

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

William Jeffrey Young, Circuit Court Judge

RECEIVED

OCT - 3 2013

S.C. Supreme Court

MICHAEL LEE JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000899

APPENDIX

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Appellate Defender

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ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
 3) 2009-GS-23-1685, 4855
 4)
 4 State of South Carolina) TRANSCRIPT OF RECORD
 5 vs)
 6 Michael Lee Jones)
 7 -----)

8 September 15, 2010
 Greenville, South Carolina

9 B E F O R E:

10 THE HONORABLE EDWARD MILLER, Judge

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

12 ALLEN FRETWELL, Esquire
 Assistant Solicitor
 13 Attorney for the State

14 TIMOTHY SULLIVAN, Esquire
 15 Attorney for the Defendant

16
 17 Caroline Hiskell
 Circuit Court Reporter
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 19
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I N D E X

(There was no exhibits or witnesses presented.)

State versus Michael Jones

P R O C E E D I N G S

1
2 THE CLERK: Your Honor, this is Case No.
3 2009-GS-23-1685, the State versus Michael Lee Jones. He's
4 indicted and pleading guilty to armed robbery. 2009-GS-
5 23-4855, he's indicted for assault and battery with intent
6 to kill and possession of a weapon during the commission
7 of a violent crime. He's pleading guilty to Count 1
8 assault and battery with intent to kill, commenced to
9 sentencing on this day.

10 Raise your right hand, please.

11 MICHAEL LEE JONES, having been duly sworn,
12 testified as follows:

13 State your name for the record.

14 DEFENDANT JONES: Michael Jones.

15 THE COURT: How many jail days.

16 MR. SULLIVAN: Judge, he was arrested on
17 January 1, 2009 and has not been out since. He's in there
18 now with violation of probation as a result of some of
19 this stuff.

20 MR. FRETWELL: I don't have the exact number,
21 Judge. I just have that he's been in there since January
22 1, 2009.

23 DEFENDANT JONES: Twenty-one months, Your
24 Honor.

25 THE COURT: All right. In the last 24 hours,

State versus Michael Jones

1 have you had any drugs --- January 21st you said?

2 MR. SULLIVAN: January 1st of '09.

3 THE COURT: In the last 24 hours have you had
4 any drugs, alcohol, or medication?

5 DEFENDANT JONES: No, sir.

6 THE COURT: Have you ever been treated for
7 the abuse of alcohol, drugs, mental illness or emotional
8 problems?

9 DEFENDANT JONES: No, sir.

10 THE COURT: You're up here on two
11 indictments. The first one is 09-1685 alleges you did in
12 Greenville County, August 8, '08 armed with a deadly
13 weapon or using a representation of one, you took by force
14 or intimidation a '98 Ford Explorer from Victor Godinez.
15 It carries 10 to 30 years. This is a Violent Offense
16 which means no parole. It's as Most Serious Offense. If
17 you get convicted of two or more Most Serious Offenses,
18 you're eligible for life in prison without parole, do you
19 understand that?

20 DEFENDANT JONES: I do.

21 THE COURT: You're also up here on 09-4855,
22 alleges you did -- this is County 1 -- in Greenville
23 County January 1, '09 with a malice aforethought express
24 or implied commit an assault and battery upon Whitney
25 Burnside. It carries up to 20 years. This is also a

State versus Michael Jones

1 Violent Offense and a Most Serious Offense.

2 Is there a mandatory minimum on that?

3 MR. FRETWELL: No, sir.

4 THE COURT: Do you understand all that?

5 DEFENDANT JONES: I do.

6 THE COURT: Okay. Understanding the nature
7 of the charges against you and the maximum possible
8 punishment, how do you want to plead?

9 DEFENDANT JONES: I plead guilty, Your Honor.

10 THE COURT: Anybody force you in any way,
11 coerced you, threatened you, or promised you anything to
12 get you to enter that plea?

13 DEFENDANT JONES: No, sir.

14 THE COURT: You understand you have an
15 absolute right to a trial by jury. We'll have one
16 tomorrow morning. At that jury trial, you would be
17 presumed innocent unless and until the State could prove
18 you guilty beyond any reasonable doubt of each and every
19 element of each and every offense that you're charged
20 with. You'd have a right to confront and cross-examine
21 the witnesses and the evidence by the State. You'd have a
22 right to compel in court all relevant and competent
23 evidence in your own defense, or you could remain silent.
24 Your silence could not be held against you and you could
25 never be compelled to incriminate yourself.

State versus Michael Jones

1 Do you understand all those rights.

2 DEFENDANT JONES: I do, Your Honor.

3 THE COURT: Do you want to give them all up
4 to enter this plea?

5 DEFENDANT JONES: I do.

6 THE COURT: Are you guilty?

7 DEFENDANT JONES: I am, Your Honor.

8 THE COURT: Have you had enough time to
9 review the evidence the State has against you?

10 DEFENDANT JONES: I have.

11 THE COURT: All right, tell us about it.

12 MR. FRETWELL: May it please the Court. Your
13 Honor, the first incident, the armed robbery, occurred on
14 or about August 8, 2008. The victim was outside his
15 residence washing his car. Two black males approached in
16 a Ford Taurus and the co-defendant, the passenger in the
17 vehicle, pointed a shotgun at the victim and told him to
18 give him his money. The victim stated that he did not
19 have any money and this defendant then approached him.
20 The victim could see that this defendant had a gun in his
21 hand.

22 The victim told him he didn't have any money.
23 At that point this defendant asked the victim for the keys
24 to the car that he was washing. The victim had his hands
25 up in the air and looked down at his waste line where his

State versus Michael Jones

1 keys were and the victim testify that this defendant
2 reached over, snatched the keys, got in the Expedition.

3 Meanwhile, the passenger of the other car who
4 was holding the shotgun went around, got in the driver's
5 seat of the other car, the two car drove away. The victim
6 then called police.

7 The police get a call the next day from a
8 lady named Paulette Blakely the following morning. She
9 said she arrived home at 6:00 a.m. from work to find a
10 green Ford Expedition parked in her backyard. The vehicle
11 information matched it to the one that had been stolen
12 from the victim, Mr. Godinez.

13 Latent came out, they processed the vehicle.
14 They found five latent fingerprints, three of which
15 matched this defendant. The Investigator Dave Weiner put
16 the defendant's photograph in to a photo array, presented
17 it to Mr. Godinez, he looked at each picture and then
18 immediately pointed out this defendant as the one who had
19 come up, taken his keys and taken his vehicle. That's the
20 evidence that the State would present at trial, Your
21 Honor.

22 As to the ABWIK charge, on January 1, 2009,
23 this defendant hit a female at a club. When the female
24 returned home, she told her brother about the incident.
25 The brother called his ex-girlfriend who was dating this

State versus Michael Jones

1 defendant at the time. The brother and the defendant got
2 into an argument over the phone and the defendant told the
3 brother he was coming over.

4 The defendant arrived at the brother's
5 residence in a gold 1992 Camary. As the brother walked
6 outside, the defendant pulled out a pistol and shot at the
7 porch where the brother and his girlfriend, the victim
8 Ms. Burnside were standing. The bullet struck the victim
9 in her leg and another object struck her in the hand and
10 stomach. The defendant left, the deputies were called.

11 When they arrived, the noticed large amounts
12 of blood coming from the victim. She advised that she was
13 pregnant. She was transported to Greenville Memorial
14 Hospital and listed in critical condition and in the
15 officer's presence, the defendant called the brother on
16 his cell phone. I'm sorry. In the officer's presence,
17 the brother called the defendant on his cell phone.

18 He told the brother he was coming back to
19 settle the incident. The deputies observed the gold
20 Camary. The deputies tried to initial a traffic stop.
21 The defendant fled and a chase ensued and the defendant
22 abandoned the vehicle and a foot chase insured.

23 The defendant was eventually detained. A
24 silver pistol was in plain view of the passenger's seat.
25 As deputies were recovering the pistol, the defendant

State versus Michael Jones

1 asked what they were going to do with the. The defendant
2 was read his Miranda Rights and gave a statement and in
3 which he stated that he shot the victim.

4 These incident occurred within Greenville
5 County. He does have a prior record, Your Honor.

6 Mr. Godinez is not present today. He will be
7 present tomorrow for the trial. He works every day.

8 THE COURT: We're going to have a trial too?
9 I thought he was pleading guilty.

10 MR. FRETWELL: He would be if we went to
11 trial. Ms. Burnside here and she's in the black, Your
12 Honor. She's here with our victim advocate and would like
13 to address the Court at the appropriate time.

14 THE COURT: Sure.

15 MR. FRETWELL: Just for the Court's
16 information, on Mr. Godinez's behalf, he wanted me to
17 request \$1,320 worth of restitution for the speakers and
18 stereo taken out of his vehicle.

19 Ms. Burnside's medical bills, et cetera, have
20 been covered by Medicaid. I at least have the Restitution
21 Order, if Your Honor would consider that.

22 I have the prior record. In addition to
23 that, that's basically the State's evidence.

24 THE COURT: Is that pretty much true and
25 correct?

State versus Michael Jones

1 DEFENDANT JONES: Yes, sir.

2 THE COURT: Are you sure? You kind of
3 hesitated there. You must be sure about this..

4 DEFENDANT JONES: Yes.

5 THE COURT: 100 percent?

6 DEFENDANT JONES: Just at the end of that
7 statement where the police took for me when Jermaine told
8 me that his girlfriend had got shot and I told him that I
9 was on my back over there but I didn't tell him I was on
10 by way back over there to settle the score. I was on my
11 way back over there minus the pistols.

12 THE COURT: Okay. Other than that, are true
13 and correct?

14 DEFENDANT JONES: Yes, sir.

15 THE COURT: I'll accept the plea as being
16 freely and voluntarily and intelligently made with the
17 advice of a very competent attorney with whom he says he
18 is well satisfied and there is a substantial factual basis
19 for the plea.

20 What's his prior record?

21 MR. FRETWELL: Your Honor, it starts in 2000
22 with two counts of ABHAN, one count of pointing and
23 presenting; 2001 possession of crack, possession of
24 cocaine, possession of marijuana; 2002 indecent exposure,
25 shoplifting, driving without a license and operating

State versus Michael Jones

1 uninsured.

2 THE COURT: Okay.

3 MR. SULLIVAN: There's an accessory in there
4 where he got probation for cooperating with the police.
5 That's what he doing the revocation on. He got revoked by
6 -- about six months ago he got a full revocation on so
7 he's been in since 1-1-09, but he also has on the record
8 and accessory after which ---

9 THE COURT: For what?

10 MR. FRETWELL: Armed robbery.

11 MR. SULLIVAN: It was a case where ---

12 THE COURT: How much time has he done?

13 MR. SULLIVAN: Six.

14 DEFENDANT JONES: Six years.

15 THE COURT: Six. When did you get it? You
16 had to do a YOA or something?

17 DEFENDANT JONES: No, sir. It was suspended
18 to five years probation and when I got revoked, the judge
19 gave me the whole six.

20 THE COURT: When did you get that?

21 DEFENDANT JONES: July, 2008.

22 MR. SULLIVAN: That's when you got your
23 probation.

24 THE COURT: When did you get provoked?

25 DEFENDANT JONES: March 17, 2009.

State versus Michael Jones

1 MR. FRETWELL: The incident occurred, Your
2 Honor, in 2008, accessory after the fact.

3 THE COURT: I'll be happy to hear from you.
4 Ma'am, is there anything you want to tell me? Don't feel
5 any pressure to speak.

6 MR. FRETWELL: The other think she mentioned
7 to me, Your Honor, to tell the Court is that she was
8 carrying her baby at the time and that she ---

9 THE COURT: Very scary stuff.
10 All right. Who wants to talk?

11 MR. SULLIVAN: We tried this case on the
12 armed robbery about a month or so ago and it was a
13 mistrial, so rather than go through all of that again, it
14 was a good chance he would be convicted. Plus he's always
15 told me he was guilty of this so he knows he's looking at
16 a lot of time. Whatever you give him is going to 85
17 percent. The shooting is the worse then that happened.

18 There was a dispute, bad judgment. He didn't
19 actually, I think, shoot at somebody but he did shoot the
20 gun towards people and I think he hit the porch and she
21 was hit by flying brick and ---

22 THE COURT: He ought to be darn lucky it's
23 not murder.

24 MR. SULLIVAN: I understand, Your Honor, and
25 he does to -- maybe double because she was pregnant and he

State versus Michael Jones

1 may have been looking at life without parole, I don't
2 know. But he is relatively a young man and it did get
3 violent towards the end. A lot of it was drug related and
4 he's going to spend a good bit of time in jail.

5 THE COURT: Yeah. He's 29.

6 MR. SULLIVAN: I was hoping to maybe give him
7 the maximum on the assault and battery with intent to
8 kill, which is the worse one which would be the 20 years
9 and then maybe something that would run concurrent with
10 that, and he'd do seventeen-and-a-half and he's almost 30
11 so he'd be basically 50 years old by then. He hadn't
12 learned his lesson by then, then he's not going to.

13 The prison system, as we all know, there's no
14 guarantee he's going to walk out of there. You have to
15 behave yourself in there. I think it's 85 percent, Your
16 Honor, and he knows that because we've gone over it.

17 MR. FRETWELL: Your Honor, for the record,
18 we're dismissing the failure to stop charge and the
19 possession of a weapon during the commission of a violent
20 crime in conjunction with this plea.

21 MR. SULLIVAN: That was a part of the assault
22 and battery charge when he fled for the police.

23 THE COURT: So he gets the benefit of the old
24 ABWIK law, right?

25 MR. FRETWELL: Yes, sir. It would be limited

State versus Michael Jones

1 to 20.

2 MR. SULLIVAN: We've gone over that. Like I
3 said we been through one trial. He's familiar with the
4 system so he's not going in here like a lamb.

5 THE COURT: I know he's familiar with it.

6 MR. SULLIVAN: I guess I'm asking, Judge, in
7 a way if you could hit him on the assault and battery
8 where there's no question about and the one that was
9 mistried and maybe give him a break on that. During the
10 trial, the jury went out about 4:00 and came back at 9:30
11 the next day and said they were hung. It didn't take them
12 more than about an hour to reach that decision.

13 THE COURT: What do you want to tell me?

14 DEFENDANT JONES: I ain't going to make
15 excuses for what I did. I know it was wrong and I know
16 the caliber of the offense that I committed. The shooting
17 was an accident.

18 THE COURT: Well, you didn't mean to hit her,
19 but that gun didn't go off accidentally.

20 DEFENDANT JONES: No, sir. But in a state of
21 panic there was a lot of people on the porch and it wasn't
22 just her and her boyfriend.

23 THE COURT: But you went over there.

24 DEFENDANT JONES: Yes, sir.

25 THE COURT: You went looking for trouble.

State versus Michael Jones

1 You started all of your trouble when you were about, what,
2 18?

3 DEFENDANT JONES: Yes.

4 THE COURT: Why?

5 DEFENDANT JONES: Lack of guidance.

6 THE COURT: Did you quit school?

7 DEFENDANT JONES: No, sir.

8 THE COURT: You graduated.

9 DEFENDANT JONES: Yes, sir.

10 THE COURT: Keinan(ph) High School. I got my
11 GED.

12 MR. SULLIVAN: That's in Columbia

13 THE COURT: Anything further from the State?
14 Ma'am, are you okay? Do you want to say
15 anything?

16 MR. FRETWELL: Just the restitution.

17 MR. SULLIVAN: That was for the speakers that
18 were missing when they recovered the vehicle.

19 THE COURT: I'm going to give him 20 on each
20 of them.

21 MR. SULLIVAN: Thank you, Your Honor.

22 THE COURT: You're going to be a middle-aged
23 man when you get out and I'll tell you what if you can
24 communicate with any other 18 year old boys, tell them not
25 to do it and to stay away from guns and stuff and drugs.

State versus Michael Jones

1 Good luck to you.

2 MR. SULLIVAN: Thank you. Your Honor.

3 ---END OF TRANSCRIPT RECORD---

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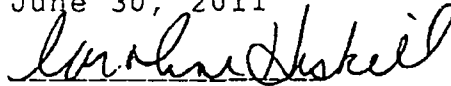
22 I, the undersigned Caroline Hiskell, Official
23 Court Reporter for the Thirteenth Judicial Circuit of the
24 State of South Carolina, do hereby certify that the
25 foregoing is a true, accurate, and complete transcript of

State versus Michael Jones

1 record of all the proceedings had and evidence introduced
2 in the trial of the captioned case, relative to appeal, in
3 the Circuit Court of Greenville County, South Carolina on
4 the 15th day of September, 2010.

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

7
8
9 June 30, 2011

10 

11 Caroline Hiskell
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FORM 5

STATE OF SOUTH CAROLINA)
County of Greenville)

IN THE COURT OF COMMON PLEAS

Michael Jones # 296273)
Full name and prison number (if any) of Applicant)

APR 29 11:10:31
CLERK OF COURT
GREENVILLE CO. SC

v.)
State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2011-CP-23- 2916

INSTRUCTIONS TO READ CAREFULLY

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

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

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

1. Place of detention Lieber Correction Institution (Sentry)
2. Name and location of Court which imposed sentence The Court of General Sessions, thirteenth Judicial Circuit, Greenville SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) _____

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) September 15 2010, 20 years 85% violent

(b) Assault and battery with intent to kill 20 yrs

(c) Armed Robbery 20 yrs

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

8. If you answered Ayes@ to (7), list:

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) I was acting under the advisement of my lawyer

(b) I didnt fully understand a direct appeal and my
(c) lawyer didnt help me he said "dont worry about it"

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

(a) Ineffective Council
(b) _____
(c) _____

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

(a) Ineffective Council: my lawyer didnt represent
(b) _____
(c) _____

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

(a) any petition in a State Court under South Carolina Law? No
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
(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 Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:
i. _____
ii. _____
iii. _____
iv. _____
(b) the name and location of the Court in which each was filed:
i. _____
ii. _____
iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) _____
- (b) _____
- (c) _____

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

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

18. If you answered Ayes@ to one or more parts of (17), list:

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

- i. Timothy Sullivan 305 E. North St. Suite 123
Greenville SC 29601
- ii. _____
- iii. _____

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

- i. plea
- ii. trial
- iii. sentencing

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

A New trial for the Armed Robbery of a Reduced Sentence
for both charges.

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Greenville)

VERIFICATION

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

[Signature]

SWORN to and subscribed before me this 20th day of April


[Signature] (L.S.)
Notary Public

My Commission Expires: 1/24/2018

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

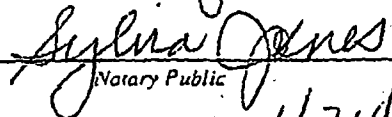
I, Michael Jones, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



 Applicant

SWORN or affirmed to and subscribed before me this
20th day of April, 2011.



 Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Michael Lee Jones,)
 S.C.D.C. No. 296273,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-2916

RETURN

In response to the post-conviction relief application filed April 29, 2011, the Respondent would show this Court:

1.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the December 2009 term of General Sessions for armed robbery (2009-GS-23-1685), assault and battery with intent to kill (ABIK) (2009-GS-23-4855, count 1), and possession of a weapon during commission of a violent crime (2009-Gs-23-4855, count 2). C. Timothy Sullivan, Esquire represented the Applicant.

On September 15, 2010, the Applicant pled guilty to armed robbery and ABIK. The Honorable Edward W. Miller levied concurrent sentences of twenty (20) years for armed robbery and twenty (20) years for ABIK. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v.

State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE 2011-CP-23-02916

MICHAEL LEE JONES,

-VS-

THE STATE of SOUTH CAROLINA,

Defendant.

TRANSCRIPT OF RECORD

February 14, 2013
Greenville, South Carolina

Ordered: May 3, 2013

Delivered: June 9, 2013

B E F O R E:

THE HONORABLE W. JEFFREY YOUNG, Presiding Judge.

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

MS. KAREN C. RATIGAN, Esquire
Assistant Attorney General Appearing for the State

MS. CAROLINE HORLBECK, Esquire
Attorney Appearing for the Applicant

Pamela Faucette
Circuit Court Reporter

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

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E X H I B I T S

Applicant's Exhibits:

Marked:

Received:

(None)

Respondent's Exhibits:

Marked:

Received:

(None)

Court's Exhibits:

Marked:

Received:

(None)

Reporter's Certification.....21

Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

1 February 14, 2013

2:11 P.M.

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THE COURT: Yes, ma'am?

MS. RATIGAN: Thank you, Your Honor. May it please the Court?

This is the case of *Michael Lee Jones vs. The State*, docket number 2011-CP-23-2916.

Mr. Jones was indicted for armed robbery, assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime. He was represented on these charges by Mr. Sullivan.

On September 15th of 2010, he pled guilty just to the armed robbery and ABWIK charges before Judge Miller. He received concurrent terms of twenty (20) years on each charge. He did not file an appeal and the State is ready to proceed.

THE COURT: All right. Ms. Horlbeck?

MS. HORLBECK: Judge, that's correct. And we'd call Michael Jones to the stand.

THE COURT: All right. For the purposes — he's in a wheelchair. Can you hear him sufficiently from there? If you would want him to just testify from there, that would be fine.

MS. HORLBECK: That 's fine, Judge

THE COURT: Is that okay with you?

MS. RATIGAN: As long as the court reporter can hear.

THE COURT: As long as she can hear, that's fine. Okay.

MS. HORLBECK: And Madam Court Reporter —

(Off-The-Record Comments)

(Whereupon,

MICHAEL LEE JONES

having been first duly sworn, testified as follows:)

MADAM CLERK: Please state your full name for the record.

THE WITNESS: Michael Lee Jones.

DIRECT EXAMINATION by MS. HORLBECK:**2:12 P.M.**

Q. All right. Mr. Jones, where are you currently incarcerated?

A. Liebert Correctional Institution (phonetic).

Q. And what charges are you incarcerated on?

A. Armed robbery and assault and battery with intent to kill.

Q. Did you -- and what sentence did you receive on those?

A. I received a 20-year sentence, 85% ran concurrent.

Q. Was that as a result of a guilty plea?

A. It was, yes.

Q. And what attorney -- what was the name of the attorney that represented you on these charges?

A. Mr. Timmons -- Timothy Sullivan.

Q. Okay. And did you have an opportunity to discuss your charges with Mr. Sullivan before you pled guilty?

A. I did.

Q. Okay. And did you and Mr. Sullivan have the chance to discuss the potential sentences that you could receive on each of these charges?

A. We did.

Q. Okay. And what -- tell me -- tell me about that discussion. Did you all talk about a -- a -- did you ask him or did you -- did you tell him, "Hey, look, this is the sentence that I would like you to ask for"?

1 A. Like we discussed -- we was scheduled to go to trial the next -- the
2 next day.

3 Q. Okay.

4 A. And he brought me in to discuss a plea. And, from my understanding,
5 from what he told me, was he was going to talk to the judge and I was going to
6 plead to under 20 years. And, if it wasn't under 20 years, that we was looking
7 forward to going to trial the next day. And I pled thinking I was going to get under 20
8 years.

9 Q. Okay. When did you and Mr. Sullivan have this discussion about
10 under 20 years?

11 A. Five minutes before we walked into the courtroom.

12 Q. Okay. And, when you say five minutes before you walked into the
13 courtroom, was that the day of your --- the day you pled guilty?

14 A. Right.

15 Q. Okay. So that would have been September -- September the 15th,
16 2010?

17 A. My memory is not correct, but that was what my understanding was.

18 Q. Okay. Did you get to talk to Mr. Sullivan about this a couple of days or
19 anything --

20 A. No

21 Q. --- or just the day of?

22 A. The same day.

23 Q. Okay. Were you incarcerated or ---

24 A. Yes.

25 Q. Okay. Where were you incarcerated?

1 A. Kershaw Correctional Institution.

2 Q. Okay. All right. Did you know that you -- were you informed that your
3 case was scheduled for trial?

4 A. Yes. I was informed through the mail because we previously had a
5 mistrial.

6 Q. Okay.

7 A. I received a letter in the mail we had a docket and my name was
8 highlighted on the docket.

9 Q. Okay.

10 A. They were going to take me.

11 Q. Okay. And did you -- did you know, then, when you were transferred
12 to court, did you know what that was for then?

13 A. Right.

14 Q. Okay. All right. And let me just back you up a little bit to that
15 discussion you had with Mr. Sullivan. You testified previously that Mr. Sullivan was
16 going to go speak to the judge about a sentence under 20 years?

17 A. Right.

18 Q. Were you present for that discussion with the judge?

19 A. No.

20 Q. All right. Why -- why did you -- why do you think that Mr. Sullivan was
21 going to go speak to the judge about a particular sentence of under 20 years?

22 A. Well we was -- we was trying to not have to go to trial because the first
23 trial resulted in a mistrial for armed robbery.

24 Q. Uh-huh (affirmative).

25 A. And, you know, during that time the judge gave me a chance to plead

1 and gave me 25 years and I didn't accept it. So, you know, Mr. Sullivan came and
2 talked to me.

3 But I -- I specified and let him know that, you know, I -- I would plead
4 to like 15 or, you know, anything under 20. Well, I told him 15. He told me under
5 20.

6 Q. Uh-huh (affirmative).

7 A. So I was kind of disappointed, you know what I'm saying, to anything
8 under 20.

9 Q. Okay. Did Mr. Sullivan say he was going to go speak to the judge or
10 did he just say, "Look, I'll ask the judge for something under 20"?

11 A. Well, he didn't say he was going to ask. He kind of made it seem like
12 that it was a guaranteed thing because he told me, if it wasn't going to be under 20
13 years, he was going to tell the judge that we would just see him at trial tomorrow.

14 Q. Okay. All right. And, when you pled guilty, do you recall your attorney
15 asking for -- for a -- a 20-year sentence?

16 A. (No Response)

17 Q. Do you recall him asking for that?

18 A. I -- I recall him saying something about the max for assault and
19 battery intent to kill.

20 Q. Okay. Did you know what the maximum sentences were on each of
21 these charges?

22 A. No. I was under the impression that the max for assault and battery
23 intent to kill was 15 years.

24 Q. Okay. All right. And what gave you that impression? Was it your
25 attorney or ---

1 A. He — he didn't tell me that. I'm just —

2 Q. Okay.

3 A. — just ---

4 Q. Do you recall the ---

5 A. — just guessing basically.

6 Q. Do you recall the judge telling you — telling you the maximum and any
7 minimum sentence during the guilty plea?

8 A. He probably did, but they'd be going so fast, I ---

9 Q. Okay.

10 A. You know, the dialogue.

11 Q. Okay. But you've indicated previously — or you just testified that your
12 attorney was going to ask for a sentence of less than 20 years.

13 A. Right.

14 Q. Okay. And do you recall during — during the guilty plea hearing your
15 attorney asking for a 20-year sentence?

16 A. He said the max. I — I didn't really hear the numbers.

17 Q. Okay. All right.

18 **MS. HORLBECK:** Let the record reflect I'm — I'm going to hand you
19 a copy of the transcript.

20 Q. (By Ms. Horlbeck) And I'm going to direct your attention to Page 13,
21 Lines 6 through 8. I just want you to read that silently — read those lines silently to
22 yourself. And, then, I'm just going to ask you a couple of questions.

23 **(Brief pause while the witness complied with the request.)**

24 Q. All right. Have you — have you had a chance to read that to yourself?

25 A. Yes, ma'am.

1 Q. Okay. Do you see where — do you recall now where your attorney
2 asked the Court to give you a 20-year sentence?

3 A. Like I say I — I recall --

4 Q. Uh-huh (affirmative).

5 A. — him saying the maximum, but ---

6 Q. Okay.

7 A. — if it's recorded, it's all here.

8 Q. Okay. Explain to the Court why you did not stop the proceeding right
9 then and there and say, "Wait, wait," you know, and speak to your attorney. Just the
10 Court — because the Court is going to want to know that.

11 A. Right. I -- I wasn't aware that you could stop the Court -- interrupt the
12 Court during the proceedings.

13 Q. Okay.

14 A. I didn't know I could just stop whatever.

15 Q. All right. And the end result is that you — you didn't stop the Court, did
16 you?

17 A. Right, I didn't.

18 Q. Okay. All right. And, as a result of the sentence, that — that you
19 received that day, you filed this petition for Post-Conviction Relief?

20 A. Right.

21 Q. Okay. All right. And after that did you -- after you got a sentence that
22 was 20 years essentially, what — what happened? Did you talk to your attorney
23 again?

24 A. Well, I spoke to him. He -- he -- he was the one that told me about
25 this.

1 Q. Okay. When did you speak to Mr. Sullivan after the — after you pled
2 guilty?

3 A. Right then and there.

4 Q. Okay. Like in the courtroom?

5 A. Right.

6 Q. Okay. And what did you say to Mr. Sullivan?

7 A. I don't — I don't remember exactly, you know. But I — I remember him
8 telling me to go ahead and file a PCR, yes.

9 Q. Okay. Did you and Mr. Sullivan have the chance to discuss an
10 appeal?

11 A. No.

12 Q. Okay. Did you ever ask Mr. Sullivan to file an appeal for you?

13 **(Brief Pause)**

14 A. I — I don't think I did. He mentioned a PCR and I was content with a
15 PCR.

16 Q. Okay.

17 A. I don't think I even asked ---

18 Q. All right, then. All right. What I want you to do next is answer any
19 questions — well, actually let me back up and make sure we've covered everything.

20 Are there any other mistakes or things that you think Mr. Sullivan
21 should have done that he didn't do or things that he didn't do that he should have
22 done?

23 A. No.

24 Q. Okay. So we've covered everything that — that's in — that your — all
25 the complaints or allegations that you're making in your PCR petition, we've covered

1 them in this hearing?

2 A. Right.

3 Q. Okay. All right. And you understand that the judge today cannot
4 change your sentence?

5 A. Right.

6 Q. Do you understand that the judge can do one of two things; either
7 grant or deny your petition?

8 A. Right.

9 Q. Do you understand that, if the judge grants your petition, you could be
10 prosecuted all over again on these charges, right? It's like as if the slate is wiped
11 completely clean; do you understand that?

12 A. I do.

13 Q. Okay. And do you understand that, if the judge denies your petition,
14 you'll just have to continue serving your sentence until it's done?

15 A. Right.

16 MS. HORLBECK: Please answer any questions that the Attorney
17 General has for you.

18 THE COURT: Ms. Ratigan?

19 MS. RATIGAN: Thank you.

20 (Off-The-Record Comments)

21 CROSS EXAMINATION by MS. RATIGAN:

2:20 A.M.

22 Q. So, Mr. Jones, Mr. Sullivan had been your lawyer for awhile because
23 you all had a mistrial on that armed robbery charge, correct?

24 A. Yes, sir — yes, ma'am.

25 Q. Okay. So would it be fair to say you had several meetings with him?

1 A. Not several.

2 Q. Okay. How many would you say you had in terms of talking about
3 these charges?

4 A. We had an initial meeting when he was assigned to me.

5 Q. Uh-huh (affirmative).

6 A. I spoke to him the day of the trial -- well, actually, he handled my --
7 my probation violation too, but we didn't speak about these charges.

8 Q. Okay.

9 A. So the initial meeting, the day of the armed robbery trial, and the day
10 of the plea. And that's three times.

11 Q. Okay. And, during these meetings, you had reviewed the State's
12 evidence with Mr. Sullivan?

13 A. Yes.

14 Q. And that would have included the fact that you gave a confession on
15 that assault and battery? You all talked about that?

16 A. Right.

17 Q. Okay. And did you tell Mr. Sullivan kind of your -- your version of
18 what had happened on these charges?

19 A. Right.

20 Q. Okay. Now did Mr. Sullivan promise you, you would get less than 20
21 or just that he was going to ask for it?

22 A. No, it was -- it was kind of like a guaranteed thing.

23 Q. Okay. Based on what he told you, you just assumed -- or based on
24 the way that he told you, you assumed you were going to get less than 20?

25 A. Right.

1 Q. Okay.

2 (Brief Pause)

3 Q. So, when you went to court that day, you did not know you were
4 pleading without any kind of recommendation?

5 A. No. I was -- I was under the impression that they was transporting me
6 for trial.

7 Q. Okay. So, when you talked to Mr. Sullivan that morning, is when he
8 told you, you were going to get the less than 20 or you were going to trial?

9 A. Right.

10 Q. Okay. Did he tell you at that time the State was going to drop the
11 weapons charge and the failure to stop?

12 A. No, we did all of that the first -- at the first trial.

13 Q. Okay.

14 (Brief Pause)

15 Q. And your testimony today is that you would have wanted an appeal?

16 A. An appeal?

17 Q. Yes.

18 A. If -- if I was going to get up to 20 years, I -- I told Mr. Sullivan I wanted
19 to go to trial.

20 Q. Okay. Well, Ms Horlbeck asked you, if you had spoken about an
21 appeal with your lawyer.

22 A. Right.

23 Q. Is that something today that you're saying, that you wished he had
24 filed an appeal after you pled guilty or not?

25 A. I mean, appeals are based on, you know, misconduct or ----

1 Q. Right.

2 A. — things of that nature. And I — I didn't really see any error ---

3 Q. Okay.

4 A. — in the court proceedings.

5 Q. I got you. And, at some point, during Mr. Sullivan's representation of
6 you, had you all talked about the minimum and maximum sentences you could get
7 on each of these charges?

8 A. No.

9 Q. Okay. But the judge talked about it with you that day?

10 A. Well, like I say, I don't remember because the dialogue is so long. I —
11 I don't remember.

12 MS. RATIGAN: Okay. That's all I have, Your Honor.

13 THE COURT: All right. Any redirect?

14 MS. HORLBECK: No, sir.

15 THE COURT: Okay. Let me make sure. Mr. Sullivan also
16 represented him in the first trial that ended up in a hung jury?

17 MS. HORLBECK: That's correct.

18 THE COURT: So, when he says the first time he saw him, that
19 was just on this particular plea? But he had actually spent time with him
20 while they tried the case; is that correct?

21 MS. HORLBECK: That's correct. That's my understanding.

22 THE COURT: Okay. Thank you.

23 MS. HORLBECK: And, Judge, we have no further witnesses.

24 THE COURT: Okay. Yes, ma'am?

25 MS. RATIGAN: The State would call Mr. Sullivan.

1 (The witness stepped forward to be sworn.)

2 (Whereupon,

3 **MR. TIMOTHY SULLIVAN, ESQUIRE**

4 having been first duly sworn, testified as follows:)

5 **MADAM CLERK:** Please, state your full name for the record.

6 **THE WITNESS:** Carl Timothy Sullivan, Jr. I — I practice by C.

7 Timothy Sullivan.

8 **DIRECT EXAMINATION by MS. RATIGAN:**

2:24 P.M.

9 **Q.** Mr. Sullivan, do you — do you remember representing Mr. Jones on
10 these charges?

11 **A.** Sure I do.

12 **Q.** And were you retained in this case or were you appointed through the
13 PD's office?

14 **A.** I was appointed.

15 **Q.** And did you file the usual Brady and Rule 5 discovery motions?

16 **A.** Oh, we had full discovery and I gave a copy to Michael.

17 **(Brief Pause)**

18 **Q.** And did you review all those materials with him prior to the — to either
19 the — the trial or the plea in this case?

20 **A.** Well, the first trial, yeah, I would have given him a copy way before
21 then. And, then, I would tell him to make notes.

22 And, then, we got the other before the trial and discussed it. And,
23 then, actually tried the case. And it ended in a mistrial.

24 So he would have been brought back for the trial. Now, to be honest
25 with you, I don't know if — if we tried the armed robbery or tried him on the assault

1 and battery with intent to kill, which was their better case to tell you the truth.

2 Q. All right. And, so — and, in part of the discovery materials, your client
3 gave a confession on the assault and battery; is that correct?

4 A. He gave his version of — of events, yes, on the assault and battery
5 intent to kill.

6 Q. And did you — did you discuss with him the impact that, that would
7 have on your — on your defense case?

8 A. Well, one — one can pull to the other, but we discussed, if he pled to
9 one, the other would be drafted into it. He was looking at 10 to 30 I think in those
10 days on the armed robbery. And up to 20 on assault and battery intent to kill, which
11 is now I think the attempted murder charge.

12 So he was getting the benefit of the old law at that time.

13 Q. And did you discuss with Mr. Jones those sentence ranges, the
14 minimums and maximums that he was facing on these charges?

15 A. Sure, yes. I can't take them into court without them knowing what
16 they're going to get.

17 Q. And did you talk with Mr. Jones about his version of what had
18 happened?

19 A. On both of them, yeah. On the car case he said he had gone to buy
20 some rims and he didn't rob anybody.

21 And, then, on the assault and battery, he admitted that he drove by
22 and he was anger and fired a — just one shot. And there were some people out on
23 the porch and that it hit a brick or something. And a piece chipped off the building
24 and Shelby Praven (phonetic) was in critical condition in the hospital.

25 He came back by and they caught him with the gun and there were

1 powder burns on his hands. But he said he wasn't even trying to hurt anybody, just
2 scare them.

3 Q. Now, after the armed robbery case was mistried, was it pretty much
4 immediately put back on the trial docket?

5 A. Pretty close. I got -- I got it and he said he had it highlighted. I -- I
6 mailed it, or my office did, and highlighted the day it would be tried. But usually, if I
7 think we can work something out, I like to do it before the day of the trial.

8 And that's why somewhere in the dialogue with the judge, "Oh it's..."
9 -- he said, "Oh, it's for a trial?" I said, "Yes, sir. Tomorrow or the next day. If we
10 can work it out, we can go ahead and do it today." So that's what we did.

11 He pled on the trial docket, but prior to the day of trial.

12 (Brief Pause)

13 Q. And am I correct that there was no plea offer in this case?

14 A. Once it gets to -- in our -- in our Circuit, if they make an offer, and it
15 gets on the trial docket, the offer is withdrawn and you plead to whatever is on the
16 indictment; an open plea.

17 Q. And did you explain to Mr Jones he was pleading straight up without
18 any kind of recommendation?

19 A. Yes, I'm -- I'm sure I mentioned it. He knew that -- he knew that when
20 we went into the first trial.

21 (Brief Pause)

22 Q. Do you ever recall telling Mr. Jones that he would get less than 20
23 years if he pled guilty that day?

24 A. I don't recall that. And I usually don't make a habit of that unless it's a
25 negotiated plea, unless I talk to the judge and the solicitor and get input from the

1 victims and everybody agrees.

2 There is no such thing as a guarantee plea unless it's negotiated. This
3 was no negotiations.

4 Q. So your trial — your general trial practice, you would not have made
5 any kind of speculation as to sentence?

6 A. I would have told him that I would talk on his behalf and try to get him
7 not more than 20 because he was looking at 30 on the armed robbery and the
8 assault and battery intent to kill, that carried 20.

9 And knowing Judge Miller, I was hoping he'd cap it at 20. I hoped he
10 would keep it under, but I may have said, "I'm trying to keep it under," but I think in
11 my opening statement to the judge I say I'm asking to give me 20 on the assault and
12 battery intent to kill and then run the other concurrent. And that's basically what
13 Judge Miller did.

14 MS. RATIGAN: That 's all I have, Your Honor.

15 THE COURT: Any cross?

16 MS. HORLBECK: Just briefly.

17 CROSS EXAMINATION by MS. HORLBECK:

2:29 P.M.

18 Q. Mr. Sullivan, you said you may have told Mr. Jones that you would try
19 to keep the sentence under 20?

20 A. Well, he wanted less than 20 And I said, "Well, I can't guarantee that,
21 but I'll try and keep it 20 or — or below; nothing above that."

22 Q. Okay. And did — and you've had a chance to review the transcript of
23 the plea hearing; is — is that correct?

24 A. Yeah, I have it here.

25 Q. Okay. And did — did you ask for 20 — at anytime in that transcript,

1 did you ask for a sentence of less than 20? Or was it just a ---

2 A On page 13 I asked the judge to give him 20 on the assault and batter
3 and then run the other concurrent.

4 Q. Okay.

5 A. I was trying to cap it once I knew the judge might go with the armed
6 robbery and give him 30 and then run 20 and run concurrent. So I was trying to
7 save him some time there.

8 Q. Okay. And did you and the prosecutor have an occasion to speak with
9 the judge ---

10 A. No ----

11 Q. --- prior to trial about what you might ask for as far as sentencing?

12 A. No. We came out. I think we told Judge Miller that it was on the trial
13 docket. But we wanted to plea to both charges and clear the case up.

14 Q. Okay. And did you and Mr. Jones have the opportunity to discuss ---
15 to discuss an appeal in the case?

16 A. There's something in there, but like he said, on a guilty plea it's hard to
17 appeal. And he didn't ask me for one. I did may have mentioned a PCR to him.

18 Q. Okay.

19 A. It's not on the record. I've been putting it on the record lately, but I did
20 tell him the option of a PCR if he thought there was --- something was wrong with it.

21 MS. HORLBECK: Okay. All right. That 's all I have. Thank you.

22 THE COURT: Thank you.

23 MS. RATIGAN: I have nothing further.

24 THE COURT: Thank you. You may step down.

25 (Witness complied with the Court's request.)

1 MS. RATIGAN: I'd ask Mr. Sullivan to be, please, be excused.

2 MS. HORLBECK: No objection.

3 THE COURT: Okay. You have a nice afternoon.

4 THE WITNESS: Thank you, Judge.

5 THE COURT: Anything further from the ----

6 MS. RATIGAN: No, Your Honor. We rest.

7 THE COURT: All right.

8 MS. HORLBECK: Nothing further, Judge.

9 THE COURT: All right. I'll take the matter under advisement.

10 And I'll look at the transcript and I'll give you my ruling when I make it. Thank
11 you.

12 (Whereupon, the proceeding concluded at 2:31 p.m.)

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REPORTER'S CERTIFICATE

I, the undersigned, **PAMELA S. FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 20, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

May 27, 2013

Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Michael Lee Jones,)
 S.C.D.C. No. 296273,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-2916

ORDER OF DISMISSAL

FILED IN CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENS/SMITH
 2013 APR -2 P 1:53

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 29, 2011. The Respondent made its return on August 18, 2011. An evidentiary hearing into the matter was convened on February 14, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, C. Timothy Sullivan, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the December 2009 term of the Greenville County Grand Jury for armed robbery (2009-GS-

23-1685), assault and battery with intent to kill (ABIK) (2009-GS-23-4855, count 1), and possession of a weapon during commission of a violent crime (2009-GS-23-4855, count 2). He was represented by C. Timothy Sullivan, Esquire.

On September 15, 2010, the Applicant pled guilty to armed robbery and ABIK. The Honorable Edward W. Miller levied concurrent sentences of twenty (20) years for armed robbery and twenty (20) years for ABIK. The Applicant did not appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under

prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he had three meetings with plea counsel and they discussed his version of events, the State's evidence, and his statement. The Applicant stated the armed robbery case had previously ended in a mistrial so he knew the case was back on the trial docket. The Applicant stated he told plea counsel he would plead guilty if he would receive a sentence less than twenty years. The Applicant stated he did not know he was pleading guilty without a sentence recommendation and believed – based on his conversation with plea counsel – that he would definitely receive less than twenty years. The Applicant stated the plea transcript indicates plea counsel asked the plea judge to sentence him to twenty years and that he did not stop the proceeding at that point because he did not know he could do so.

Plea counsel testified he filed discovery motions, gave a copy of the State's evidence to the Applicant, and reviewed that evidence with him prior to the trial. Plea counsel testified he reviewed the Applicant's statement with him, discussed the Applicant's version of events, and explained the minimum and maximum sentences for the charges. Plea counsel testified he told the Applicant the case was placed back on the trial docket after the mistrial. Plea counsel testified the Applicant wanted a sentence less than twenty years but he did say the Applicant would receive such a sentence. Plea counsel testified he told the Applicant there was no

sentence recommendation. Plea counsel testified he asked the plea judge – in an attempt to try and cap the sentence – to levy a twenty year sentence on the ABIK charge and run the armed robbery charge concurrent.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.6; p.10). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty and had not been coerced in any way. (Plea transcript, pp.5-6).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly explain the sentence he could receive at the plea hearing. Plea counsel testified he told the Applicant the sentence ranges on his charges. Plea counsel testified he told the Applicant there was no sentence recommendation prior to the plea hearing. This Court finds plea counsel's testimony is credible. This Court notes the plea judge explained the charges and sentence ranges during the plea hearing. (Plea transcript, pp.4-5). This Court also notes the Applicant signed the sentencing sheets, which clearly indicated there was no sentence recommendation. While plea counsel did ask the plea judge to levy the maximum sentence on the ABIK charge, this Court finds plea counsel articulated this was a strategic decision and further finds it was a valid attempt to have the judge cap the overall sentence at twenty years. (Plea transcript, pp.13-14). See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel

articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

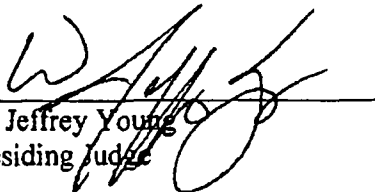
This Court advises the Applicant that he must file a notice of intent to appeal within thirty

(30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13 day of March, 2013.



W. Jeffrey Young
Presiding Judge

Dunta, South Carolina.

WITNESSES

David Weiner

Greenville County Sheriff's Office

1/21/2009

DOCKET NO. 2009-GS-23-

AO#

001605

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2009

THE STATE

PLEAD GUILTY

VS.

MICHAEL LEE JONES

ARREST WARRANT NUMBER

1476014

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0139

Indictment for

ARMED ROBBERY

VIOLATION § 16-11-0330

Foreperson of Petit Jury

Date:

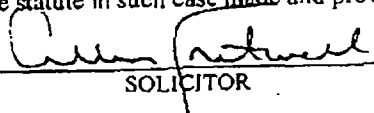
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on **DEC 15 2009** the Grand Jurors of Greenville
County present upon their oath:

That MICHAEL LEE JONES did in Greenville County, on or about the 8th day of August 2008, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: a 1998 FORD EXPEDITION, from the person or presence of VICTOR GODINEZ. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

A. Lindler

Greenville Police Department

1/1/2009

ARREST WARRANT NUMBER

M068003 and M068004

(Dictm)

ACTION OF GRAND JURY
TRUE BILL

Carrie Mackles
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-23-000055

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December TERM 2009

THE STATE

VS.

MICHAEL LEE JONES

PLEAD GUILTY
CH

Indictment for
0014 and 0549

ASSAULT AND BATTERY WITH INTENT TO
KILL and POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

VIOLATION §16-03-0620 and §16-23-490

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT AND BATTERY WITH INTENT TO KILL

At a Court of General Sessions, convened on **DEC 15 2009** the Grand Jurors of Greenville
County present upon their oath:

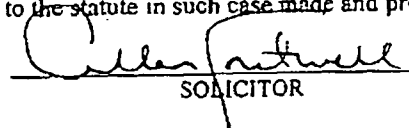
COUNT I

That MICHAEL LEE JONES did in Greenville County, on or about the 1st day of January 2009, willfully, unlawfully and with malice aforethought, either express or implied, commit an assault and battery upon WHITNEY BURNSIDE. This is in violation of §16-3-620 of the South Carolina Code of Laws (1976) as amended.

COUNT II

That MICHAEL LEE JONES did in Greenville County, on or about the 1st day of January 2009, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: ASSAULT AND BATTERY WITH INTENT TO KILL. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR