that I never have to. But I also can't imagine what it  
5 was like for Mr. Boone and his family last night knowing that  
6 he was going to come up here and go to jail, Your Honor, and  
7 they did. I would simply ask that you consider that he has a  
8 relatively minor record with CDVs and a hit and leaving the  
9 scene. Consider that he's 26, that he does have family  
10 supporting him now. That he will have the same family  
11 supporting him when he gets out and Jessie is going to tell  
12 you some of the things that he has done while out on bond to  
13 try and better himself. We were hoping for a different  
14 outcome for this but we want to take responsibility for what  
15 he's done and I would just ask that you take mercy, please.

16 The Court: Mr. Boone, you're 26, right?

17 Mr. Boone: Yes, sir.

18 The Court: All right. A few minutes ago when I was  
19 asking you what you did that makes you guilty you were talking  
20 about some other things and I cut you off. Now, is the time  
21 for you tell me things like that. Anything else you'd like to  
22 tell me. If you chose to make any comments referring to the  
23 victim, please make your comments to me and she'll receive  
24 those.

25 Mr. Boone: Yes, sir. That's what I want to start

HEARING

20

1 with. I want to start with apologizing to her. I've seen  
2 her. I know of her. I use to live in the neighborhood behind  
3 her. I've went in there and ate several different times and I  
4 want to apologize to her for that. I don't know what I was  
5 thinking. I was just easy influenced and acted upon my  
6 impulse and just did something without thinking about it  
7 first. I'm extremely sorry for it. I never meant to hurt  
8 anybody and I'm so glad I didn't. I never meant to and I felt  
9 remorseful right after it happened. Leaving out of the door I  
10 was thinking why did I do it. I shouldn't have done that.  
11 All I can say is I'm sorry. I have been trying to better my  
12 life since I been out last year. I've been in touch with a  
13 Army recruiter. Depending upon how this turn out they was  
14 going to let me come join the Army. I have been going to work  
15 keys class. I'm supposed to take the test, I think next week.  
16 I been going to Voc Rehab waiting for them to put me to work.  
17 I went to work for Home Improvements an old boss man I use to  
18 work for on Magnolia. I been just trying to keep my child  
19 support paid. I have four beautiful children. I just, I'm  
20 sorry for it. I'm sorry for what I did. That's all I can  
21 say. I mean, I'm not a bad person I just made a stupid  
22 decision and I'm standing right here now ready to pay for it  
23 like a man, you know. I've been totally honest with Florence  
24 from the first time he ask me to right now, standing here now,  
25 I'm still being totally honest. All I can ask is that you

HEARING

21

1 just have mercy on me.

2 The Court: Your name, ma'am.

3 Female Speaker: Alice Priest.

4 The Court: And you're ...

5 Ms. Priest: I'm his mother.

6 The Court: Is there anything you would like to tell me?

7 Alice Priest?

8 Ms. Priest: Yes, sir.

9 The Court: Okay.

10 Ms. Priest: I don't know if I can hold it together. I  
11 want to apologize for my son's actions. Whenever I first  
12 found out what had happened --- I didn't know until I saw it  
13 on the front page of the paper and I was totally shocked  
14 because that is not something he would do. After he got to  
15 where he had changed some, he got caught doing what he did and  
16 he spent two years in the county, but I will say that he has  
17 been trying to do better. I saw a change in him. Those two  
18 years he had to sit in there did actually, I think, help him  
19 some. But, I know he didn't --- I can't say anymore. I know  
20 he's sorry. He's not a bad child. He's not a leader, he's a  
21 follower. He always has been and that's one of his biggest  
22 down falls.

23 The Court: Thank you, Ms. Priest. Anybody else?

24 You're his sister?

25 Female Speaker: Yes, sir.

HEARING

22

1 The Court: What is your name?

2 Female Speaker: My name is Ariana McLeana(sp).

3 The Court: Now, you don't have to speak but if there is  
4 anything you'd like to say I'd be happy to hear from you.

5 Sister Speaking: I would just say I have spent a lot of  
6 time with my brother and I know that what he done was a  
7 mistake and there is nothing he can do to change it but  
8 hopefully you can have some kind of leniency on him that when  
9 he gets out he can be a productive father to his children.

10 The Court: Anybody else. Your name ma'am.

11 Female Speaker: Jessie is a good boy.

12 The Court: Your name, please.

13 Female Speaker: My name is Elaine Barron. Jesse is a  
14 good boy. He has stayed with me many, many times. He has  
15 always been good to me. He just had a hard life and he's been  
16 in a bad wreck, he was in a coma for two months. My grandson  
17 was killed in the wreck and I've always felt Jessie was  
18 special and just needs a chance. He needs help. He don't  
19 need prison, he needs a life. He's got four little children  
20 that need him and we all love him and we want him to come home  
21 soon.

22 The Court: Thank you, ma'am. Anything else, Ms.  
23 Stevens?

24 Ms. Stevens: No, sir.

25 The Court: Do you have any position on sentencing Mr.

HEARING

23

1 Conner?

2 Mr. Conner: No, sir.

3 The Court: His record again is ...

4 Ms. Stevens: Two CDVs in Magistrate's Court, leaving  
5 the scene also in Magistrate's Court, threatening a public  
6 official and CDV third, which he plead at the same time to  
7 both of those, Your Honor, in 2004.

8 The Court: 2006?

9 Ms. Stevens: 4.

10 The Court: 2004?

11 Ms. Stevens: Yes, sir.

12 The Court: Has Mr. Scurry been prosecuted?

13 Mr. Conner: He had some other charges we have him on,  
14 Your Honor, but he want be charged on this case.

15 The Court: Any evidence that or what evidence is there  
16 that Mr. Boone made any verbal threats to the victim, to the  
17 extent that that's relevant. Did he say anything to you,  
18 ma'am?

19 Mr. Conner: He just demanded money. He had a pistol in  
20 his hand and a mask on his face.

21 The Court: All right. Mr. Boone, as you know, you're  
22 facing up to thirty years in prison for this offense. You  
23 have served 22 months you said in jail already. Under the law  
24 you get credit for that. I'm not going to give you the  
25 maximum of thirty years (30) but you do have to understand

HEARING

24

1 that you will serve at least 85 percent of this sentence that  
2 I'm getting ready to give you before you get out. That will  
3 be a tough road for you. What we're encountering here is  
4 young folks --- there is no reason in the world while this  
5 young lady should suffer like that. There has got to be some  
6 stiff, there has to be stiff consequences for that. You have  
7 three convictions for criminal domestic violence?

8 Mr. Boone: Yes, sir.

9 The Court: I don't know the situation behind those but  
10 they are probably not a very pretty picture. Also,  
11 threatening the life of a public official. While some might  
12 consider that to be a relatively inconsequential record in  
13 light of what we see up here many times in fact the young man  
14 that plead yesterday had a significant criminal history and  
15 that plays a part in the sentencing.

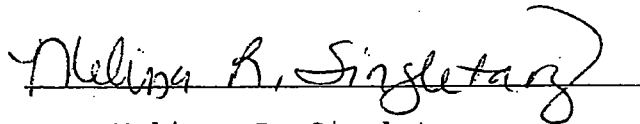
16 Under these circumstances I'm going to commit you to the  
17 State Department of Corrections for a period of Eighteen (18)  
18 years. You'll get credit for the time you have served. That  
19 fits this particular circumstance. Again, you will get credit  
20 for the time you have served.

**CERTIFICATE**

This is to certify that the hearing in the matter of State vs. James Wesley Boone, consisting of Twenty-four (24) pages is a true and correct transcript; said jury selection was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 8th day of April, 2010.



Melissa R. Singletary  
Certified Court Reporter

Notary Public for South Carolina  
My Commission Expires: 3-5-2014



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EXHIBITS

(There were no exhibits marked at this hearing)

HEARING

3

1           The Court: All right, Ms. Stevens, you have filed a  
2 motion for reconsideration of the sentence that I imposed  
3 on September 15th, is that right?

4           Ms. Stevens: Tuesday morning. Yes, sir, Your  
5 Honor. Yes, sir. Your Honor, my motion is based on the  
6 fact that there was a negotiated plea offer that was  
7 never formally rescinded until after my client and I had  
8 signed a plea sheet that still had it as a negotiated  
9 plea and at no time did Mr. Conner tell me that picking a  
10 jury would end that negotiated plea or he didn't tell me  
11 Monday afternoon if he doesn't plea right this minute he  
12 can't have the ten (10) year sentence. My client tells  
13 me if it had been Monday or not he would have plead but  
14 we both assumed that we would have the same offer Tuesday  
15 morning because no one had told us otherwise. And I just  
16 feel like, Your Honor, if ten (10) years was good enough  
17 for Mr. Conner on Monday, I don't see why it wasn't good  
18 enough for Mr. Conner on Tuesday.

19           The Court: Of course, the ultimate decision is  
20 whether or not the negotiated sentence would have been  
21 appropriate for me. I guess everybody concurs that I  
22 didn't know anything about any negotiated plea.

23           Ms. Stevens: Yes, sir, Your Honor.

24           The Court: Nor is there any reason to let me know  
25 unless, unless it's part of the deal so to speak. When

HEARING

4

1 we went through the questions during the plea I asked if  
2 there were any recommendations or negotiations and I  
3 remember questioning Mr. Boone about perhaps his body  
4 language at that point when Mr. Conner said no. Then you  
5 chimed in and said he did have some issues with that but  
6 that you were fine to go ahead.

7 Ms. Stevens: Yes, sir.

8 The Court: Was there anything on the record during  
9 the plea that there was a negotiated or offer or however  
10 you might describe it?

11 Ms. Stevens: Well, actually, Your Honor, there was  
12 an offer that turned into a negotiated plea. The first  
13 offer was ...

14 The Court: I'm talking about on the record?

15 Ms. Stevens: No, sir, Your Honor.

16 The Court: All right. I don't know how it would  
17 works behind the scenes on what progresses the cases up  
18 the roster for trial, but I would assume in this instance  
19 this case was on the trial list and that some discussions  
20 had perhaps been going on about a plea deal and then it -  
21 -- I can't remember what time we picked the jury, I don't  
22 know if it was Tuesday morning. I assume it was if it  
23 was not Monday afternoon.

24 Ms. Stevens: It was Monday afternoon.

25 The Court: Monday afternoon, that's right because

HEARING

5

1 Mr. Boone wanted to go home and talk with his children.

2 Ms. Stevens: Correct.

3 The Court: I guess the best thing for me to do at  
4 the moment is ask Mr. Conner what his position is on  
5 this.

6 Mr. Conner: We had discussed a possible plea, Your  
7 Honor, a negotiated sentence. I had told her the first  
8 week, the week of September the 7th that if he would plea  
9 I would be agreeable to a negotiated ten (10) year  
10 sentence. She had all week to do it ...

11 The Court: You're talking about during the plea  
12 week of September the 7th?

13 Mr. Conner: That's right.

14 Ms. Stevens: Your Honor, just for the record ...

15 The Court: I'll come back to you.

16 Mr. Conner: Nothing ...

17 Ms. Stevens: Thank you.

18 Mr. Conner: Nothing happened that week. She did  
19 lead me to believe that he was leaning toward accepting  
20 the plea. On Monday afternoon, right over there at the  
21 probation agents table I had a discussion with her and  
22 let her know that after we drew the jury there wouldn't  
23 be any negotiated agreement and she said, well, that was  
24 all right that she was confident with her case and likely  
25 that the statement would be suppressed and she was ready

HEARING

6

1 for trial and they didn't need an agreement. So that as  
2 far as I was concerned was the end of it. And we called  
3 the case and got ready to do business and the next  
4 morning I had all my witnesses here and she came in and  
5 said he was going to plead guilty. She brought --- I had  
6 given her the plea sheet at some point in time and when  
7 she brought that down to me I reminded her that there was  
8 no negotiated settlement of this case and she said she  
9 understood that, which is essentially what both of them  
10 confirmed when you questioned them about a plea  
11 negotiation that they understood there was going to be no  
12 negotiated sentence on my part in any event.

13 The Court: Ms. Stevens?

14 Ms. Stevens: Your Honor, that was after --- Mr.  
15 Conner gave me the plea sheet Monday afternoon with  
16 negotiated still marked on it. No time after that when  
17 he gave me that plea sheet did he say he cannot have ten  
18 (10) years. After we, right before we picked the jury I  
19 was taking the plea sheet back to him and he was upset  
20 that Mr. Scurry was getting off so Mr. Conner looks at  
21 him and says go sit down we'll pick your jury. Not at  
22 that time did he say and the ten (10) years is gone. I  
23 still had a plea sheet, Your Honor, with negotiated ten  
24 (10) year sentence written on it. He never asked me back  
25 for the plea sheet, never told me it was no longer on the

HEARING

7

1 table. He says we had a conversation and I remember a  
2 different conversation, Your Honor, and the exact words  
3 ...

4 The Court: The conversation at the probation agents  
5 table?

6 Ms. Stevens: Yes, sir, Your Honor. At no time  
7 during that conversation did he say --- he did say I will  
8 never offer you another offer but he did not say at that  
9 time that this particular offer was off the table and as  
10 we were trying to negotiate Monday afternoon he never  
11 said the negotiated plea is off the table. When we  
12 signed the plea sheet, which still had negotiated  
13 sentence marked on it, when I gave it to him, he said  
14 this isn't a negotiation anymore. I figured it wouldn't  
15 be just because I know Mr. Conner.

16 The Court: Why at that time didn't you all just not  
17 plead or push it further with me and try to enforce it,  
18 if it was something that could be enforced?

19 Ms. Stevens: Well, Your Honor, I was hoping that  
20 his support and his lack of a major criminal record, the  
21 fact that he's never denied doing it, gave a statement  
22 almost right away. The victim told you, well, she didn't  
23 speak but through Mr. Conner said that although she was  
24 scared, I think you asked her if he had said anything or  
25 threatened her in any way that she said no and I was just

HEARING

8

1 hoping that I would be able to convince you that the ten  
2 (10) year sentence would have been appropriate without it  
3 having been negotiated and unfortunately I was not able  
4 to accomplish that. He was not expecting eighteen (18)  
5 years and Your Honor I feel like I the original offer was  
6 a plea to the ten (10) year minimum it was negotiated  
7 that was what he offered me first and then ...

8 The Court: Just looking on down the line, you have  
9 to make at least one assumption that I would accept the  
10 plea, because it would be up to me ...

11 Ms. Stevens: Completely.

12 The Court: If there would have been a negotiated ten  
13 (10) years in place, with a stick up with a hand gun and  
14 a mask it would fall on me to decide whether or not that  
15 was appropriate. I would say the majority of the time in  
16 a negotiated situation I will honor the thinking of the  
17 lawyers as to what can be proven and what might be  
18 difficult about it and how the chips might fall because  
19 you all know the case better than I do. I can think of  
20 several instances where at least in recommendations the  
21 instances of where a violent crime I've gone above the  
22 recommendation much to the dismay of the Defendant and  
23 also negotiated plea where I rejected it because I didn't  
24 think the sentence was appropriate. Of course, I guess,  
25 when I asked Mr. Boone a question is it your

HEARING

9

1 understanding there is no negotiation or recommendation,  
2 he did hesitate to answer that question first and then I  
3 detective some things that were unusual and then he did  
4 say no there is no negotiation or recommendation. So, I  
5 don't know exactly what the remedy would be at the time  
6 he stood before me and entered the plea there was in his  
7 mind no negotiation or recommendation. Even if all of  
8 your conversations with Mr. Conner are correct that  
9 certainly doesn't foreclose you from moving for a  
10 reduction in the sentence on the basis that eighteen (18)  
11 years is just to high under the circumstances. I'm not  
12 inclined to put in place a negotiated sentence of ten  
13 (10) years unless I were to be convinced that ten (10)  
14 years is an appropriate sentence period. I'd be more  
15 inclined to reduce the sentence then I would be to  
16 enforce a negotiation that probably wouldn't hold any  
17 water at least in my mind. I don't know if I audibly  
18 stated that or not.

19 Mr. Conner, I might be able to anticipate what your  
20 answer would be but the Defendant has no criminal record  
21 ...

22 Mr. Conner: He does have a criminal record.

23 The Court: Oh, okay.

24 Ms. Stevens: He has a slight criminal ...

25 The Court: That's right.

HEARING

10

1 Ms. Stevens: Magistrate criminal domestic violence  
2 and then one criminal domestic violence ...

3 The Court: Two or three CDVs?

4 Ms. Stevens: Yes, sir.

5 The Court: That's what I consider the substantive  
6 conviction. What's the state's position on whether or  
7 not 18 years is appropriate, not appropriate, too high,  
8 too low or, just about right.

9 Mr. Conner: I think it's about right based upon  
10 what the little woman at the Twin Dragon reported and  
11 what the video indicated. He came in, you can see him  
12 with his gun in his hand pointed directly at her and she  
13 said he demanded money and you can see her handing him  
14 the money and all that time he had the pistol within  
15 about four feet from her, as close as I am to the court  
16 reporter in any event. And he had on a mask and ...

17 The Court: That's what gets me you have a Sumter  
18 County citizen who, and this is why I would struggle with  
19 the ten years on a negotiated deal. You have a Sumter  
20 County citizen who the circumstances makes it clear why  
21 they call it a stick up. It is terrifying I'm sure.

22 Ms. Stevens: I'm sure it was, Your Honor.

23 The Court: No citizen in any county in any state  
24 ought to have to go through that and I certainly  
25 sympathize with him that he says he is easily led astray

HEARING

11

1 and he's a follower and not a leader. There are lots of  
2 followers out there who --- that's just hard to imagine  
3 how anybody would feel looking down a barrel of a gun. I  
4 don't know if I've ever given anybody ten years on a  
5 armed robbery. Common Law robbery happens very  
6 frequently but that's just a terrifying incident. Is  
7 there anything else you want to say about the sentence.  
8 I know, I know that the distress of the Defendant is  
9 about --- I'm just not convinced that even if the facts  
10 are just exactly like you say and for purposes of this  
11 motion I'll accept those facts exactly as you say with  
12 those dealings with Mr. Conner but when he got up to plea  
13 it was clear that there was no deal in place. I don't  
14 know the motives of the State in trying to get cases to  
15 plea or what their strategies are in offering these  
16 negotiated deals. Of course, I think everybody knows a  
17 negotiated plea I need to know about it in advance  
18 anyway.

19 Ms. Stevens: Yes, sir.

20 The court: It certainly wouldn't do anybody any  
21 good to go through twenty minutes of a plea and then say  
22 by the way this is a negotiated ten (10) years and it's  
23 the first I ever heard of it. The better practice is to  
24 let me know ahead of time and say this is negotiated  
25 would you be inclined to do it and of course, I'd say not

HEARING

13

1 Ms. Stevens: And he does have four children, Your  
2 Honor. I would ask that you reconsider the 18 year  
3 sentence and sentence him to a lesser sentence?

4 The Court: Anything else Mr. Conner?

5 Mr. Conner: Nothing further.

6 The Court: All right. I'll take that under  
7 advisement. Is all the jury here.

8 Bailiff: Yes, sir.

9 The Court: I'll let you all know within the next  
10 hour.

11 Ms. Stevens: Thank you.

12 (Off the record)

13 The Court: All right. Anything else, Ms. Stevens?

14 Ms. Stevens: No, sir. Your Honor.

15 The Court: Anything else that you want to say, Mr.  
16 Boone?

17 Mr. Boone: I --- you know, I've never been in any  
18 serious trouble. I never been to prison. I just kind of  
19 seem like my first offense, I know it's a serious crime,  
20 first offense from the start I've been questioned I've  
21 been totally honest because of my remorse I felt for it.  
22 I knew it was wrong. In fact, I never been in trouble.  
23 I have four children out there that I kind of got to be  
24 there eventually for them. I kind of feel like 18 years  
25 is just a little to long for first offending felony, you

1 know.

2 The Court: Well, I understand what you're saying.  
3 I know what you're talking about there and I don't mean  
4 it this way but there is no armed robbery first offense  
5 but I understand what you're saying.

6 Mr. Boone: Yes, sir.

7 The Court: What I'm trying to do is balance in my  
8 mind the sheer terror that the victim felt and the fact  
9 that citizens of this county are increasingly exposed to  
10 these senseless crimes involving guns. And I want to  
11 make sure that the record shows that I'm not going to  
12 grant the motion based on the negotiated deal. I'm going  
13 to grant it in part. I'm not going to sentence you to  
14 ten years. I just couldn't do that. I'm going to lower  
15 the sentence and, you know, as you consider things, I  
16 consider these things ranging from sentencing to  
17 obviously going through my mind during the presentation.  
18 I'm going to --- Mr. Corbett --- and I'll have to assign  
19 an amended sentencing sheet or sign an order to this  
20 effect which will go to the Department of Corrections.  
21 How much have you spent in jail?

22 Mr. Boone: Twenty-two (22) months.

23 The Court: Twenty-two (22) months. All right. The  
24 sentence is, Mr. Boone, that you are committed to the  
25 State Department of Corrections for fourteen (14) years.

HEARING

15

1 Ms. Stevens: Thank you, Your Honor.

2 The Court: I would not have considered a ten (10)  
3 year sentence anyway.

4 Ms. Stevens: Yes, sir. Your Honor.

5 The Court: The only other circumstance where I  
6 would have would be if you had been the lookout man or  
7 whether or not you would have been the driver, but the  
8 one holding the weapon, fourteen is hardly --- that's my  
9 position.

10 Ms. Stevens: Thank you, Your Honor.

11 The Court: Thank you.

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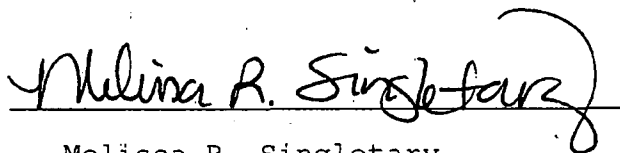
25

**CERTIFICATE**

This is to certify that the Motion for Reconsideration hearing in the matter of State vs. James Wesley Boone, consisting of Fifteen (15) pages is a true and correct transcript; said jury selection was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 3rd day of May, 2010.



Melissa R. Singletary  
Certified Court Reporter

Notary Public for South Carolina  
My Commission Expires: 3-5-2014

FORM 5

STATE OF SOUTH CAROLINA OCT 13 PM 4:45

IN THE COURT OF COMMON PLEAS

COUNTY OF Sumter )

James Wesley Boone 336939 )  
Full name and prison number (if any) of Applicant. )

2011-CP-43-1939

v. )

APPLICATION FOR

State of South Carolina )

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 veified (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 ckr 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, exeise 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 thfees 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 Turbeville Correctional Institution
2. Name and location of Court which imposed sentence Sumter County Courthouse Sumter SC
3. Name(s) of co-defendant(s) (if any) Andrew Scurry
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2007-GS-43-0640
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) Sept. 15 2009 18 years 858
  - (b) Sept. 17 2009 14 years 858

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes

(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. South Carolina Court of appeals

ii. P.O. Box 11629

iii. Columbia SC 29211-1629

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

i. Appeal Denied (conviction Affirmed)

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. Submitted August 15, 2011 - Filed August 22, 2011

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. UP NO. 2011-UP-399

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) NA

(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 Counsel
- (b) Involuntary Guilty plea
- (c) Prosecutorial misconduct

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

- (a) Breach of Promise
- (b) Attempted to coerce trial court with set plea (without stating reason at original hearing)
- (c) Coerced applicant to accept plea then proceeded with picking jury for trial.

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

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

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

- (a) the specific nature thereof:
  - i. Motion of reconsideration of sentence
  - ~~ii.~~ \_\_\_\_\_
  - ~~iii.~~ \_\_\_\_\_
  - ~~iv.~~ \_\_\_\_\_

- (b) the name and location of the Court in which each was filed:
  - i. Sumter County Courthouse Sumter SC 29150
  - ~~ii.~~ \_\_\_\_\_
  - ~~iii.~~ \_\_\_\_\_
  - ~~iv.~~ \_\_\_\_\_

- (c) the disposition thereof:
  - i. 18 year sentence reduced to 14 years
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. September 17, 2009

~~ii.~~ \_\_\_\_\_

~~iii.~~ \_\_\_\_\_

~~iv.~~ \_\_\_\_\_

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

i. N-A

~~ii.~~ \_\_\_\_\_

~~iii.~~ \_\_\_\_\_

~~iv.~~ \_\_\_\_\_

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

NO

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

(a) which grounds have been presented:

i. N-A

~~ii.~~ \_\_\_\_\_

~~iii.~~ \_\_\_\_\_

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

i. N-A

~~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) N-A

~~(b)~~ \_\_\_\_\_

~~(c)~~ \_\_\_\_\_

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? No
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

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. Lauren Stevens, Esq. 141 N. Main St. Room 102 Sumter, SC 29150
  - ii. Elizabeth A. Franklin-Best Division of Appellate Defense P.O. Box 11589
  - iii. Columbia SC 29211-1589
- (b) the proceedings at which each such attorney represented you:
- (17a, 17c and 17d)
- i. Lauren Stevens represented me at the Plea hearing and reconsideration
  - ii. Elizabeth Franklin-Best represented me for the direct appeal. (17d)
  - iii. \_\_\_\_\_

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

To receive the benefit of original plea agreement

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

N

Applicant reserves the right to amend this application pursuant to the precepts of S.C. Code Ann. 17-27-10 et. seq.

STATE OF SOUTH CAROLINA )  
 )  
County of )

2011-CP-43-1939

VERIFICATION

I, \_\_\_\_\_, 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.

*A James Bone*

SWORN to and subscribed before me this 17th  
day of October, 2011.

*Susan H Shirley* (L.S.)  
Notary Public

My Commission Expires: 09-29-2018

2011 OCT 18 PM 2:55  
CLERK OF COURT  
SOUTH CAROLINA

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

I, \_\_\_\_\_, 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.

James Beere  
Applicant

SWORN or affirmed to and subscribed before me this

17th day of October, 2011.

Susan H. Hurley  
Notary Public

My Commission Expires: 09-29-2018

2011 OCT 18 PM 2:55  
CLERK OF COURT  
SOUTH CAROLINA

State of South Carolina ) Court of Common Pleas

County of Sumter 2011 OCT 18 PM 2:55 Third Judicial Circuit

James W. Boore 336939 )  
COURT )  
S.C. ) Case no. 2011-CP-43

vs. )

State of South Carolina )

Certificate of Service  
by mail

I certify that a true copy of the following  
application for Post Conviction Relief has been served on  
the Honorable James C. Campbell on this 17th day of  
October 2011

*James Boore*

Sworn before me on this  
17th day of October 2011

*Susan H. Hurley*  
Notary of public South Carolina  
My Commission expires:  
09-29-2018

STATE OF SOUTH CAROLINA )  
 COUNTY OF SUMTER )  
 )  
 James Wesley Boone, #336939, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE THIRD JUDICIAL CIRCUIT

**2011-CP-43-1939**

**RETURN**

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 18, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the September 2007 term of the Sumter County Grand Jury for Armed Robbery, Criminal Conspiracy and Accessory After the Fact of a Felony (2007-GS-43-0640). Applicant was represented by Lauren Stevens, Esquire. On September 15, 2009, the Applicant appeared before the Honorable George C. James, where he pled guilty to Armed Robbery and was sentenced to eighteen (18) years imprisonment. Upon Applicant's Motion for Reconsideration, the trial judge reduced the sentence to fourteen (14) years imprisonment.

A timely Notice of Appeal was filed and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's plea and sentence by written order on August 22, 2011. (State v. Boone, Op. No. 2011-UP-399). The Remittitur was sent on September 7, 2011.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject guilty plea, the Applicant's records from the South Carolina

Department of Corrections, the relevant appellate documents, and the guilty plea transcript<sup>1</sup>. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. Ineffective Assistance of Counsel.
  - a. "Breach of promise."
2. Involuntary Guilty Plea.
  - a. "Attempted to coerce trial court with set plea (without stating reason at original hearing)."
3. Prosecutorial Misconduct.
  - a. "Coerced Applicant to accept plea then proceeded with picking jury for trial."

Applicant has failed to set forth with specificity the grounds upon which the application is based and facts in support thereof. S.C. Code §17-27-50. Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

## 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

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<sup>1</sup> As of the date of this return, Respondent is still awaiting receipt of the South Carolina Department of Corrections records. The same will be forwarded to the Court upon its receipt.

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

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

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

ROBERT D. CORNEY  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211


December 19, 2011.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2011-CP-43-1939
	)	
JAMES WESLEY BOONE, 336939,	)	
	)	
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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Brian Benenhaley, Esquire**  
**Subscriber BASE Holdings**  
**3830 Forest Dr., Ste.207**  
**Columbia, SC 29204**

DATED this 19<sup>th</sup> day of December, 2011.

  
 Lauren Meara, Legal Assistant  
 For Respondent

State of South Carolina	)	In the Court of Common Pleas
	)	Third Judicial Circuit
County of Sumter	)	2011-CP-43-01949

James Wesley Boone,	)	
	)	
	)	
Plaintiff	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	
_____	)	

December 10, 2012  
Sumter, South Carolina

B E F O R E:

The Honorable Ferrell Cothran, Judge

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

Megan Harrigan, Esq.  
Attorney for the Defendant

Charles T. Brooks, III Esq.  
Attorney for the Applicant

Bonnie H. Kelly, CVR  
Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID</u>
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-- No exhibits introduced --

1 THE COURT: Okay.

2 MS. HARRIGAN: May it please the Court.

3 THE COURT: Yes, ma'am.

4 MS. HARRIGAN: Your Honor, the next case is *James*  
5 *Wesley Boone vs. the State of South Carolina*; docket No.  
6 2011-CP-43-1939. Applicant was true-billed indicted at the  
7 September 2007 term of the Sumter County Grand Jury for  
8 armed robbery, criminal conspiracy, and accessory after the  
9 fact of a felony.

10 Applicant was represented by Lauren Stevens. On  
11 September 15, 2009, the applicant appeared before the  
12 Honorable George C. James, where he pled guilty as indicted  
13 to armed robbery, and was sentenced to 18 years  
14 imprisonment.

15 Upon applicant's motion for reconsideration, Judge  
16 James reduced the sentence to 14 years imprisonment. A  
17 timely notice of appeal was filed, and the appeal was  
18 perfected. The Court of Appeals affirmed the applicant's  
19 plea and sentence, and the remittitur was sent on September  
20 7, 2011.

21 He filed a timely application for post-conviction  
22 relief on October 18, 2011, alleging ineffective assistance  
23 of counsel, involuntary guilty plea, and prosecutorial  
24 misconduct. The State made its return on December 19,  
25 2011, and is represented in this action by Charles T.

1 Brooks, III.

2 THE COURT: Okay.

3 MR. BROOKS: Ready, Judge?

4 THE COURT: Yes, sir.

5 MR. BROOKS: Call Mr. Boone to the stand.

6 THE COURT: Okay.

7 JAMES WESLEY BOONE, having been first duly sworn,  
8 testifies as follows:

9 BAILIFF: State your name, and spell your last name  
10 for the record, please.

11 THE APPLICANT: My name's James Boone. Last name B-o-  
12 o-n-e.

13 MR. BROOKS: Ready, Judge?

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION BY MR. BROOKS:

16 Q Mr. Boone, I -- I'm going to ask a couple little  
17 housekeeping things like we talked about, I told you I was  
18 gonna ask you.

19 You were represented in general sessions matter by Ms.  
20 Stephens; is that correct?

21 A Yes, sir.

22 Q And that was through the Public Defender's Office; is  
23 that correct?

24 A Yes, sir.

25 Q Okay. And this was an armed robbery case; is that

1 correct?

2 A Uh-huh.

3 Q Okay.

4 THE COURT REPORTER: Is that "yes"?

5 Q You gotta say "yes" ---

6 A Yes, sir.

7 Q Okay. And now, let me -- let me help you out, James.  
8 When -- when somebody asks you questions here in court, you  
9 got to give them verbal response. You gotta say "yes,"  
10 "no." Because this lady right here (indicates) she can't  
11 take down uh-uh, uh-huh, and all that; and nodding of the  
12 head, like -- like we do when we talk back there. You  
13 understand that, right?

14 A Yes, sir.

15 Q Okay. Now, you was -- pled guilty to armed robbery,  
16 you got sentenced to 18, and your sentence was then reduced  
17 to 14; is that correct?

18 A Yes, sir.

19 Q Okay. Now, just so we get this out the air, you  
20 understand that your only remedy here today, the only thing  
21 that the Judge can do, is set aside your plea and put you  
22 back in the position that you were in the beginning and  
23 give you a new trial. You understand that.

24 A (No audible response.)

25 Q That's the only thing Judge Cothran can do for you

1 today if we convince him of that. You understand that?

2 A Yes, sir.

3 Q Okay. You understand there's risk that come with  
4 that.

5 A Yes, sir.

6 Q And you have told me you understood that. You said  
7 you still wanted to go forward; is that correct?

8 A Yes, sir.

9 Q Okay. Now, part of your application is you said you  
10 were taking a 10-year deal. Okay? Is that correct?

11 A Yes, sir.

12 Q Tell the judge where that come from and how did this  
13 plea come about.

14 A Well, the plea come from -- the arm robbery carried a  
15 mandatory minimum of 10. During my time in the county I  
16 was told, through every visit with Lauren Stevens, that the  
17 charge would be dropped to strong arm. If not, I would be  
18 forced to plead to a 10-year sentence.

19 After -- after two years in the county, I bond out. I  
20 was on bond for a year. Every time I talked to her it  
21 would get dropped to strong arm. If not, I would have to  
22 plead to 10 years. Okay.

23 When I finally got the call, she said my case was on  
24 docket. I was told she couldn't get it dropped to strong  
25 arm, I would be forced to plead my 10 -- I would have to

1 plead to 10 years. I said, "Well, okay."

2 I -- I came to the courtroom prepared to do the 10  
3 years. I never seen -- she never showed me any paperwork  
4 or anything, you know, as far as the plea. The one that I  
5 signed -- didn't sign until Tuesday. She never showed me  
6 anything. She said I was going to plead to 10 years.

7 I waited around all day. Last -- the last case come  
8 up about 3:30/3:45, and she said that if we would allow a  
9 jury to be picked, it would buy me one more night home. I  
10 could come back in the morning, the 10 would still be on  
11 the table, and I could plead and get the 10 years.

12 Q So I want to make sure -- I'm going to stop you right  
13 there. You're saying she told you you were going to get  
14 10. That was the deal.

15 A Yes, sir.

16 Q And you're sure of that.

17 A Positive.

18 Q Okay. All right. And what happened? Tell us about  
19 what happened at the plea.

20 A All right. Like I said, at the plea, my case doesn't  
21 get called until towards the end of the day, 3:45, close to  
22 four o'clock. And she said -- well, I hadn't signed  
23 nothing. I hadn't signed any -- I wasn't brought anything  
24 to sign at all. I was just told I was going to plea to 10  
25 years. That was on the table; that's what I was gonna get.

1 Plead guilty.

2 But with 15 minutes left in the day, go ahead, let  
3 this jury be picked. They won't have time to get to your  
4 case today. You can come back in the morning, the 10 years  
5 will still be on the table, you can still plead guilty, and  
6 receive the 10-year sentence.

7 Q All right.

8 A So I -- I allowed the solicitor to pick the jury, went  
9 on home, come back in the morning prepared to plea to 10  
10 years. Me, my mother, my sister, we went in front of the  
11 Public Defender's Office. She come in with the sentencing  
12 sheet marked "negotiated sentence."

13 I asked her, like, three times, "This 10 years?" She  
14 said, "Yes." I said, "Are you sure?" She said, "Yes, I'm  
15 sure." I asked her again, "Ten years if I sign this." She  
16 said, "Yes."

17 So I signed it. Handed it to her, she said, "Meet me  
18 in the courtroom."

19 Got in the courtroom, I sat down, prepared to plead.  
20 And that's when she comes over to me and says, "The  
21 solicitor, she wants to take the 10 years off the table."  
22 And I asked her, "Well, we just signed -- we just made that  
23 deal." She said, "Don't worry bout nothing. Just make  
24 sure you go along with this plea, because the judge is not  
25 going to give you more than 10 years. You're gonna have --

DIRECT EXAMINATION BY MR. BROOKS - JAMES WESLEY BOONE 10

1 go on the record, you have family support. I'm sure the  
2 judge won't give you 10 years for one arm robbery."

3 I asked her again, "Are you sure?" She said, "Yes,  
4 I'm sure." I said, "All right."

5 Went along with the plea, answered everything  
6 accordingly. That's when the judge give me 18 years. And  
7 went back to the county jail, got brought back up two days  
8 later for the -- the reconsideration hearing. And during  
9 that hearing, Ms. Stevens is just not telling the judge,  
10 "Look, we made a 10-year deal; we signed the paper for 10  
11 years. You promised 10 years," whatever.

12 The judge then states that he doesn't know anything  
13 about that, you know what I'm saying. He states -- I -- I  
14 think his exact words on the transcript are that "I concur  
15 everyone knows -- everyone concurs I didn't know anything  
16 about this plea." He didn't know nothing about the plea to  
17 start with.

18 And so he asked Ms. -- Ms. Stevens why -- why at that  
19 time when -- when the solicitor backed out of the agreement  
20 that she made, why didn't you try to enforce the agreement  
21 or why didn't you just not plead? And I think her answer  
22 is to the effect "I -- I figure with his family support,  
23 his lack of criminal record, the fact that he never denied  
24 doing it, then I would be able to convince you that a 10-  
25 year sentence would have been appropriate without it being

1 negotiated.

2 That -- that -- and that's the reason she didn't feel  
3 she had to enforce it. She just felt like the judge was  
4 gonna give me a 10-year sentence either way, whether there  
5 was a deal or no deal. And that's what her --- that's what  
6 she advised me, and that's the reason I pled guilty, to get  
7 the 10 years.

8 Q Okay. Now, Mr. Boone, and I have to ask, when the  
9 judge -- at that motion for reconsideration -- reduced it  
10 from 18 to 14, and what you testified here today was you  
11 were prepared to do 10.

12 A Yes, sir.

13 Q That's a difference of four years. Are you willing to  
14 risk this issue of four years for a possible, potential  
15 maximum sentence of arm robbery on the second time around?

16 A Yes, sir. I pled guilty for 10 years. I was told I  
17 was gonna get 10, I signed for 10, promised 10. My whole  
18 understanding throughout the whole process is I was gonna  
19 receive a 10-year sentence ---

20 Q And I got ---

21 A --- if I pled guilty.

22 Q I got that. All I'm asking is are you willing to run  
23 that risk -- you understand what, you could get for arm  
24 robbery, which is 30.

25 A I -- I understand the minimum and the maximum to the

DIRECT EXAMINATION BY MR. BROOKS - JAMES WESLEY BOONE 12

1 sentence.

2 Q And you understand that we convince Judge Cothran here  
3 today to grant you your post-conviction relief, you could  
4 go back and potentially face -- potentially -- possibility  
5 of 30 years.

6 A Yes, sir.

7 Q And what -- what you're arguing about is four years.  
8 And I just want to make sure that's what you want to do.

9 A Yes, sir.

10 Q Okay. Now, if you had known that you was gonna get 18  
11 or eventually get 14, would you have taken this deal?

12 A No, sir.

13 Q Okay. Would you have taken this thing to trial?

14 A Yes, sir. I -- I would have. I would have asked for  
15 a continuance to prepare my defense for the trial if the  
16 plea that I had done made couldn't be honored. I believe  
17 it was enforceable -- I had a right to enforce it, which at  
18 the time I didn't know. My lawyer failed to enforce that  
19 right and it was an enforceable plea agreement.

20 I relied upon that agreement first of all when I gave  
21 the statement to the detective. That's the only reason I  
22 gave a statement, so he would make sure -- he knew what  
23 happened -- he would make sure that I got the leniest  
24 [phonetic] possible if I gave a statement. So I gave a  
25 statement.

1           And also, when I -- I signed a -- when I signed a  
2 paper, that -- that was -- I had no defense to it after  
3 that. I had done admitted to it for this 10-year sentence.  
4 And that -- that's why I admitted to it, to get a 10-year  
5 sentence.

6           Q     Okay. Is there anything else we need to tell Judge  
7 Cothran, as your testimony, that we haven't covered?

8           A     I think it's pretty much covered: My lawyer was  
9 ineffective; the plea was coerced; I was told I was getting  
10 10 years by pleading guilty.

11          Q     And you -- and you still want your sentence vacated  
12 and given a new trial.

13          A     I want -- I -- the relief I'm seeking is to be re-  
14 sentenced.

15          Q     I -- I -- I understand that. But listen, listen to me  
16 carefully now: You understand that that's not the remedy  
17 you can get on PCR. We convince Judge Cothran here that  
18 Ms. Stevens was ineffective --

19          A     Uh-huh.

20          Q     -- the remedy is to get you a new trial. Listen, like  
21 I explained to you about the computer game --

22          A     Uh-huh.

23          Q     -- where you press the reset button, start over, same  
24 game. That's the only remedy that Judge Cothran can give  
25 you. Now, that's what we're asking for, and you -- we

DIRECT EXAMINATION BY MR. BROOKS - JAMES WESLEY BOONE -- 14

1 gonna get -- we're asking the judge to set -- say that Ms.  
2 Stevens was ineffective and to give you a new trial.  
3 That's what we want, right?

4 A Yeah. Yes, sir. I -- I want this corrected.

5 Q I -- listen to me: We -- we're asking for a new trial  
6 --

7 A All right.

8 Q -- for purposes of this -- this plea and this  
9 sentence; is that correct?

10 A Yeah. That's correct.

11 Q Okay. I do want to make sure we clear about that.

12 A Yeah. I understand that.

13 Q Okay. Answer any questions of the attorney general.

14 MS. HARRIGAN: May it please the Court.

15 THE COURT: Yes, ma'am.

16 CROSS-EXAMINATION BY MS. HARRIGAN:

17 Q Mr. Boone, how many times did you meet with Ms.  
18 Stevens before your guilty plea?

19 A I -- I don't know the exact number, but several times.

20 Q And you were originally charged with armed robbery,  
21 conspiracy, and accessory after the fact of a felony,  
22 correct?

23 A Yes, ma'am.

24 Q And the State dismissed your conspiracy and your  
25 accessory after the fact charge as part of your guilty

1 plea.

2 A Yes, ma'am.

3 Q And a jury had already been selected for your trial  
4 when you decided to enter your guilty plea, correct?

5 A Yes, ma'am.

6 Q And you admitted to Judge James during your plea that  
7 you were guilty, correct?

8 A Yes, ma'am.

9 Q In fact, you described to Judge James how you planned  
10 and committed this armed robbery, correct?

11 A Yes, ma'am.

12 Q Okay. So you are guilty of armed robbery.

13 A Yes, ma'am.

14 Q And you stated multiple times during your plea how  
15 remorseful you were, correct?

16 A Yes, ma'am.

17 Q And that you were pleading guilty because you wanted  
18 to take responsibility for your actions, correct?

19 A Yes, ma'am.

20 Q And you apologized to the victim numerous times,  
21 correct?

22 A Yes, ma'am.

23 Q And you told Judge James that you knew the plea was  
24 without any negotiations or recommendations from the State,  
25 correct?

DIRECT EXAMINATION BY MR. BROOKS - JAMES WESLEY BOONE 16

1 A Yes, ma'am. I told him that with -- I told him that  
2 under the advice from Lauren Stevens with -- with the  
3 expectation of getting the 10-year sentence that I had  
4 signed for.

5 Q And Judge James even stated that he could tell by your  
6 body language that you were not happy that there were no  
7 negotiations or recommendations, correct?

8 A Yes, ma'am.

9 Q So why did you not stop the plea and tell Judge James  
10 that it was your understanding there still was a 10-year  
11 negotiation?

12 A I was told -- I was told to go along with the plea. I  
13 figured if I said anything to stop the plea, that the plea  
14 would not get accepted and I wouldn't get the 10-year  
15 sentence that I -- that I was pleading guilty to get.

16 Q So you went along with the plea because you were  
17 afraid you'd get the maximum on armed robbery.

18 A I went along with the plea because I was advised by my  
19 counsel, Ms. Lauren Stevens, that I would get the 10 years  
20 if I went along with the plea. That's why I went along  
21 with the plea.

22 Q And you told Judge James that you were satisfied with  
23 Ms. Stephens representation, correct?

24 A Yes, ma'am.

25 Q And I believe your exact words were that "she had

1 represented you properly in every way," correct?

2 A Yes, ma'am. That was before -- that was -- that was  
3 during the understanding that I was getting a 10-year  
4 sentence if I pled guilty.

5 Q Even though you told Judge James you knew there was no  
6 negotiation or recommendation under oath.

7 A Yes, ma'am.

8 Q And the armed robbery was caught on camera, correct?

9 A Yes, ma'am.

10 Q And there were two co-defendants that were involved in  
11 this, correct?

12 A There was -- I think there was one co-defendant.

13 Q And you gave a statement admitting your guilty to law  
14 enforcement, correct?

15 A Yes, ma'am.

16 Q And after Judge James sentenced you, Ms. Stephens  
17 filed a motion for reconsideration, right?

18 A Yes, ma'am.

19 Q And you had another hearing before Judge James?

20 A Yes, ma'am.

21 Q And Ms. Stevens told Judge James about the prior 10-  
22 year plea offer, correct?

23 A Yes, ma'am.

24 Q And Judge James stated that he would not have accepted  
25 the 10-year negotiation, correct?

DIRECT EXAMINATION BY MR. BROOKS - JAMES WESLEY BOONE 18

1 A Yes, ma'am.

2 Q And Judge James did reduce your sentence to 14 years,  
3 correct?

4 A Yes, ma'am.

5 Q Took four years off your sentence?

6 A Yes, ma'am.

7 Q Did you want to go to trial on these charges?

8 A I didn't want to go to trial if I -- with the plea for  
9 the 10-years, I didn't want to go to trial. If I would  
10 have known that -- that I would face eight -- I was going  
11 to get 18 or 14, I would -- I probably would have took it  
12 to trial.

13 Pled guilty to get the 10 years. That's all I knew.  
14 I was gonna get 10. If you plead guilty, you will get 10.  
15 I pled guilty, expecting to get 10 years I was promised.

16 Q And did you ask Ms. Stevens to put off or delay your  
17 plea so you could spend more time with your family,  
18 particularly your son?

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

20 Q All right.

21 MS. HARRIGAN: No further questions, Your Honor.

22 THE COURT: Okay. Anything further?

23 MR. BROOKS: No other questions, Judge.

24 THE COURT: Okay. Thank you, sir. You can step down.

25 (The applicant complies.)

1 THE COURT: You have any other witnesses?

2 MR. BROOKS: Beg -- beg the Court's indulgence, Your  
3 Honor.

4 THE COURT: Okay.

5 (Mr. Brooks confers with the applicant.)

6 MR. BROOKS: Your Honor, we would call Alice Priest.

7 THE COURT: Okay.

8 ALICE PRIEST, having been first duly sworn,  
9 testifies as follows:

10 BAILIFF: State your name, please, ma'am, and spell  
11 your last name for the record.

12 THE WITNESS: It's Alice Priest, P-r-i-e-s-t.

13 MR. BROOKS: Ready, Judge?

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION BY MR. BROOKS:

16 Q Ms. -- Ms Priest, how are you today?

17 A I'm good; you?

18 Q All right. Mr. Boone is your son?

19 A Yes.

20 Q Okay. Were you privy to conversations between him and  
21 his lawyer Ms. Stevens?

22 A I wasn't around for all of them. I just knew the  
23 things that he was telling me, you know, about hopefully  
24 getting it dropped to strong arm robbery. He told me about  
25 that.

1 Q I understand that. But I'm talking about ---

2 A Prior to court?

3 Q Were you privy to conversations -- were you in the  
4 room, listening to Ms. Stevens talking to your son about  
5 his case?

6 A Once or twice.

7 Q Okay. During these -- this once or twice occasion,  
8 did Ms. Stevens ever promise your son 10 years?

9 A She said that if he pled guilty, he would get 10  
10 years. And the day before we went -- went to court or went  
11 in for the trial and all, she come out with a -- with a  
12 paper. I mean, because the night before, we were all at  
13 our house and you know, we were talking about, you know, he  
14 was gonna be gone 10 years. And you know, that's what we  
15 all thought was gonna happen.

16 And we met her in front of -- down from her office.  
17 And she gave this piece of paper, which I have right here  
18 (indicates) that he signed, and he looked at her, "This is  
19 pretend, right?" You know, and he asked about three  
20 different times, and she said, "Yes. Yes. Sign this --  
21 this paper."

22 I mean, everything's crossed out now.

23 So whenever he went to trial and everything was going  
24 on, you know, I felt like that he was gonna get the 10  
25 years. And when the judge sentenced him to the 18, I -- I

1     bout fell out.

2     Q     And now, ultimately the judge reconsidered and knocked  
3     four years off.

4     A     Right.

5     Q     Okay. So he -- so what -- the time that he's serving  
6     now is 14 years.

7     A     Right.

8     Q     And -- and that form that you have, is that like the  
9     plea form that he signed?

10    A     Before going to trial, yes. It was --

11    A     I'm not sure -- it doesn't say it was a plea, but I  
12    know he signed this before going.

13    Q     Can I see that?

14    A     Yes.

15             (The witness hands a document to Mr. Brooks.)

16    Q     This is -- this is the plea form that he signed.

17    A     Yeah. And see how everything is crossed out?

18    Q     Yes, ma'am. Yes, ma'am. I understand that. All  
19    right.

20             (Mr. Brooks confers with the applicant.)

21    Q     You were there when he signed this form?

22    A     Yes, I was, me and my daughter.

23    Q     And you're saying that these boxes, they weren't "x'd"  
24    out when he signed ---

25    A     No, they were not.

CROSS-EXAMINATION BY MS. HARRIGAN - ALICE PRIEST 22

1 Q --- them? Okay. And so what you're saying is that  
2 occurred after he signed it; is that correct?

3 A Right.

4 Q All right.

5 A I would assume after the sentencing, whenever he got  
6 sentenced.

7 Q Okay. But you ---

8 (Mr. Brooks confers with the applicant.)

9 Q You were there and he got -- you're saying that Ms.  
10 Stephens told him that he was gonna get 10 years.

11 A Yes. Because he asked him [sic] specifically. He  
12 looked before -- I mean, because it took him awhile to  
13 sign, because you know, 10 years is a long time. Not as  
14 long as 18, but -- and he, you know, asked, "You sure this  
15 is for the 10? You -- you sure?" And she said "yes," and  
16 then he signed. And then we went upstairs.

17 Q All right. No other questions. Answer any questions  
18 of the attorney general.

19 MS. HARRIGAN: May it please the Court.

20 THE COURT: Yes, ma'am.

21 CROSS-EXAMINATION BY MS. HARRIGAN:

22 Q Ms. Priest, you stated that you were only there for  
23 one to two meetings of Ms. Stephens, correct?

24 A Uh-huh.

25 Q And you've heard your son say that he met with her

1 several times, correct?

2 A Uh-huh.

3 Q So you weren't ---

4 THE COURT REPORTER: Is that a "yes"?

5 THE WITNESS: Yes, yes. I'm sorry.

6 Q So you weren't present for a majority of the meetings  
7 between your son and his attorney.

8 A Right.

9 Q Okay. Was it one or two times that you were present  
10 for these meetings?

11 A I think it was two times.

12 Q Okay. And were you present for the guilty plea?

13 A Whenever he pled ---

14 Q Yes.

15 A Whenever he went to trial and all?

16 Q When he pled guilty before Judge James --

17 A Yes. I was ---

18 Q -- were you present?

19 A --- there.

20 Q And you heard him tell the judge that he understood  
21 there were no negotiations or recommendations, correct?

22 A Yes. But I don't think --

23 Q But you heard him say that, yes ---

24 A Yes, I heard that.

25 Q Okay. Did you ever hear your son ask Ms. Stephens to

1 put off the plea for as long as possible?

2 A I didn't hear that.

3 Q Do you know when the sentencing sheet was -- the  
4 recommendation or negotiation was crossed out?

5 A No, I don't.

6 Q Did he want a trial on these charges?

7 A No. He was going to plead guilty and get 10 years.

8 Q So he wanted a trial.

9 A No. I mean, he was going to plead guilty and get 10  
10 years. I mean, why would you pick a jury if somebody's  
11 pleading guilty?

12 Q Okay. You love your son, correct?

13 A Very much.

14 Q And you don't want to see him go to the Department of  
15 Corrections, do you?

16 A No.

17 Q Okay. And you'd do whatever you could to help your  
18 son, correct?

19 A I would do almost anything. I'm not going to lie.

20 MS. HARRIGAN: No further questions, Your Honor.

21 THE COURT: Okay. Anything further?

22 MR. BROOKS: No other questions.

23 THE COURT: All right. You can step down.

24 (The witness complies.)

25 MR. BROOKS: Judge, we'll call Arianne Baker.

1 THE COURT: Okay.

2 ARIANNE BAKER, having been first duly sworn,  
3 testifies as follows:

4 BAILIFF: State your name, please, ma'am, and spell  
5 your last name for the record.

6 THE WITNESS: Arianne Baker; B-a-k-e-r.

7 THE COURT REPORTER: And your first name, too, please.

8 THE WITNESS: Arianne, A-r-i-a-n-n-e.

9 MR. BROOKS: Ready, Judge?

10 THE COURT: Yes, sir.

11 DIRECT EXAMINATION BY MR. BROOKS:

12 Q Ms. Baker, this is your brother?

13 A Yes, sir.

14 Q Mr. Boone?

15 A Yes, sir.

16 Q Okay. Were you privy or around when he was talking  
17 with his lawyer, Ms. Stevens, about this case?

18 A I had not necessarily been in there during some  
19 conversations, but I had talked to Jessie a lot about what  
20 was going on.

21 Q I understand about Jessie, but were you there when Ms.  
22 Stevens was talking to him?

23 A I was there the -- whenever he came up to trial.

24 Q For plea.

25 A For plea.

1 Q Where you -- where you present ---

2 A But I wasn't in -- like in his interview. When he  
3 would go to see Lauren or when Lauren would go to the  
4 jailhouse to see him when he was in jail, I wasn't in those  
5 meetings.

6 Q Where you in any of those meetings to overhear what  
7 Ms. Stevens was telling him?

8 A Whenever it came up to trial, when he was coming --  
9 when we came to court that morning and he was supposed to  
10 go up, we had went down to the Public Defender's Office;  
11 and when he had signed the plea, I had heard that it was  
12 supposed to be a non-negotiable plea of 10 years.

13 MS. HARRIGAN: We would object to hearsay.

14 THE COURT: Okay. Sustained.

15 A I was standing there.

16 Q Did you hear Ms. Stevens say that to him?

17 A Ms. Stevens said that to him and to my mother and to  
18 me that it was a non -- he was supposed to go in there and  
19 sign a non-negotiable plea of 10 years. That is what we  
20 walked into courtroom under the understanding.

21 When everything come down, that was not what he got  
22 sentenced -- that wasn't what it was. That -- the only  
23 thing that I can testify to that I think he was done  
24 unjustly, unfairly in some type of way, because he signed a  
25 non-negotiable plea of 10 years. If they could not offer

1 that -- if they couldn't offer that, that should have never  
2 been put on the table. She should have just let him say  
3 you're going to have to go in front of the judge and get  
4 whatever the judge's gonna get you.

5 All's I do know is that he was offered a non-  
6 negotiable plea of 10 years, and that is what I can testify  
7 to.

8 Q Okay. All right. Answer any questions of the  
9 attorney general.

10 CROSS-EXAMINATION BY MS. HARRIGAN:

11 Q How many meetings specifically were you present for  
12 between your brother and his attorney?

13 A I wasn't present for any. I was present for the court  
14 date, from the time when we went downstairs, before we even  
15 went into the courtroom, to see Lauren whenever he signed  
16 the plea downstairs. That was what I was ---

17 Q So you weren't present for any of the actual meetings  
18 between your brother and his attorney?

19 A Right. Which is what I said.

20 Q Okay. So you don't know what was discussed in any of  
21 those meetings.

22 A No, I don't know. But I do know she had offered him a  
23 non-negotiable plea of 10 years.

24 Q So you were present for the plea.

25 A Yes. I was ---

1 Q And you heard Judge James say, on the record, that  
2 there was no negotiation or no recommendation, correct?

3 A No, I didn't.

4 Q But you -- but you were present for the plea. You  
5 just don't recall that part of the plea?

6 A I -- I mean, it's been so long, I don't remember. But  
7 I do remember his plea agreement, what we went in there  
8 under the assumptions that what we thought we were doing.

9 Q So you can recall before the plea. Your memory's just  
10 fuzzy of what happened during the plea.

11 A I don't remember everything that --

12 Q So your memory could be wrong about what happened  
13 before the plea.

14 A My memory's not wrong about what I know. I know that  
15 Lauren signed a non-negotiable -- gave him a non-negotiable  
16 plea of 10 years.

17 As far as everything that was said before, word-for-  
18 word in the trial, no. I couldn't -- I couldn't tell you  
19 that. There's a lot of things that's gone on in life since  
20 then that I don't say that I can remember.

21 I just know that things were, to me, done unfairly.  
22 The boy was offered a non-negotiable plea of 10 years.  
23 That's what we walked in the court expecting to get, and it  
24 went a different way.

25 Q Okay. But you don't recall most of the plea.

1 A That was the plea.

2 Q Were you aware that your brother gave a statement to  
3 the police admitting his guilt?

4 A Yes.

5 Q And you love your brother, correct?

6 A I do.

7 Q And you don't want to see him in the Department of  
8 Corrections.

9 A Not for

10 Q And you'd do what you could to help him out, correct?

11 A I would do anything that would be legally within my  
12 power to help him out. But no, I'm not gonna sit up here  
13 and purger myself or any drastic measures.

14 MS. HARRIGAN: No further questions, Your Honor.

15 THE COURT: Okay. Anything futher?

16 MR. BROOKS: No other questions, Judge.

17 THE COURT: Thank you. You can step down.

18 (The witness complies.)

19 MR. BROOKS: Judge, that's the applicant's case.

20 THE COURT: Okay.

21 MS. HARRIGAN: The State would call Lauren Stevens.

22 THE COURT: All right.

23 LAUREN STEVENS, having been first duly sworn,  
24 testifies as follows:

25 BAILIFF: State your name, please, and spell your

1 first and last name for the record.

2 THE WITNESS: Lauren Vassel Stevens; S-t-e-v-e-n-s.

3 THE COURT REPORTER: Lauren?

4 THE WITNESS: L-a-u-r-e-n.

5 MS. HARRIGAN: May it please the Court?

6 THE COURT: Yes, ma'am.

7 DIRECT EXAMINATION BY MS. HARRIGAN:

8 Q Good morning, Ms. Stevens. How long have you been  
9 practicing law?

10 A I was sworn in in May of 1996.

11 Q What percentage, would you say, of your practice is  
12 criminal defense?

13 A I was a public defender for 13 years.

14 Q Do you recall when you were appointed to represent Mr.  
15 Boone?

16 A I don't recall the exact date, but I've known Jessie  
17 since he was probably 16 or 17 years old.

18 Q Have you had a opportunity to review your file from  
19 your representation prior to today?

20 A Yes.

21 Q Do you recall the number of times you met with Mr.  
22 Boone to discuss his charges?

23 A No, I do not. But I know that he and I met -- it was  
24 my practice to go out to the jail before every term of  
25 court, and I would see all of my clients even if I didn't

1 have any news for them. So I don't know the exact number.

2 Q And he was in the Sumter County Detention Center prior  
3 to his guilty plea?

4 A I -- I think for almost two years, yes.

5 Q Okay. And during these meetings, were you able to go  
6 over the indictments and the elements of the charges he was  
7 facing?

8 A Yes.

9 Q And potential sentences he was facing?

10 A Yes.

11 Q Did you explain to him that armed robbery carried a  
12 mandatory minimum of 10 years, and a maximum of 30 years?

13 A Yes.

14 Q Did he ever indicate that he didn't understand that to  
15 you?

16 A No.

17 Q Did you ever advise him of a likely sentence he would  
18 receive if he was found guilty in a trial?

19 A I told him that you were generally rewarded for  
20 pleaing. And that although you were not punished for going  
21 to trial, you would not get the same lenient sentence that  
22 you would if you were to plead.

23 Q Did you ever tell him that his charge would be reduced  
24 to strong armed robbery?

25 A The -- the prosecutor that he originally had did have

1 a reputation for not wanting to try cases and would  
2 entertain the thought of dropping the charge to strong arm  
3 robbery. So I did tell him that I would try and talk that  
4 particular solicitor into dropping the charge to strong arm  
5 robbery.

6 He had a co-defendant who also had other charges, and  
7 it was my hope that he would be allowed to get the reduced  
8 sentence in an effort to testify against his co-defendant.  
9 I was hoping that they were more interested in getting a --  
10 a guilty verdict from the co-defendant than they were Mr.  
11 Boone.

12 Q And eventually a new solicitor took over the case.

13 A Yes.

14 Q Okay. And did you explain to him that -- the  
15 implications that had on the case?

16 A I did.

17 Q So he went into his -- did he go into his plea still  
18 thinking there was a possibility of a strong arm robbery?

19 A No.

20 Q And did you discuss the implications that would have  
21 on potential sentence ranges for him?

22 A Yes.

23 Q Did you discuss his version of the facts in this case?

24 A He never denied that he did it. He only told me that  
25 -- on several occasions -- that there was a co-defendant.

1           And he also told me that the co-defendant's girlfriend  
2           at the time should also be charged, because she's the one  
3           that dropped them off there, and she was aware of what was  
4           going on. I did pass that information on to the solicitor,  
5           but nothing ever came of it.

6           Q     Do you recall receiving Mr. Boone's discovery in this  
7           case?

8           A     Yes.

9           Q     Okay. Did you review the contents of that discovery  
10          with him?

11          A     Yes.

12          Q     What -- if you'd characterize the extent of the  
13          evidence against him briefly for the Court.

14          A     They caught him close to the scene. He was on video  
15          and he did confess to the police. As to whether the police  
16          promised him any leniency, I am not aware of that. I was  
17          not present when he gave his statement.

18          Q     And he never told you that the police promised him  
19          anything, did he?

20          A     No.

21          Q     Did Mr. Boone indicate that he wanted a trial on these  
22          charges?

23          A     He did not want to go to trial. Although he did have  
24          some record, I thought that it was minor, and -- but  
25          anytime you have charges or convictions on your record, the

1 judge does take that into account when he does sentence you  
2 after trial.

3 Q And you explained that to Mr. Boone.

4 A Yes.

5 Q Do you feel you spent sufficient time preparing this  
6 case for trial -- trial or an eventual plea?

7 A Yes.

8 Q Do you recall entering into plea negotiations with the  
9 State?

10 A We did, and Mr. Connor did reluctantly agree to the 10  
11 years. The day we were supposed to pick a jury Jessie and  
12 his family wanted me to try to put it off as long as I  
13 could. I realize that it's hard for somebody to walk into  
14 the courtroom knowing they're not going to walk out. I  
15 tried to evade the solicitor as long as I could to try to  
16 give him that extra time.

17 The solicitor and I had a conversation. He did not,  
18 at that point, tell me that the deal was off the table. We  
19 did pick a jury. I still had the sentencing sheet. The  
20 sentencing sheet still had "negotiated 10-year sentence."

21 I explained to Jessie when he signed it that it still  
22 said "negotiated 10 years," and as far as I was concerned,  
23 since Mr. Connor had not verbally told me that that was no  
24 longer the case, that it was the case when he signed it.

25 When I took it to Mr. Connor, he scratched out the

1 negotiated plea and said, "I picked a jury. There is no  
2 longer a negotiated plea."

3 I went to tell Jessie and his family that there was no  
4 longer a negotiated plea. We discussed the fact that we  
5 had a jury picked, we could go to trial. As I said, he did  
6 not have very much of a record; criminal domestic violence,  
7 if I remember correctly. And I felt that because he was  
8 young and remorseful and had cooperated and was pleading,  
9 that hopefully I would be able to convince the judge that  
10 he did deserve the minimum.

11 But he was aware, when he stood in front of the judge,  
12 that the 10-year sentence was no longer a negotiated deal.

13 Q And he understood that he could get anywhere from 10  
14 to 30 years at that time.

15 A Yes, he did.

16 Q But he understood you were going to beg the Court for  
17 mercy, and explain that he was admitting his guilt; and  
18 hopefully he'd get a lower sentence?

19 A Yes.

20 Q And he told Judge James during the plea that he  
21 understood they were without any negotiations or  
22 recommendations, correct?

23 A Yes.

24 Q And do you recall Judge James commenting that he did -  
25 - he seemed displeased by this?

1 A Yes.

2 Q And after he received 18 years, he filed motion for  
3 reconsideration.

4 A I did.

5 Q What was your basis for filing this motion for  
6 reconsideration?

7 A I felt that based on Jessie's lack of a serious  
8 record, the fact that he was very remorseful, the fact that  
9 he cooperated with the police, he admitted his guilt, that  
10 he deserved the 10-year negotiated sentence.

11 And as he said, he -- it is not his job to enforce  
12 negotiations between the State and the defense. I didn't  
13 bring it up during the first plea because he can't enforce  
14 it; at that point it was a non-issue.

15 At the second hearing, I brought it up because I  
16 wanted the judge to know that the State had been willing to  
17 offer us 10, and the 18 was a big difference between what  
18 the State had been willing to offer originally and what he  
19 was sentenced to.

20 And I think that that is why he met in the middle, is  
21 that he gave some consideration to the fact that we had  
22 been offered 10 to begin with; and if the State was willing  
23 to accept 10 at one point, although he couldn't enforce  
24 negotiations, that he did take into consideration that the  
25 State was willing to take that particular sentence.

1 Q Did Judge James indicate to you at the motion hearing  
2 afterwards that he would have taken the 10-year  
3 negotiation?

4 A He said he -- it was -- I think the very last thing he  
5 said was "and I would not have taken a negotiated 10-year  
6 sentence on this."

7 When -- during the plea he felt that Jessie's prior  
8 record -- which I personally did not consider to be that  
9 serious -- he felt that perhaps Jessie had anger issues,  
10 and that is why he had gotten those -- those charges.

11 But he said that part of the reason he did sentence  
12 him originally to 18 was due to the charges that he had;  
13 not the amount of charges, but the kind of the charges that  
14 he had.

15 MS. HARRIGAN: No further questions, Your Honor.

16 THE COURT: Okay.

17 CROSS-EXAMINATION BY MR. BROOKS:

18 Q Ms. Stevens.

19 A Hey, Charles.

20 Q Haven't seen you in a while, Ms. Stevens.

21 A Been enjoying spending time with Evelyn.

22 Q I understand. Now, on -- on Mr. Boone, did you let  
23 him look back at the sentencing sheet after Mr. Connor had  
24 made those changes?

25 A Yes.

1 Q Did you ever try to ask the Court to enforce that deal  
2 of 10 years?

3 A At the second hearing I did.

4 Q But it was -- it was termed as a "motion for  
5 reconsideration."

6 A Correct.

7 Q And did you tell him what kind of questions the Court  
8 would be asking during the plea process?

9 A Yes.

10 Q Okay.

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

12 (Mr. Brooks confers with the applicant.)

13 Q And I just want to make sure I -- I understand. There  
14 was an offer on the table of a 10-year minimum, is that  
15 correct, at one point in time?

16 A There was a negotiated 10-year sentence.

17 Q Negotiated 10-year sentence. Okay. And you had  
18 communicated that to Mr. Boone.

19 A Yes.

20 Q And this was when another solicitor had the case.

21 A Yes.

22 Q Okay. And then when this other solicitor --

23 A No. There was never a -- the -- I misunderstood your  
24 question.

25 Q Okay.

1 A The first solicitor who had the case, let's just say  
2 isn't very fast when he --

3 Q Not -- not too aggressive.

4 A He's -- very good. He's not very aggressive, and a  
5 lot of times his cases, the older they get, the more likely  
6 he is to reduce the charge.

7 Q The weaker they may get, too, sometimes.

8 A Exactly.

9 Q Now, this other solicitor tend to be a lot more  
10 aggressive.

11 A That's a word I would use for him, yes.

12 Q Sometimes a little overbearing.

13 A Yes.

14 Q Okay. And anyway, when he had the case, was the 10-  
15 year deal on the table then?

16 A Yes.

17 Q Okay. That solicitor then tells you, once he picked  
18 the jury, the 10 years is off the table.

19 A Yes.

20 Q Okay. Did you communicate that to Mr. Boone?

21 A Yes, I did. I asked him if he wanted to go to trial  
22 or if he wanted to plead without negotiation. As I  
23 mentioned before, I felt, with his limited record, that I  
24 could convince the judge to be lenient on him and he'll get  
25 the minimum sentence.

1 Q After the second solicitor picks the jury and takes  
2 the deal off the table and you told him that the 10 years  
3 was off the table, did you tell him that he should still go  
4 forward with the plea?

5 A I did. And the reason I did is because the evidence  
6 against him was overwhelming.

7 Q So your hopes was -- your hopes were to still plead  
8 and try to persuade Judge James to give him the 10 years.

9 A Yes.

10 Q Okay. Did you at any time communicate that mission to  
11 Mr. Boone?

12 A Yes.

13 Q Okay. That the 10-year negotiable deal was gone --

14 A Yes.

15 Q -- that he was pleading guilty and it would be left up  
16 to Judge James; and that your hopes was for him to  
17 cooperate, seem remorseful. And then you, being the  
18 dutiful lawyer that you are, would try to argue to Judge  
19 James to give him the 10 years.

20 A Yes.

21 Q And you communicated that all to him.

22 A Yes.

23 (Mr. Brooks confers with the applicant.)

24 MR. BROOKS: No other questions, Judge.

25 THE COURT: Anything ---

1 MS. HARRIGAN: No additional questions from the State.  
2 And that's the State's case, Your Honor.

3 THE COURT: Okay. Thank you. You can step down.

4 (The witness complies.)

5 THE COURT: Anything else from either side?

6 MR. BROOKS: Judge, we would just put forth to the  
7 Court our argument that this sentence should be vacated.  
8 My client should be granted post-conviction relief remedy  
9 and we put forth to the Court in regards to Ms. Stevens  
10 ineffective assistance of counsel.

11 The reasons is that, obviously, my client did not  
12 voluntarily intend for this plea, for reasons that he has  
13 testified to, that he did not know exactly that the 10-year  
14 deal was off the table at the time he pled. By the time  
15 that Ms. Stevens had come in and tried to enforce that, my  
16 client had already -- was basically in -- in a plea that he  
17 had already -- that he was already stuck with the plea.  
18 And obviously, at that point, the judge would only drop it  
19 down to 14 from 18.

20 We feel that, obviously, if he had known at the time,  
21 that he would have been fully aware, fully informed whether  
22 or not to go forward with this plea.

23 THE COURT: Okay. I will -- and I reviewed the  
24 transcript some. I'll read the transcript of the hearing  
25 and the reconsideration motion filed before Judge James, as

1 well as the remaining paperwork, and let y'all know  
2 something.

3 MR. BROOKS: Thank you, Judge.

4 MS. HARRIGAN: Thank you, Your Honor.

5 -- END OF TRANSCRIPT OF RECORD --

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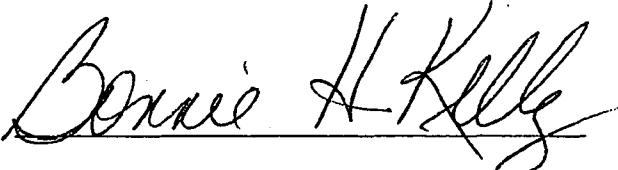
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**CERTIFICATE**

1  
2 I, the undersigned Bonnie H. Kelly, Official  
3 Court Reporter for the Fifth Judicial Circuit of the  
4 State of South Carolina, do hereby certify that the  
5 foregoing is a true, accurate, and complete transcript  
6 of record of all the proceedings had and evidence  
7 introduced in the hearing of the captioned cause,  
8 relative to appeal, in the Third Circuit Court for  
9 Sumter County, South Carolina, on the 10th day of  
10 December, 2012.

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

13  
14   
15

16 Bonnie H. Kelly, CVR

17 Official Court Reporter

18  
19 Columbia, South Carolina

20 April 24, 2013

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMTER ) FOR THE THIRD JUDICIAL CIRCUIT

RECORDED  
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James Wesley Boone, #336939 )  
Applicant, )  
JAMES C. CAMPBELL )  
CLERK OF COURT )  
SUMTER COUNTY, S.C. )

Case No. 2011-CP-43-1939

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )  
Respondent. )

CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
*Sandra C. Dickerson*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an application for post-conviction relief filed October 18, 2011. The Respondent made its Return on December 19, 2011. An evidentiary hearing into the matter was convened on December 10, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted during the September 2007 term of the Sumter County Grand Jury for Armed Robbery and Criminal Conspiracy (2007-GS-43-0640). Applicant was represented by Lauren Stevens, Esquire. On September 15, 2009, the Applicant appeared before the Honorable George C. James, Jr., where he pled guilty as indicted to Armed Robbery; Applicant's Conspiracy charge was dismissed pursuant to the plea. Judge James sentenced Applicant to eighteen years imprisonment. Thereafter, Applicant, through his counsel, filed a Motion for Reconsideration and a hearing on Applicant's motion was held on September

17, 2009. During this hearing, Judge James reduced Applicant's sentence to fourteen years imprisonment.

A timely Notice of Appeal was filed and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's plea and sentence. State v. Boone, Op. No. 2011-UP-399 (filed Aug. 22, 2011). The Remittitur was sent on September 7, 2011.

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

1. Ineffective Assistance of Counsel.
  - a. "Breach of promise."
2. Involuntary Guilty Plea.
  - a. "Attempted to coerce trial court with set plea (without stating reason at original hearing)."
3. Prosecutorial Misconduct.
  - a. "Coerced Applicant to accept plea then proceeded with picking jury for trial."

#### SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from his mother, Alice Priest, and his sister, Arianne Baker. Additionally, Applicant's plea counsel, Lauren Stevens, Esquire ("Counsel") testified. This Court also had before it a copy of the Applicant's guilty plea transcript, Applicant's Motion for Reconsideration hearing transcript, the records of the Sumter County Clerk of Court, Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that he met with Counsel "several" times prior to his guilty plea. Applicant testified that he was originally charged with Armed Robbery and Conspiracy and he acknowledged that the State dismissed the Conspiracy charge as part of a plea agreement. Applicant testified that he initially thought he would be able to plead to

the lesser included offense of strong armed robbery, but at the time of his plea, he thought that he was pleading guilty to Armed Robbery for a negotiated ten year sentence. Applicant testified that a jury had been selected for his trial at the time of his guilty plea. Applicant testified that he signed his sentencing sheet with the understanding that he would receive a ten year sentence. Applicant testified that he recalled telling Judge James that he understood he was pleading guilty without any negotiations or recommendations from the State. Additionally, he remembered Judge James stating that he could tell by Applicant's body language that he was not happy that the plea was without any negotiation or recommendation.

Applicant testified that he admitted to Judge James during his guilty plea that he was guilty of armed robbery and acknowledged that he described how he planned and committed the armed robbery to Judge James during his plea. Applicant testified that he is guilty of armed robbery. Applicant acknowledged that he stated multiple times during the plea how remorseful he was and that he apologized to the victim numerous times. Applicant testified that he informed the plea court he was pleading guilty because he wanted to take responsibility for his actions. Applicant testified that he told the plea court that he was satisfied with Counsel's representation and that she has represented him "properly in every way." Applicant testified that he armed robbery was caught on camera and he gave a statement admitting his guilt to law enforcement.

Applicant testified that Counsel filed a motion for reconsideration and he was present for another hearing before Judge James a few days following his plea. Applicant testified that Counsel informed the plea court of the prior ten year plea negotiation and asked for the court to reduce his sentence to ten years. Applicant testified he recalled Judge James stating that he would not have accepted a ten year negotiated plea in this case and acknowledged that Judge James did reduce his sentence by four years for a fourteen year sentence. Applicant stated that he

did not want a trial and testified that he only wishes for this Court to reduce his sentence to ten years to honor his plea negotiations with the State.

Applicant also presented testimony from his mother, Alice Priest. Ms. Priest testified that he was present for one or two meetings between Counsel and her son. She testified that Counsel told Applicant that if he pled guilty, he would receive a ten year sentence. She testified that she was present when her son signed his sentencing sheet and stated that at this time, the sentencing sheet indicated his plea was pursuant to a ten year negotiation. Ms. Priest testified she is not sure when this portion of the sentencing sheet was changed. She did not recall if Applicant asked Counsel to delay his plea so he could spend additional time with his family. Ms. Priest testified that she was present for her son's guilty plea hearing; however, she could not recall the hearing with any specificity.

Additionally, Applicant presented testimony from his sister, Arianne Baker. Ms. Baker testified that she was present for a meeting with Applicant and Counsel before his guilty plea. She testified that she specifically recalls Counsel promising Applicant that if he pled guilty, he would receive a ten year sentence. Ms. Baker testified that she was present for his guilty plea hearing as well, but she testified that she could not recollect anything in particular from Applicant's guilty plea hearing.

Following Applicant's case, Respondent presented testimony from Counsel. She testified that she was been practicing law since 1996 and at the time she represented Applicant, she had been a public defender for approximately thirteen years. Counsel testified that she has known Applicant since he was a teenager and also knows Applicant's family through an unrelated personal connection. Counsel testified that she represented Applicant for approximately two years before he entered a guilty plea and that she visited with him numerous times. She stated

that she went over the elements of both charges Applicant was facing. Counsel testified that she advised Applicant of potential sentences he may receive.

Counsel testified that she reviewed Applicant's discovery materials with him and described the evidence in this case as "overwhelming." Specifically, Counsel stated that Applicant gave an incriminating statement to law enforcement, there was a video of the armed robbery, and Applicant's co-defendant was available to testify against him if the matter proceeded to trial. Counsel testified that Applicant never denied his guilt to her and indicated from the beginning of her representation that he wanted to plead guilty.

Counsel testified that based on these conversations, she entered into negotiations with the State to secure a favorable plea deal for Applicant. Counsel testified that she advised Applicant she hoped to negotiate a plea deal that would allow him to plead to the lesser included offense of strong armed robbery, but that once a new, "more aggressive" assistant solicitor was assigned the case, these plea negotiations regarding a lesser included offense came to an end. Counsel testified that Assistant Solicitor Harry Conner, who prosecuted the case, reluctantly agreed to a ten year plea deal after much negotiation. Counsel testified that she informed Applicant, as well as his family, of the ten year offer and that Applicant wanted to accept this offer. Counsel testified that Applicant signed his sentencing sheet while it was marked that there was a negotiated sentence. Counsel testified that after signing the sentencing sheet, Applicant begged her to put off the plea for as long as possible to allow him to spend additional time with his family. Counsel testified that in order to honor her client's wishes, she attempted to avoid Assistant Solicitor Connor in hopes of delaying the plea.

Counsel testified that Applicant's guilty plea was entered after a jury was selected for his trial. Counsel testified that after the jury was selected, Assistant Solicitor Connor informed her

that the plea negotiation was no longer valid and the plea would be without any negotiations or recommendations from the State. Counsel testified that she informed Applicant that the ten year plea offer was no longer valid and his plea would be without any negotiations or recommendations from the State. Counsel testified that she explained to Applicant that this meant he could receive anywhere from a ten to thirty year sentence. She stated that Applicant was not pleased that the plea offer had expired, but that he understood there was not a ten year plea offer at the time of his plea and that he still wished to proceed forward with a plea knowing he could receive up to thirty years imprisonment.

Counsel testified that following Applicant's guilty plea, she moved for the plea court to reconsider his sentence and that a hearing on her motion was held a few days later before Judge Jams. She testified that during this hearing, she informed Judge James about the prior ten year plea negotiation and asked for Judge James to either enforce this plea negotiation or reduce Applicant's sentence. Counsel testified that Judge James stated that he would not have accepted a ten year negotiated sentence for this case due to the severity of the charges and the specific facts of this case. Counsel testified that Judge James noted that Applicant's prior record reflects anger issues. Counsel testified that Judge James reduced Applicant's sentence by four years.

#### 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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

*Ineffective Assistance of Counsel*

Applicant alleges that Counsel was ineffective for "breach[ing] [a] promise" during her representation of Applicant. In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 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, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use 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, attorney performance is measured 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).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. This Court finds that the Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant for "breach of promise." Counsel testified that she fully reviewed the discovery with the Applicant and discussed Applicant's version of the facts with him. Counsel testified that advised Applicant of the elements of each charge he was facing, what the State would be required to prove if he proceeded to trial, and the possible sentences Applicant was facing for each charge. At Applicant's request, Counsel attempted to secure a favorable plea negotiation for Applicant. After securing a ten year negotiated sentence included the dismissal of Applicant's conspiracy charge, Applicant requested that Counsel delay his plea for as long as possible. Counsel did so, resulting in a withdrawal of the State's plea negotiation. Counsel clearly and unequivocally communicated to Applicant that no plea offer remained, and despite this, Applicant decided to proceed forward without a negotiation or recommendation. Following Applicant's guilty plea hearing, Counsel filed a timely Motion for Reconsideration, which was heard by the plea court two days after the plea. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel, as the Applicant stated numerous times during the evidentiary hearing that he was guilty of armed robbery and that he did not want to proceed to trial on these charges. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

*Involuntary Guilty Plea*

Applicant's second allegation is that his guilty plea was entered involuntary, specifically that "[a]ttempted to coerce trial court with set plea (without stating reason at original hearing)." To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the post-conviction relief hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985). This Court finds that the Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. During his guilty plea, Applicant freely admitted his guilt to the plea court and described how he planned and carried out his crime. Applicant also told the plea court under oath that he understood his plea was without any negotiations or recommendations from the State and that he could receive a

sentence of up to thirty years imprisonment. Additionally, during the evidentiary hearing, Applicant testified that he is indeed guilty of armed robbery and that he did not want a trial.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such. As shown in Applicant's allegation of ineffective assistance of counsel presented above, this Court finds that Counsel acted reasonably and effectively. Therefore, this allegation must be denied and dismissed with prejudice.

#### *Prosecutorial Misconduct*

Applicant's final allegation is that he is being held in custody unlawfully due to prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief; rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief.

Regardless, it is an applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). This Court finds that Applicant abandoned this

allegation, as he did not present any evidence or testimony in its regard. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

### CONCLUSION

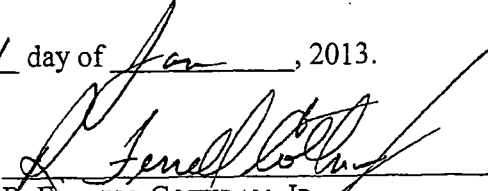
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

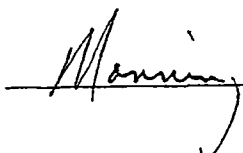
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right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

### IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 24 day of Jan, 2013.

  
 R. FERRELL COTHRAN, JR.  
 Presiding Judge  
 Third Judicial Circuit

  
 \_\_\_\_\_, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM SUMTER COUNTY

Court of Common Pleas  
Honorable R. Ferrell Cothran, Jr. Circuit Court Judge

Case No: 2011-CP-43-1939

James Wesley Boone.....Appellant

S.C.D.C. 336939

v.

The State.....Respondent

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 4<sup>th</sup> day of February, 2013, I served the foregoing **Notice of Appeal, Order of Dismissal**, as well as **Certificate of Service** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on February 4, 2013, addressed to the following as indicated below:

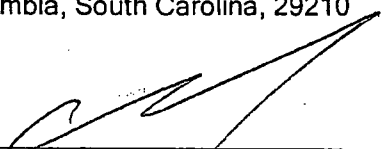
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29211-1589

Office of Attorney's General  
Attn: Megan E. Harrigan, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

James Wesley Boone, 336939  
Walden Correctional Institution  
4340 Broad River Road  
Columbia, South Carolina, 29210

Dated: February 4, 2013

  
Charles T. Brooks, III  
Attorney for the Appellant  
309 Broad Street  
Sumter, South Carolina 29150  
(803) 418-5708

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SUMTER ) ARMED ROBBERY, CONSPIRACY,  
 ) ACCESSORY AFTER THE FACT OF A FELONY

At a Court of General Sessions, convened on August 30, 2007, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – ARMED ROBBERY

*of Amendment considered on 9/15/09*

That JAMES W. BOONE, JR. AND ANDREW T. SCURRY did in Sumter County on or about September 13, 2006, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: pistols, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon, did feloniously take from Twin Dragon Restaurant, in the presence of an employee of Twin Dragon Restaurant, by means of force or intimidation goods or monies of the said Twin Dragon Restaurant.

COUNT TWO – CONSPIRACY

That JAMES W. BOONE, JR. AND ANDREW T. SCURRY did in Sumter County on or about September 13, 2006, violate Section 16-17-410 of the Code of Laws of South Carolina (1976), as amended, in that they did unite, combine, conspire, confederate and/or agree among themselves for the purpose of committing the crime of armed robbery of the Twin Dragon Restaurant,

COUNT THREE – ACCESSORY AFTER THE FACT OF A FELONY

That ANDREW T. SCURRY did in Sumter County on or about September 13, 2006, render assistance to a felon, namely, James W. Boone, Jr. who, on or about September 13, 2006, committed the crime of armed robbery of Twin Dragon Restaurant by driving Boone from the scene of the crime and aiding him in fleeing and avoiding law enforcement.

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

*C. Kelly Jackson*  
 \_\_\_\_\_  
 SOLICITOR

DOCKET NO. 2007-GS-43- 640  
The State of South Carolina  
County of SUMTER

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

THE STATE  
vs.

JAMES W. BOONE, JR.

ANDREW T. SCURRY

Indictment for

ARMED ROBBERY, CONSPIRACY,  
ACCESSORY AFTER THE FACT OF A  
FELONY

C. KELLY JACKSON, SOLICITOR

WITNESSES

SCSO

Inv. D. Florence

ARREST WARRANT NUMBER

J287362; J287408

D/A: 10/02/06 (Boone); 10/04/06 (Scurry)

ACTION OF GRAND JURY

*True Bill*

*Sally Holloman*

Foreperson of Grand Jury

Date: *Jan 30-07*

VERDICT

Foreperson of Petit Jury

Date: