

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

—————
Certiorari to Kershaw County

Honorable D. Craig Brown, Circuit Court Judge
Honorable G. Thomas Cooper, Jr. Circuit Court Judge
Honorable Daniel McLeod Coble, Circuit Court Judge

—————
ALONZO TARELL JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-000158

—————
APPENDIX
—————

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Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW) COURT OF GENERAL SESSIONS
2013-GS-28-0083
2013-GS-28-0334

State of South Carolina,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
Alonzo Tarrell Jones,)
Defendant.)

April 9, 2013
Camden, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

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

BRETT A. PERRY, DEPUTY SOLICITOR
Attorney for the Plaintiff

CORNELIUS J. RILEY, CHIEF PUBLIC DEFENDER
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced during these proceedings.)

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APRIL 9, 2013

MR. PERRY: We have Alonzo Jones, with his attorney Neil Riley.

He was charged, Your Honor, with possession of a stolen pistol and felony possession of a firearm.

On those two charges, Your Honor, it turns out that Mr. Jones has not previously been convicted of a violent felony in South Carolina as is required under the South Carolina statute to be guilty of a possession of a firearm by a prior convicted felon. The State is nol-prossing that case -- or that charge.

With respect to the stolen pistol, Your Honor, all indications were that he paid what would have been fair market value for the pistol on the street, and ultimately, Your Honor, he is pleading guilty to what he was actually guilty of. He had the pistol in his pocket out publicly. He is pleading guilty to the misdemeanor of unlawfully carrying a firearm, which is punishable by up to one year.

THE COURT: And what else is he pleading to?

MR. PERRY: Your Honor, he is also pleading guilty to a resisting arrest -- and it is the one year variety, not the ten year variety -- that

1 occurred on a separate incident.

2 THE COURT: And what is the recommendation?

3 MR. PERRY: Your Honor, the recommendation is
4 for a short term of probation, six months or so of
5 probation. He has never been on probation before,
6 according to Ms. Mullins.

7 THE COURT: Okay. Let me get her to swear him
8 in, take the plea, and then I'll let you talk.

9 MR. PERRY: Yes, ma'am.

10 THE CLERK: Mr. Jones, would you raise your
11 right hand, please?

12 (The Defendant complies.)

13 THE CLERK: Do you swear or affirm to tell the
14 truth, the whole truth, and nothing but the truth,
15 so help you God?

16 THE DEFENDANT: Yes, ma'am.

17 THE CLERK: Thank you.

18 THE COURT: He is pleading guilty to an
19 unlawful carrying of a pistol and a resisting
20 arrest, is that correct?

21 MR. PERRY: Yes, ma'am, Your Honor, that is
22 correct.

23 THE COURT: All right, Mr. Riley, is that
24 correct? Is that your understanding of the
25 negotiations, a short term of probation?

1 MR. RILEY: Correct, Judge.

2 THE COURT: All right. And have you explained
3 to your client the charges contained in the
4 indictment, the possible punishment, and his
5 constitutional rights?

6 MR. RILEY: I have, Judge.

7 THE COURT: And on Indictment 2013-GS-28-334,
8 it has not been presented to the Grand Jury. Does
9 he wish to waive his right to have it presented to
10 the Grand Jury?

11 MR. RILEY: He does, Judge.

12 THE COURT: And how does he wish to plead?

13 MR. RILEY: Guilty.

14 THE COURT: And do you agree with his decision
15 to plead guilty?

16 MR. RILEY: Yes, ma'am.

17 THE COURT: All right. And you are Alonzo
18 Jones?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And, sir, you are pleading guilty
21 to unlawful carrying of a pistol and resisting
22 arrest, is that correct?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And how old are you, sir?

25 THE DEFENDANT: Thirty-two.

1 THE COURT: Sir?

2 THE DEFENDANT: Thirty-two.

3 THE COURT: And who do you live with?

4 THE DEFENDANT: Me and me my fiancée.

5 THE COURT: Do you have children?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Their ages?

8 THE DEFENDANT: Four and eight.

9 THE COURT: You can back up a little bit. How
10 old are they?

11 THE DEFENDANT: Four and eight.

12 THE COURT: Four and eight? Do they live with
13 you?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. And are you on
16 probation or parole?

17 THE DEFENDANT: Nothing right now.

18 THE COURT: All right. Within the last 24
19 hours, have you taken any medication, drugs, or
20 alcohol?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: All right. Listen closely to the
23 Solicitor as he states the facts.

24 MR. PERRY: Your Honor, basically on the
25 unlawful carrying of a pistol, on August 13th,

1 2012, Sergeant David Morales with the Camden Police
2 Department was on patrol and observed the
3 Defendant, who he knew to have an outstanding
4 arrest warrant with a city charge, to be walking
5 into the Cheap Way fill station here in Camden.

6 He approached Mr. Jones and placed him in
7 investigative detention. He was handcuffed behind
8 his back.

9 Whenever he was patted down they found a black
10 Smith & Wesson .380 caliber pistol in his pocket of
11 his pants. That is the basis for the charge for
12 the unlawful carrying of a pistol, Your Honor. He
13 did not possess a concealed weapons permit, so of
14 course he couldn't carry it there.

15 THE COURT: All right.

16 MR. PERRY: With respect to the resisting
17 arrest charge, Your Honor, on January 5th, 2013,
18 Sergeant Pamela Moore with the Camden PD had
19 information that there was an active warrant for
20 Mr. Jones. She saw him in traffic, activated her
21 blue lights, did a traffic stop for him.

22 During the course of trying to take him into
23 custody, as she grabbed one hand to try to put his
24 arms behind his back to handcuff him -- he had on a
25 hoodie, and he started struggling to get away --

1 she got a hold of the hoodie. He slipped out of
2 the hoodie and ran.

3 Ultimately, he was arrested and charged with
4 resisting arrest, the one year variety. He is
5 pleading guilty as charged to that, Your Honor.

6 THE COURT: Sir, is that what you are pleading
7 guilty to? Do you agree with what he said?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Are those the facts that happened
10 that led to your arrest?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And that have ultimately led to
13 your pleading guilty?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: You understand that both charges
16 charges carry up to a year in jail?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: I could run those consecutive and
19 you would be looking at two years in jail. Do you
20 understand that, sir?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Knowing that, do you still wish to
23 plead guilty?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right, sir, also the

1 indictment for the resisting arrest has not been
2 presented to the Grand Jury. Do you wish to waive
3 your right to have it presented to the Grand Jury?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right. And you have been --
6 you also have the right to a jury trial. At a
7 jury trial the State would have to prove you guilty
8 beyond a reasonable doubt. You and your attorney
9 would have the opportunity to cross-examine any
10 witnesses that they would present, sir, but you
11 yourself would not have to testify, the burden
12 would be solely upon the State to prove you guilty
13 beyond a reasonable doubt. But by pleading guilty,
14 you waive your right to a jury trial. Is that what
15 you wish to do?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And you have been represented by
18 Mr. Riley. Are you satisfied with his
19 representation?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Do you need any more time to speak
22 with him?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: All right. And has he done
25 everything for you that you feel he could have done

1 or should have done?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Are you completely satisfied with
4 his services?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Is anyone forcing you to plead
7 guilty today?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Are you pleading guilty of your
10 own free will?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And are you pleading guilty
13 because you are guilty of resisting arrest and
14 unlawful carrying of a pistol?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Have you understood my questions?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Have you answered them truthfully?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: You understand you have the right
21 to appeal the guilty plea and sentence of this
22 Court within ten days of today's date?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right. I find that there is a
25 substantial factual basis for this plea.

1 I also find that the Defendant's decision to
2 plead guilty is freely, voluntarily, knowingly, and
3 intelligently made.

4 That he is represented by counsel to whom he
5 has indicated to me he is completely satisfied
6 with.

7 I will accept your plea.

8 Mr. Riley, I am inclined to follow the
9 recommendation unless you want to add anything else
10 for the record.

11 MR. RILEY: Just very briefly, Judge. I am in
12 accord with the recommendation. My client and I
13 agree with it.

14 I would just respectfully ask the Court to
15 consider just making it a time served sentence, but
16 at any rate --

17 THE COURT: How much time did he serve?

18 MR. RILEY: -- that's all I want to say,
19 Judge.

20 THE COURT: How much time did he serve?

21 MR. RILEY: About two days.

22 THE COURT: All right. On Indictment --
23 anything else, Mr. Perry?

24 MR. PERRY: No, ma'am.

25 THE COURT: On Indictments 2013-GS-28-334 and

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)
)
 Alonzo Tarell Jones)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2014-CP-28-302

APPLICATION FOR

POST-CONVICTION RELIEF

FILED FOR RECORD
 14 APR - 8 PM 3:22
 CLERK OF COURT
 KERSHAW COUNTY

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Not currently detained
2. Name and location of Court which imposed sentence Court of General Sessions, Kershaw County, 1121 Broad Street, Camden, SC 29020
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-28-83, Unlawful Carry of a pistol
 - (b) 2013-GS-28-334 Reisting Arrest
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Sentenced on April 9, 2013, sentenced to one year suspended on service of six

ATTEST True, Correct & Certified Copy of Original on File in this Court Revised 3/2003

Deja M. Donald
Clerk of Court Kershaw County

months probation on both Indictments to be run concurrently

- (b) _____
 - (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?
No

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

(a) I was not advised of the collateral consequences of this guilty plea by my plea counsel. I became aware of the collateral consequences after the time for filing an appeal had lapsed..

(b) I was not advised of the procedure or need of pursuing an appeal by my plea

11 00 100 0500090
 2014 APR -8 PM 2:23
 CLERK OF COURT
 Kershaw County, S.C.

counsel.

(c) _____

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

(a) My plea counsel failed to investigate the facts underlying my charges, specifically whether or not the State actually had possession of the evidence in my case. I have since discovered that the State did not possess the evidence and I would not have pled guilty knowing that there was no evidence.

(b) I was not advised by my plea counsel of the collateral consequences of my guilty plea to a weapons offense, namely that I would be subject to Federal Prosecution from it. I would not have pled guilty had I been made aware of that consequence.

(c) _____

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

(a) I was arrested on or about August 21, 2012 for charges that involved a firearm. In January of 2013, and agent of the Bureau of Alcohol, Tobacco, and Firearms took custody of the evidence, specifically the firearm involved, from the City of Camden Police Department. I was advised by my counsel at the time of a probationary plea offer that I accepted on April 9, 2013. At no time did my counsel examine the evidence in my case. Had he done so, I would have been made aware of the Federal involvement and would not have pled guilty. I would have also not pled guilty due to the fact that the evidence was not there. At no time was I advised of the collaeral consequences that I faced due to my record, specifically that I could be indicted Federally based upon my guilty plea. I was not advised of any of this, including the status of the evidence until I was, in fact, indicted by the United States Government for this arrest. I have learned subsequent to my Federal Indictment that the State of South Carolina was not in possession of any of the evidence in my case at the time of my plea. I would not have plead guilty and would have proceeded to trial if I had been aware of this. I feel that my counsel was ineffective in his representation of me for those reasons. I also feel that these facts also constitute a discovery and Brady violation in that material exculptory facts, ie the unavailability of the evidence, were not disclosed to me. At no time did I agree to not recieve discovery in this case. I could not have knowingly waived these issues as I was completely unaware of them.

2013 APR 8 PM 2:23
 FEDERAL COURTS
 DISTRICT OF SOUTH CAROLINA
 FEDERAL RECORD

(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 "yes" 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. _____

2011 APR -8 PM 2:23
CLERK OF COURT
KERSHAW COUNTY, S.C.

(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) This is the first opportunity that I have had to raise this issues since I've been made aware of them. I was not incarcerated as a result of my plea so I do not believe I could have raised a claim of Habeus Corpus. I was not made aware of the collateral consequence of Federal action until that actually took place after the time for filing an appeal had lapsed. I do intend to raise these issues in the Federal Prosecution but have not had opportunity to do so as of yet.

- (b) _____
- (c) _____

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

(a) your arraignment and plea? Yes

2014 APR -8 PM 2:23
 CLERK OF COURT
 WERESHAM COUNTY, S.C.

- (b) your trial, if any? No Trial
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No Appeal
- (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. Cornelius Riley, Kershaw County Public Defender's Office, 1121 Broad Street,

Camden, SC 29020

- ii. Ron Moak, P.O. Box 2544, Camden, SC 29020

iii. _____

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

- i. Mr. Riley was my Public Defender in this case.
- ii. Mr. Moak is representing me in the Post Conviction Relief Action.
- iii. _____

2011 APR -8 PM 2:23
 CLERK OF COURT
 KERSHAW COUNTY, S.C.
 COURT RECORDS

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

I would like to have new trial on these charges.

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

No.

STATE OF SOUTH CAROLINA)
)
County of Kershaw)

VERIFICATION

I, Alonzo 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.

Alonzo J. Jones

SWORN to and subscribed before me this 8th
day of April, 2014.

[Signature] (L.S.)
Notary Public

My Commission Expires: 3/23/16

2014 APR -8 PM 2:23
OFFICE OF THE CLERK OF COURT
KERSHAW COUNTY, S.C.

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

I, Alonzo 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.

x Alonzo L Jones
Applicant

SWORN or affirmed to and subscribed before me this
8th day of April, 2014.

[Signature]

Notary Public

My Commission Expires: 3/23/15

FILED FOR RECORD
2014 APR -8 PM 2:23
CLERK OF COURT
BERKSHIRE COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
Alonzo Jones,	)	2014-CP-28-302
)	
Applicant,)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the Application for post-conviction relief filed April 8, 2014, would respectfully show this Court:

I.

Applicant was indicted during the February 2013 term of the Kershaw County Grand Jury for Unlawful Carrying of a Pistol (2013-GS-28-0083). Additionally, Applicant waived presentment to the Kershaw County Grand Jury for Resisting Arrest (2013-GS-28-0334). Applicant was represented by Cornelius J. Riley, Esquire. On April 9, 2013, Applicant appeared before the Honorable DeAndrea G. Benjamin, where he pled guilty to both offenses. Judge Benjamin sentenced Applicant to one year imprisonment for Unlawful Carrying of a Pistol and to a concurrent one year imprisonment for Resisting Arrest. Applicant did not appeal his guilty pleas or sentences.

Attached herewith and incorporated herein are the records of the Kershaw County Clerk of Court regarding the subject convictions and the transcript from Applicant's guilty plea proceeding. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, Applicant alleges that he is being held in custody for the following reasons of ineffective assistance of counsel:

1. Counsel failed to investigate the facts regarding the underlying charges; and
2. Counsel failed to advise Applicant of the collateral consequences to pleading guilty to a weapons offense.

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

III.

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

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

IV.

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

V.

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

Signature block to follow

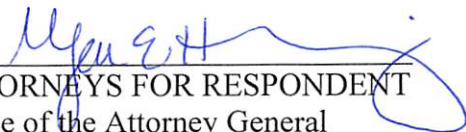
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211


June 11, 2014.

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW)	
)	
	)	2014-CP-28-302
)	
ALONZO JONES)	
)	
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:

Ron Moak, Esquire
Moak Law Firm
Post Office Box 2544
Camden, South Carolina 29020

DATED this 11th day of June, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014-CP-28-302

Alonzo Tarell Jones

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

FILED FOR RECORD
2015 DEC -9 AM 11:10
CLERK OF COURT
KERSHAW COUNTY, S.C.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

For Clerk of Court Office Use Only

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Debra S. Blount
Clerk of Court Kershaw County

This judgment was entered on 9th day of December, 2015, and a copy mailed first class or placed in the appropriate attorney's box on 9th day of December, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Ronald Wade Moak PO Box 2544 Camden, SC 29020

James Clayton Mitchell III PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Joyce McDonald
Joyce McDonald - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Alonzo T. Jones, Fed. ID: 70680-053

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-28-00302

ORDER OF DISMISSAL

FILED FOR RECORD
2015 DEC -9 AM 11:10
JOYCE REEDNALL
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 8, 2014. Respondent made its Return on June 12, 2014, requesting an evidentiary hearing be convened. Ronald W. Moak, Esquire, was retained by Applicant to represent him. An evidentiary hearing was held on July 16, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Moak. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Cornelius J. Riley, Esquire, testified. This Court had before it the Kershaw County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant was indicted during the February 2013 term of the Kershaw County Grand Jury for Unlawful Carrying of a Pistol (2013-GS-28-0083). Additionally, Applicant waived presentment to the Kershaw County Grand Jury for Resisting Arrest (2013-GS-28-0334). Applicant was represented by Cornelius J. Riley, Esquire. On April 9, 2013, Applicant appeared before the Honorable DeAndrea G. Benjamin, where he pleaded guilty to both offenses. Judge Benjamin sentenced Applicant to one (1) year imprisonment for Unlawful Carrying of a Pistol.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Joyce Reednall
Clerk of Court Kershaw County

GR

and to a concurrent one (1) year imprisonment for Resisting Arrest. Applicant did not appeal his guilty pleas or sentences.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in failing to properly investigate the charges against Applicant.
2. Ineffective assistance of counsel in failing to advise Applicant that he could be subject to federal prosecution.

II. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Failure to Investigate

Applicant alleges Counsel was ineffective for failing to investigate the facts of the case. He argues that he has learned the gun that was recovered from him during the incident was not processed by investigators. Counsel testified Applicant was originally charged with being a felon in possession of a firearm but that charge was dropped because he did not have a requisite felony conviction. Counsel credibly testified that there was no dispute about whether there was a gun found on Applicant. He testified that Applicant was eager to plead guilty and was happy with the sentence.

This Court finds this allegation without merit. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential



witnesses and making an independent investigation of the facts and circumstances of the case.” Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). The record reflects Applicant fully admitted his guilt to the plea court. “A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held “[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process.” Id (citations omitted). “When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Id (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Applicant cannot now claim that he did not have a gun when arrested. He fully agreed to the facts as laid out by the solicitor and admitted to the allegations set forth in the indictment.

In any event, Applicant failed to present any evidence that the gun was *not* properly processed by law enforcement. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (“failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.”). The allegation rests entirely on speculation. This allegation is denied and dismissed with prejudice.

Failure to Advise That Applicant Could be Subject to Federal Prosecution

This Court further finds Applicant knowingly and voluntarily entered into the guilty plea. Applicant alleges he was not advised that he could be subjected to federal prosecution from the incident. He alleges that if he had known this, he would not have pleaded guilty. This Court finds



this issue is a collateral, rather than direct, consequence of the sentence and therefore is not cognizable in this forum. “The law is clear that a valid plea of guilty requires that the defendant be made aware of all the direct consequences of his plea.” Cuthrell v. Director, Patuxent Institution, 475 F.2d 1364, 1365 (4th Cir.), cert. denied, 414 U.S. 1005 (1973). “The distinction between ‘direct’ and ‘collateral’ consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant’s punishment.” Id at 1366. In Cuthrell, the Fourth Circuit determined that the possibility of civil commitment proceedings was a collateral consequence of a plea to a criminal assault charge, and failure to advise petitioner of this collateral consequence did not render the plea unconstitutional.

Here, the issue of whether the federal authorities will press charges is absolutely collateral to Applicant’s convictions. The decision was fully discretionary with a completely separate authority and jurisdiction. It was in no way definite, immediate or automatic upon entering the plea. This Court finds Counsel had no duty whatsoever to advise Applicant of the possibility that he could be charged by the federal government.

Further, as Counsel credibly testified, he did not know the federal authorities were investigating the case. Counsel did note that the solicitor will normally take a “hands-off” approach and wait to see if a defendant is convicted in federal court before moving forward with the State charges. He noted that the State charges are usually *nolle prossed* in that situation if a defendant is convicted in federal court. Here, Applicant is essentially alleging that Counsel was ineffective in failing to advise him to wait to plead until the federal charges were adjudicated. Counsel did not know of any federal investigation involving Applicant. He testified he did not believe this sort of incident would draw the attention of federal authorities and therefore had no



reasons to consider it. He further testified that he believed the prosecution to be legal because of the doctrine of dual sovereignty. This Court finds Counsel acted reasonably in his representation and made a strategic decision to advise Applicant to plead guilty to the charges as he believed the plea deal to be beneficial to Applicant. It was not unreasonable for Counsel not to advise Applicant of that fact that he could be prosecuted by federal authorities. Counsel had no knowledge and had no reason to know that Applicant was under investigation by the federal authorities. This allegation is denied and dismissed with prejudice.

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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial

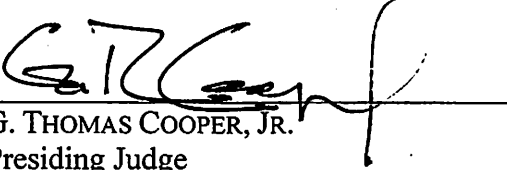


of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 3RD day of December, 2015.
5 day of November, 2015.


 G. THOMAS COOPER, JR.
 Presiding Judge

COLUMBIA, South Carolina

EX.D

The Supreme Court of South Carolina

Alonzo Tarell Jones, Petitioner,

v.

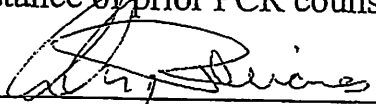
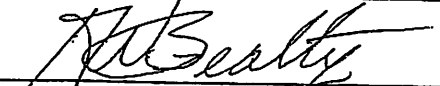


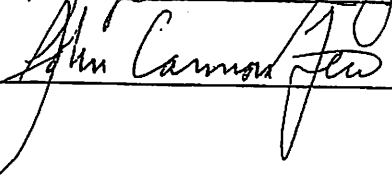
State of South Carolina, Respondent.

Appellate Case No. 2016-002278

FILED FOR RECORD
2016 DEC 29 AM 11: 29
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

ORDER

This matter is before the Court on a petition for writ of habeas corpus dated November 1, 2016. We find habeas relief is not proper in this instance, as petitioner has not exhausted all other available remedies. *Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426 (1998). Accordingly, the petition is denied without prejudice to petitioner's right to file another application for post-conviction relief (PCR) in the circuit court alleging ineffective assistance of prior PCR counsel.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina

December 1, 2016

cc:

Alonzo Tarell Jones

Alan McGrory Wilson, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of KERSHAW)

2017-CP-28-226

ALONZO TARELL JONES)

Full name and prison number (if any) of Applicant)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

FILED FOR RECORD
2017 MAR 15 PM 3:53
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

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

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

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

- 1. Place of detention FCI SATELLITE CAMP Edgefield
P.O. Box 725 Edgefield S.C. 29824
- 2. Name and location of Court which imposed sentence COURT OF GENERAL
SESSIONS, KERSHAW COUNTY 1121 Broad St Camden S.C. 29020
- 3. Name(s) of co-defendant(s) (if any) NONE

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) _____
- (b) _____

**ATTEST True, Correct & Certified
Copy of Original on File in this
Court**
Janet C. Hasty
Clerk of Court - Kershaw County

(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

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

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

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

(a) EXHIBIT A MATTER 3 EXPLAINS

(b) WHY I COULDN'T APPEAL.

2017 MAR 15 PM 3:54
 CLERK OF DISTRICT COURT
 KENNESAW COUNTY, S.C.

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

(a) SEE EX.C
(b) _____
(c) _____

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

(a) SEE EX.C
(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 "yes" 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. _____

2017 MAR 15 PM 3:54
KERRICK COUNTY
CLERK OF COURT
KERRICK COUNTY, S.C.

(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?

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. _____

2011 MAR 15 PM 3:54
 CLERK OF DISTRICT COURT
 KANSAS DISTRICT COURT
 KANSAS DISTRICT COURT
 KANSAS DISTRICT COURT

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

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

- (a) the name and address of each attorney who represented you:
 - i. RONI MOAK
P.O. Box 2544 CAMDEN, S.C. 29020
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. MR. MOAK did represented me
in the Post conviction Relief Action
 - ii. _____
 - iii. _____

2011 MAR 15 PM 3:54
 EASTERN DISTRICT COURT
 WILSON COUNTY, S.C.

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

I would like to have a new
Post conviction RELIEF ACTION EX.B
HEARINGS FOR CASE # 2014-CP-28-302

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

No

STATE OF SOUTH CAROLINA)
)
County of Kershaw)

VERIFICATION

NOTARY PUBLIC
COURT
KERSHAW COUNTY, S.C.

2017 MAR 15 PM 3:54

0000000000

I, Alonzo Tazell 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.

Alonzo Tazell Jones

SWORN to and subscribed before me this 7
day of February, 2017.

Jessie W. Carter (L.S.)
Notary Public

My Commission Expires: 8/1/22

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

2017 MAR 15 PM 3:54
CLERK OF SUPERIOR COURT
KERSHAW COUNTY, S.C.

I, ALONZO TARELL JONES, hereby apply to 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.

Alonzo Tarell Jones
Applicant

SWORN or affirmed to and subscribed before me this 7 day of February, 2017.

Jessica W. Carter
Notary Public

My Commission Expires: 8/1/22



EXHIBIT "A"

The Supreme Court of South Carolina
OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Sabrina C. Todd
Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

July 20, 2016

PERSONAL AND CONFIDENTIAL

Alonzo Tarell Jones #70680-053
Federal Satellite Low
2600 S. US Highway 301
Jesup, GA 31599

RE: NOTICE OF FINAL DISPOSITION
Lawyer: Ronald Wade Moak, Esquire
Matter Number: 15-DE-L-0859

Dear Mr. Jones:

You previously filed a complaint with the Commission on Lawyer Conduct concerning Ronald Wade Moak, Esquire. Today, the Supreme Court of South Carolina issued an opinion (Opinion No. 27649) in which Mr. Moak was found to have committed misconduct and was sanctioned. The Court determined that the appropriate sanction in this matter was a Public Reprimand.

Enclosed is a copy of the Court's opinion in this matter. I have highlighted the portion of the opinion that addresses your complaint. This action by the Court constitutes a final disposition of your complaint. Your cooperation with the investigation into this matter is appreciated.

Sincerely,

Sabrina C. Todd

Enclosure

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Ronald Wade Moak, Respondent.

Appellate Case No. 2016-001018

Opinion No. 27649

Submitted June 21, 2016 – Filed July 20, 2016

PUBLIC REPRIMAND

Lesley M. Coggiola, Disciplinary Counsel, and Sabrina
C. Todd, Assistant Disciplinary Counsel, both of
Columbia, for Office of Disciplinary Counsel.

Ronald Wade Moak, of Camden, *pro se*.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to the imposition of a public reprimand with conditions. We accept the Agreement and issue a public reprimand with conditions as stated hereafter in this opinion. The facts, as set forth in the Agreement, are as follows.

Facts and Law

Matter I

Respondent agreed to represent Client A on three matters for a flat fee of \$2,500: a criminal domestic violence charge, a Department of Social Services paternity case, and a possible divorce. Ultimately, respondent collected \$2,785 in fees, but also

represented Client A on an additional criminal domestic violence charge as well as an animal control charge.

A few days after beginning the representation, respondent filed a divorce complaint and a motion for an emergency hearing on Client A's behalf. Although respondent provided information for the domestic action, respondent did not provide him with a copy of the complaint. The temporary hearing was continued because Client A's wife was incarcerated in another county. Respondent did not seek to have the hearing rescheduled and did not adequately explain the status of the case to Client A. When Client A later waived on whether he wanted to pursue the divorce, respondent considered the matter abandoned but did not clearly communicate that to Client A. At times, respondent's communications with Client A and his daughter caused Client A to believe the divorce action was proceeding.

Respondent admits that, at times, he failed to respond to Client A's reasonable requests for information about the action. He did not notify Client A when he received a 365-day benchmark notice from the family court or when the case was dismissed.

Client A obtained a divorce with assistance from another lawyer. Thereafter, Client A filed a complaint with ODC under the mistaken belief respondent never filed a divorce action on his behalf.

Respondent admits that his conduct violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing client); and Rule 1.4 (lawyer shall keep client reasonably informed about status of matter and promptly comply with reasonable requests for information).

Matter II

Client B sought respondent's assistance with a child visitation issue. Respondent recommended Client B reach a visitation agreement with the child's father which respondent could then submit to the family court for adoption as an official court order. Respondent agreed to represent Client B for \$500, which included a court appearance and filing fees. The fee agreement was not reduced to writing. Client B understood respondent would file the visitation agreement upon payment of \$350 with the balance due later.

Client B paid respondent \$350. Respondent did not place the unearned fees into a trust account. He states he does not maintain a trust account because most funds he receives are earned fees.

Client B and the child's father presented respondent with their handwritten agreement in late October or early November 2014. Respondent advised he would immediately file the agreement so a hearing could be scheduled before the Christmas holidays.

However, respondent did not file anything on Client B's behalf and did not communicate with her further. Respondent did not respond to Client B's telephone calls or texts. Respondent admits he failed to communicate with Client B; he asserts his failure to communicate was due to personal problems related to his mother's death. Respondent further states he did not know how to reach Client B after he lost contact with Client B's aunt who had referred Client B to him.

In May 2015, Client B filed a complaint against respondent. In January 2016, respondent refunded the \$350 paid by Client B.

Respondent no longer accepts domestic cases.

Respondent admits that his conduct violated the following provisions of the Rules of Professional Conduct, Rule 407. SCACR: Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing client); Rule 1.4 (lawyer shall keep client reasonably informed about status of matter and promptly comply with reasonable requests for information); Rule 1.15 (lawyer shall deposit into trust account unearned legal fees and expenses paid in advance, to be withdrawn only as fees are earned or expenses incurred); and Rule 1.16(d) (upon termination of representation, lawyer shall take steps to extent reasonably practicable to protect client's interests, such as refunding any advance payment of fees or expenses that have not been earned or incurred).

Matter III

Respondent agreed to represent Client C in a state post-conviction relief (PCR) action. Client C was seeking relief from a conviction related to a pending federal charge and believed obtaining relief from his state conviction would help him resolve his federal charge. Client C pled guilty on the federal charge and was sent to a federal prison in another state before his PCR action reached the docket.

When Client C's case first appeared on the docket, respondent sought and received a continuance to explore having his client transferred for the hearing. By the time the case was docketed a second time respondent realized an order of transportation was not possible. Although respondent asserts he unsuccessfully attempted to reach Client C's family, he never wrote Client C or attempted to call him to explain what was happening with his case.

On June 15, 2015, Client C emailed respondent from prison requesting the status of his PCR action and he complained that respondent had not responded to communications from Client C's wife. Respondent did not respond to the email.

In July 2015, respondent represented Client C at the PCR hearing without advising Client C that the hearing had been scheduled. Respondent did not advise Client C that the judge orally denied the PCR at the end of the hearing. Respondent maintains that, after he received the written order several months after the hearing, he sent a copy of the order to Client C. Client C reports he has not heard from respondent and still does not know the status of his PCR.

The PCR order indicates respondent presented no evidence in support of Client C's primary complaint against his guilty plea counsel.

Respondent admits that his conduct violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing client); and Rule 1.4 (lawyer shall keep client reasonably informed about status of matter and promptly comply with reasonable requests for information).

Respondent also admits his conduct in each of these matters constitutes grounds for discipline under Rule 7(a)(1) of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers).

Conclusion

We find respondent's misconduct warrants a public reprimand.¹ Accordingly, we accept the Agreement and publicly reprimand respondent for his misconduct.

¹ Respondent's disciplinary history includes a letter of caution issued in 2015. Like the current matter, the letter of caution also cites Rule 1.3 and Rule 1.4 of the Rules

Further, within thirty (30) days of the date of this opinion, respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct (the Commission). Within one (1) year of the date of this opinion, respondent shall complete the Legal Ethics and Practice Program Ethics School, Trust Account School, and Law Office Management School. Respondent shall provide proof of his completion of each program to the Commission no later than ten (10) days after the conclusion of each program.

PUBLIC REPRIMAND.

PLEICONES, C.J., BEATTY, KITTREDGE, HEARN and FEW, JJ., concur.

of Professional Conduct. *See* Rule 2(r), RLDE (fact that letter of caution has been issued shall not be considered in subsequent disciplinary proceeding against lawyer unless the caution or warning contained in letter of caution is relevant to the misconduct alleged in new proceedings).

EX. B

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

ALONZO TARELL JONES

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP-28-302

Submitted By: Ron Moak
Address: P.O. Box 2544
Camden, SC 29020

SC Bar #: 68461
Telephone #: 803-729-6589
Fax #:
Other:
E-mail: MoakAtty@Gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| <input type="checkbox"/> Contracts | <input type="checkbox"/> Torts - Professional Malpractice | <input type="checkbox"/> Torts - Personal Injury | <input type="checkbox"/> Real Property |
| <input type="checkbox"/> Constructions (100) | <input type="checkbox"/> Dental Malpractice (200) | <input type="checkbox"/> Assault/Slander/Label (300) | <input type="checkbox"/> Claim & Delivery (400) |
| <input type="checkbox"/> Debt Collection (110) | <input type="checkbox"/> Legal Malpractice (210) | <input type="checkbox"/> Conversion (310) | <input type="checkbox"/> Condemnation (410) |
| <input type="checkbox"/> Employment (120) | <input type="checkbox"/> Medical Malpractice (220) | <input type="checkbox"/> Motor Vehicle Accident (320) | <input type="checkbox"/> Foreclosure (420) |
| <input type="checkbox"/> General (130) | Previous Notice of Intent Case # | <input type="checkbox"/> Premises Liability (330) | <input type="checkbox"/> Mechanic's Lien (430) |
| <input type="checkbox"/> Breach of Contract (140) | 20__-CP-__-__ | <input type="checkbox"/> Products Liability (340) | <input type="checkbox"/> Partition (440) |
| <input type="checkbox"/> Other (199) | <input type="checkbox"/> Notice/ File Med Mal (230) | <input type="checkbox"/> Personal Injury (350) | <input type="checkbox"/> Possession (450) |
| | <input type="checkbox"/> Other (299) | <input type="checkbox"/> Wrongful Death (360) | <input type="checkbox"/> Building Code Violation (460) |
| | | <input type="checkbox"/> Other (399) | <input type="checkbox"/> Other (499) |
-
- | | | | |
|--|--|---|---|
| <input checked="" type="checkbox"/> Inmate Petitions | <input type="checkbox"/> Administrative Law/Relief | <input type="checkbox"/> Judgments/Settlements | <input type="checkbox"/> Appeals |
| <input type="checkbox"/> PCR (500) | <input type="checkbox"/> Reinstate Drv. License (800) | <input type="checkbox"/> Death Settlement (700) | <input type="checkbox"/> Arbitration (900) |
| <input type="checkbox"/> Mandamus (520) | <input type="checkbox"/> Judicial Review (810) | <input type="checkbox"/> Foreign Judgment (710) | <input type="checkbox"/> Magistrate-Civil (910) |
| <input type="checkbox"/> Habeas Corpus (530) | <input type="checkbox"/> Relief (820) | <input type="checkbox"/> Magistrate's Judgment (720) | <input type="checkbox"/> Magistrate-Criminal (920) |
| <input type="checkbox"/> Other (599) | <input type="checkbox"/> Permanent Injunction (830) | <input type="checkbox"/> Minor Settlement (730) | <input type="checkbox"/> Municipal (930) |
| | <input type="checkbox"/> Forfeiture-Petition (840) | <input type="checkbox"/> Transcript Judgment (740) | <input type="checkbox"/> Probate Court (940) |
| | <input type="checkbox"/> Forfeiture-Consent Order (850) | <input type="checkbox"/> Lis Pendens (750) | <input type="checkbox"/> SCDOT (950) |
| | <input type="checkbox"/> Other (899) | <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) | <input type="checkbox"/> Worker's Comp (960) |
| | | <input type="checkbox"/> Confession of Judgment (770) | <input type="checkbox"/> Zoning Board (970) |
| <input type="checkbox"/> Environmental (600) | <input type="checkbox"/> Pharmaceuticals (630) | <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) | <input type="checkbox"/> Public Service Comm. (990) |
| <input type="checkbox"/> Automobile Arb. (610) | <input type="checkbox"/> Unfair Trade Practices (640) | <input type="checkbox"/> Other (799) | <input type="checkbox"/> Employment Security Comm (991) |
| <input type="checkbox"/> Medical (620) | <input type="checkbox"/> Out-of State Depositions (650) | | <input type="checkbox"/> Other (999) |
| <input type="checkbox"/> Other (699) | <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) | | |
| | <input type="checkbox"/> Sexual Predator (510) | | |

FILED FOR RECORD
2014 APR 8 PM 2:23
KERSHAW COUNTY, SC

Submitting Party Signature: [Signature]

Date: April 8, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)
)
 Alonzo Tarell Jones)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)
)

IN THE COURT OF COMMON PLEAS

2014-CP-28-302

APPLICATION FOR
POST-CONVICTION RELIEF

14 APR -8 PM 2:28
 CLERK OF COURT
 KERSHAW COUNTY
 NEED FOR RECORD

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Not currently detained
2. Name and location of Court which imposed sentence Court of General Sessions, Kershaw County, 1121 Broad Street, Camden, SC 29020
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-28-83, Unlawful Carry of a pistol
 - (b) 2013-GS-28-334 Reisting Arrest
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Sentenced on April 9, 2013, sentenced to one year suspended on service of six

Copy of Original on File in this Court
 Revised 3/2009
 Clerk of Court Kershaw County

months probation on both Indictments to be run concurrently

(b) _____

(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?
No

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

(a) I was not advised of the collateral consequences of this guilty plea by my plea counsel. I became aware of the collateral consequences after the time for filing an appeal had lapsed..

(b) I was not advised of the procedure or need of pursuing an appeal by my plea

ALL INFORMATION RECORDED
2011 APR -8 PM 2:23
JOSE J. JOURNALD
CLERK OF COURT
KERSTAW COUNTY, S.C.

counsel.

(c) _____

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

(a) My plea counsel failed to investigate the facts underlying my charges, specifically whether or not the State actually had possession of the evidence in my case. I have since discovered that the State did not possess the evidence and I would not have pled guilty knowing that there was no evidence.

(b) I was not advised by my plea counsel of the collateral consequences of my guilty plea to a weapons offense, namely that I would be subject to Federal Prosecution from it. I would not have pled guilty had I been made aware of that consequence.

(c) _____

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

(a) I was arrested on or about August 21, 2012 for charges that involved a firearm. In January of 2013, and agent of the Bureau of Alcohol, Tobacco, and Firearms took custody of the evidence, specifically the firearm involved, from the City of Camden Police Department. I was advised by my counsel at the time of a probationary plea offer that I accepted on April 9, 2013. At no time did my counsel examine the evidence in my case. Had he done so, I would have been made aware of the Federal involvement and would not have pled guilty. I would have also not pled guilty due to the fact that the evidence was not there. At no time was I advised of the collaeral consequences that I faced due to my record, specifically that I could be indicted Federally based upon my guilty plea. I was not advised of any of this, including the status of the evidence until I was, in fact, indicted by the United States Government for this arrest. I have learned subsequent to my Federal Indictment that the State of South Carolina was not in possession of any of the evidence in my case at the time of my plea. I would not have plead guilty and would have proceeded to trial if I had been aware of this. I feel that my counsel was ineffective in his representation of me for those reasons. I also feel that these facts also constitute a discovery and Brady violation in that material exculptory facts, ie the unavailability of the evidence, were not disclosed to me. At no time did I agree to not recieve discovery in this case. I could not have knowingly waived these issues as I was completely unaware of them.

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CLERK OF COURT
HICKORY COUNTY, N.C.
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- (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 "yes" 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. _____

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 CLERK OF COURT
 KERSHAW COUNTY, S.C.

(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. _____

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 DEPT. OF PROBATION
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

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) This is the first opportunity that I have had to raise this issues since I've been made aware of them. I was not incarcerated as a result of my plea so I do not believe I could have raised a claim of Habeus Corpus. I was not made aware of the collateral consequence of Federal action until that actually took place after the time for filing an appeal had lapsed. I do intend to raise these issues in the Federal Prosecution but have not had opportunity to do so as of yet.

- (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 Trial
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No Appeal
- (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. Cornelius Riley, Kershaw County Public Defender's Office, 1121 Broad Street, Camden, SC 29020

ii. Ron Moak, P.O. Box 2544, Camden, SC 29020

iii. _____

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

i. Mr. Riley was my Public Defender in this case.

ii. Mr. Moak is representing me in the Post Conviction Relief Action.

iii. _____

2014 APR -8 PM 2:23
 CLERK OF COURT
 KERSHAW COUNTY, S.C.
 FOR RECORD

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

I would like to have new trial on these charges.

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

No.

STATE OF SOUTH CAROLINA)

County of Kershaw)

VERIFICATION)

I, Alonzo 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.

Alonzo J. Jones

SWORN to and subscribed before me this 8th day of April, 2014.

[Signature] (L.S.)
Notary Public


My Commission Expires: 3/23/15

FILED FOR RECORDS
2014 APR -8 PM 2:23
JOYCE M. BERNARD
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
County of Kershaw)

VERIFICATION

I, Ronald Moak, retained counsel for the Applicant, 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.



Ronald Moak
S.C. Bar No. 68461
P.O. Box 2544
Columbia, SC 29020
(803) 729-6589
MoakAtty@Gmail.com

ATTORNEY FOR THE APPLICANT

SWORN to and subscribed before me this 8th
day of April, 2014.

 (L.S.)
Notary Public

My Commission Expires: 8/21/19

FILED FOR RECORD
2014 APR -8 PM 2:23
JUDICIAL DEPARTMENT
CLERK OF COURT
KERSHAW COUNTY, S.C.

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

I, Alonzo 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.

x Alonzo J. Jones
Applicant

SWORN or affirmed to and subscribed before me this
8th day of April, 2014.

[Signature]
Notary Public

My Commission Expires: 3/23/15

FILED FOR RECORD
2014 APR -8 PM 2:23
JOYCE FARRAR
CLERK OF COURT
KERSHAW COUNTY, S.C.

EXHIBIT "C"

Alonzo Tarell Jones
 Docket No. 3:13CR00967TJAW

When Inv. Burris contacted the Richland County Sheriff's Office, a detective there confirmed the .380 had been reported stolen in Richland County. Jones refused to write a statement following the interview.

- On January 7, 2013, ATF Special Agent Jesse Lee Rathel took possession of the pistol and ammunition recovered from Jones during his August 13, 2012, arrest by the Camden Police Department. The pistol seized was a Smith and Wesson, Model Bodyguard, .380 caliber pistol, serial number EAL7965, with one magazine. The ammunition was described as four rounds of .380 caliber Hornaday ammunition. Prior to placing the evidence in the Columbia Field Office evidence vault, ATF SA Rathel test-fired the firearm and found it functioned as designed.
13. On January 14, 2013, ATF SA Rathel confirmed Jones had prior felony convictions for Possession of Crack Cocaine; Possession with Intent to Distribute Marijuana; and Felon in Possession of a Firearm. These convictions prohibited Jones from possessing firearms and ammunition.
 14. On March 4, 2013, ATF SA Richard Brown conducted an interstate nexus investigation for the firearm and ammunition seized from Jones on August 13, 2012. The .380 caliber Smith & Wesson, Model Bodyguard, 380 Pistol bearing serial number EAL7965 and marked with Smith & Wesson Springfield, MA USA, was made in California and Connecticut under contract for Smith & Wesson, located in Springfield, MA. The four cartridges marked with a Hornaday and .380 AUTO headstamp were made by, or under contract for, Hornady Manufacturing Company, located in Grand Island, NE. Based on his investigation, ATF SA Brown concluded that .380 pistol was a firearm as defined in 18 U.S.C. § 921(a)(3) and was not manufactured in the State of South Carolina. ATF SA Brown also concluded the four cartridges were ammunition as defined in 18 U.S.C. § 921(a)(17)(A) and were not manufactured in the State of South Carolina. Finally, ATF SA Brown concluded the firearm and ammunition moved in international and/or interstate travel and therefore traveled in and affected interstate commerce as defined in 18 U.S.C. § 921(a)(2).
 15. On March 12, 2013, SLED Fingerprint/AFIS Supervisor Seraphim Haftoglou compared fingerprint cards taken from Alonzo Tarell Jones on December 2, 1999; June 15, 2011; December 29, 2003; November 23, 2004; August 7, 2009; and August 13, 2012. Mr. Haftoglou confirmed the ten print cards were all taken from the same individual, Alonzo Tarell Jones.
 16. On March 28, 2013, Julie Dunn, Records Administrator with the SCDPPPS, confirmed as of that date, Jones had not received a pardon.
 17. On January 30, 2014, Jones was taken into custody by members of the Sumter Police Department (SPD) on ATF's federal arrest warrant. On January 31, 2014, ATF SA Rathel and ATF Task Force Officer (TFO) Brendan Bansch transported Jones from the Sumter/Lee Regional Detention Center to the ATF Columbia Field Office for booking and processing. During the process of getting Jones ready to leave Sumter/Lee, he repeatedly asked ATF SA Rathel and TFO Bansch questions regarding his arrest status and pending charges. ATF SA Rathel and TFO Bansch both separately told Jones they would discuss the matter with Jones fully once they were in the transport vehicle. Once everyone was situated in the transport vehicle, ATF SA Rathel told Jones he wanted to make sure he (Jones) understood his Miranda rights before they began talking about any aspect of Jones' charges. After ATF SA read Jones his Miranda rights, Jones stated he understood his rights and waived them.

Ex. C

Alonzo Tarell Jones
Plaintiff

Vs.

Attorney
RONALD WADE MOAK, ESQUIRE
Defendant.

_____ /

) IN THE STATE
)
) OF SOUTH CAROLINA
)
) COUNTY OF KERSHAW
)
) IN THE CIRCUIT OF
)
) COMMON PLEAS
)
) CASE NO. 2014-CP-28-302
)
)
) Application for
)
) post conviction relief/
)
) Ineffective Assistance
)
) of Prior P.C.R. Counsel

**MOTION TO SUPPORT APPLICATION FOR
POST CONVICTION (P.C.R.) FOR
INEFFECTIVE COUNSEL**

CONE NOW, Alonzo Tarell Jones, hereinafter, the Plaintiff, appearing by pro se representation, to petition this Honorable Court for an post-conviction relief and/or correction of the sentence under the Rules, Statues, and guidelines in the State of South Carolina. Plaintiff is incarcerated in the Federal Prison at the Federal Camp at Edgefield, South Carolina.

Plaintiff is detained indigent and without means of legal representation. Plaintiff engaged an attorney, Ronald Wade Moak, Esquire who failed to provide adequate legal representation regarding a Post-Coviction Relief (P.C.R.) (see: exhibit B). Moak was later sanctioned and received a public reprimand (see: exhibit A/matter 3) by the State Supreme Court on July 20, 2016 (Matter #15-DE-1-0859) see attached. Due to the Plaintiff's loss of his Six Amendment Right to counsel and Fundamental right a fair trial his lack of legal skill and knowledge and loss of ample opportunity to meet the case of the prosecution to which he is entitled the Plaintiff respectfully requests:

- 1) Appointment of legal Counsel by the court.

In the Plaintiff's instant case he was deprived of Due Process of law because of bona fide ineffective counsel assistance of counsel, lack of replacement or substitute sufficient resources regarding South Carolina law and court rules while incarcerated in a federal prison.

- 1) The United States of America claimed possession of the evidence (pistol and ammunition) on January 7, 2013 by ATF special agent Jesse Lee Rathel (see attached presentence report, exhibit C, line 12. Federal Docket

3:13-CR-0096TLW). Therefore the state of South Carolina did not have evidence for the adjudication of the Plaintiff's plea and sentencing, nor did his federal conviction was unlawful. Solicitor instructed Plaintiff that the evidence was destroyed when it may not have been in the state's possession at all. Plaintiff requests discovery of chain of evidence to elucidate the the truth.

2) Plaintiff's counsel was proven ineffective by the Supreme Court and there was reasonable probability of the different result with effective assistance.

3) Plaintiff was in federal prison and a Writ for Habeas Corpus was not completed for P.C.R. hearing for Plaintiff to be present for the P.C.R. Plaintiff has been prejudiced by lack of adequate legal representation. Plaintiff had an insurmountable impediment to mount any lawful appeal and could have not file in a timely basis.

Adequate relief cannot be obtained in the other form or from any other court.

(A) The state of South Carolina 9Kershaw County Court) is capable of granting relief.

(B) Exhibit "D" Appellate Case No. 2016-002278-A Order

from the Supreme Court of South Carolina, a court order by the five Judge panel ordered the right for this petition.

-RELIEF SOUGHT-

Plaintiff respectfully requests permission for an post-conviction relief as allowable by South Carolina law. Plaintiff avers there are intervening circumstances of a substantial or controlling effect and/or to other substantial grounds not previously presented including, but not limited to the Plaintiff's incarceration in Federal prison and ineffective assistance as recognized by the Supreme Court of South Carolina.

Due to these deficiencies, the Plaintiff's constitutional Rights to Due Process of law, Equal Protection and Right to counsel were violated. Material and/or legal argument was overlooked in the decision to deny the Plaintiff's P.C.R. petition. Plaintiff did not know about the P.C.R. hearing until July 20, 2016. Plaintiff's request further includes:

- 1) Proper and adequate legal counsel to Petitioner according to South Carolina Supreme Court Rules.

- 2) A ^{RE} "hearing" for P.C.R. regarding his sentence and conviction in the state court of South Carolina, which may be contrary to law.
- 3) Discovery of the chain of evidence involving a pistol and ammunition since proof is substantially affecting his correct incarceration and federal conviction which also may be contrary to law.

Wherefore, all present consideration, the Plaintiff prays this Honorable court GRANT [his] petition and all relief allowable by law in the interest of life, liberty, justice, and equality.

DONE on this 22 day of December 2016

Respectfully Submitted,

Alonzo Tarell Jones

Alonzo Tarell Jones Pro Se
 Register Number 70680-053
 FCI Satellite Camp Edgefield
 P.O. Box 725
 Edgefield, SC 29824

CERTIFICATE OF SERVICE

I, Alonzo Tarell Jones, The plaitiff in the aforementioned cause, do hereby certify that i have served a copy of this request action upon the Clerk of the Court for the county of Kershaw Circuit Court via U.S. Mail. Joyce Mcdonald 1557 P.O. Box Camden Disiplinary Counsel. The Plaintiff request that Ms. Todd Forward a copy of this motion to Kershaw County Clerk of the Court Camden South Carolina and interested parties via the en/ecf system as the Plaintiff is detained, indigent and has no other means.

I, hereby swear, attest and affirm under the penalty of perjury pursuant to Title 28 U.S.C. 1746 that the foregoing instrument is true, accurate, and complete to the best of my knowledge and belief.

This Motion was executed on-the 22 day of DECEMBER, 2016 and sent first class postage prepaid via the inmate mailing system available at Federal Satellite Camp in Edgefield, South Carolina,

Respectfully, Submitted,

Alonzo Tarell Jones
 Alonzo Tarell Jones Pro se
 Register Number 70680-053
 Federal Satellite Camp Edgefield
 P.O. Box 725
 Edgefield, SC 29824

EX.D

The Supreme Court of South Carolina

Alonzo Tarell Jones, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2016-002278

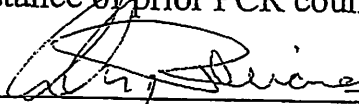
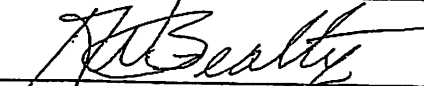
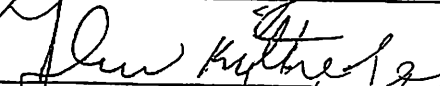

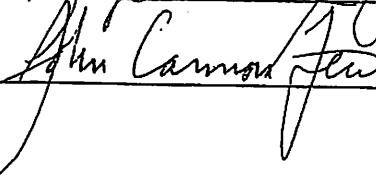
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

2016 DEC 29 AM 11: 29

FILED FOR RECORD

ORDER

This matter is before the Court on a petition for writ of habeas corpus dated November 1, 2016. We find habeas relief is not proper in this instance, as petitioner has not exhausted all other available remedies. *Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426 (1998). Accordingly, the petition is denied without prejudice to petitioner's right to file another application for post-conviction relief (PCR) in the circuit court alleging ineffective assistance of prior PCR counsel.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina

December 1, 2016

cc:

Alonzo Tarell Jones

Alan McGrory Wilson, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
)	
Alonzo Tarell Jones,	)	Case No.: 2017-CP-28-0226
Applicant,)	
)	
	)	RETURN TO SUCCESSIVE POST-
	)	CONVICTION RELIEF APPLICATION
v.	)	(Appointment of Counsel Requested)
)	
State of South Carolina,)	
Respondent.)	
_____)	

In response to the successive post-conviction relief application filed March 15, 2017 by Applicant Alonzo Jones asserting irregularities and issues pertaining to his initial post-conviction relief action, Respondent, the State of South Carolina, would show this Court:

I. PROCEDURAL HISTORY

Applicant is not presently incarcerated, as he has completed both his state and federal sentences and been released from custody.¹ During the February 2013 term, the Kershaw County Grand Jury indicted Applicant for possession of a firearm by a prior convicted felon (2013-GS-28-0054) and unlawful carrying of a pistol (2013-GS-28-0083). Applicant was subsequently indicted in the May 2013 term for resisting arrest (2013-GS-28-0334). Kershaw County Chief Public Defender Cornelius J. Riley represented Applicant. Fifth Circuit Deputy Solicitor Brett A. Perry prosecuted the case. On April 9, 2013, Applicant plead guilty as indicted to unlawful carrying of a pistol and resisting arrest before the Honorable DeAndrea G. Benjamin. In exchange for the guilty plea, the State dismissed the charge of possession of a firearm by a prior convicted felon.

¹Applicant's State sentence was suspended to six months of probation for each charge to run concurrently (Plea Tr. 11-12). Records from the Bureau of Prisons inmate search show Applicant was released from federal custody on November 3, 2017.

Pursuant to the State's recommendation, Judge Benjamin sentenced Applicant to imprisonment for concurrent terms of one year, suspended to six months' probation for each charge. Applicant did not appeal his conviction or sentence.²

First PCR Application (2014-CP-28-0302)

On April 8, 2014, Applicant, with the assistance of retained counsel Ronald W. Moak, filed his first PCR application in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
 - a. "My plea counsel failed to investigate the facts underlying my charges, specifically whether or not the State actually had possession of the evidence in my case. I have since discovered that the State did not possess the evidence and I would not have pled guilty knowing that there was no evidence."
 - b. "I was not advised by my plea counsel of the collateral consequences of my guilty plea to a weapons offense, namely that I would be subject to Federal Prosecution from it. I would not have pled guilty had I been made aware of that consequence."

Respondent made its return on June 12, 2014, requesting an evidentiary hearing. Ronald W. Moak, Esquire, represented Applicant. An evidentiary hearing in to the matter was convened on July 16, 2015, before the Honorable G. Thomas Cooper, Jr.. Applicant, who was in federal custody out-of-state at the time was not present, but was represented by counsel Moak.³ Applicant and Plea Counsel Cornelius Riley testified. Applicant alleged Plea Counsel failed to investigate his case and allegedly learn that the gun, which was recovered from Applicant's person during the incident, was not processed by investigators. Applicant also testified Plea Counsel failed to advise him that he could be subject to federal prosecution from the incident. The Court found Plea Counsel acted

² Following the plea Applicant was indicted for and ultimately convicted and received a term of incarceration for federal offenses.

³ The Order of Dismissal from Applicant's first PCR action states Applicant was present at the PCR hearing. However, Applicant was not present, but rather was in federal prison in West Virginia at the time, and was not transported back to South Carolina for his evidentiary hearing.

reasonably in his representation and strategic decision to advise Applicant to accept the beneficial plea deal. On December 3, 2015, Judge Cooper issued an Order of Dismissal, denying and dismissing Applicant's application with prejudice. Counsel Moak did not file an appeal on Applicant's behalf.⁴

Petition for a Writ of Habeas Corpus

Thereafter, on November 2016, Applicant filed a petition for writ of habeas corpus in the original jurisdiction of the South Carolina Supreme Court. On December 1, 2016, the Supreme Court issued an order holding that habeas relief was not proper, as Applicant had not exhausted all other available remedies, pursuant to *Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426 (1998). Accordingly, the South Carolina Supreme Court denied the petition without prejudice and advised Applicant to file a subsequent application for PCR in the circuit court asserting these claims.

II. ALLEGATIONS

In his second and current application for post-conviction relief, Applicant raised the following allegations:

1. Ineffective Assistance of PCR Counsel
 - a. "Plaintiff engaged an attorney, Ronald Wade Moak, Esquire, who failed to provide adequate legal representation regarding a Post-Conviction Relief (PCR). Moak was later sanctioned and received a public reprimand by the State Supreme Court on July 20, 2016. Due to Plaintiff's loss of his Sixth

⁴Applicant filed a complaint with the Office of Disciplinary Counsel alleging: Counsel Moak never attempted to call or explain what was happening with his PCR application, failed to respond to emails requesting status updates and other communications, failed to inform Applicant his PCR hearing was scheduled and arrange a means by which Applicant could participate, and failed to advise Applicant his petition was denied at the end of the hearing. The representation of Applicant by Counsel Moak was cited as one of the bases for Moak's disciplinary action. *Matter of Moak*, 417 S.C. 73, 789 S.E.2d 42 (2016). The ODC and Court found Counsel Moak violated Rules 1.3 and 1.4 of the Rules of Professional Conduct, Rule 407, SCACR because he did not act with reasonable diligence in his representation of Applicant, and did not keep Applicant reasonably informed about the status of matter or comply with requests for information. Based on these circumstances, along with Applicant's current action, Respondent interprets his claim as seeking *Austin* review of the procedural irregularities and other issues of his first PCR action.

Amendment Right to counsel and Fundamental right a fair trial his lack of legal skill and knowledge and loss of ample opportunity to meet the case of the prosecution to which he is entitled....”

- b. “Plaintiff’s counsel was proven ineffective by the Supreme Court and there was reasonable probability of the different result with effective assistance.”
- c. “Plaintiff was in federal prison and a Writ of Habeas Corpus was not completed for PCR hearing for Plaintiff to be present for the PCR. Plaintiff has been prejudiced by lack of adequate legal representation. Plaintiff had an insurmountable impediment to mount any lawful appeal and could not have filed in a timely basis.”
- d. “Due to these deficiencies, the Plaintiff’s constitutional Rights to Due Process of law, Equal Protection and Right to counsel were violated. Material and/or legal argument was over-looked in the decision to deny the Plaintiff’s PCR petition. Plaintiff did not know about the PCR hearing until July 20, 2016.”

Applicant requested a new post-conviction relief action for his case (2014-CP-28-0302) for his requested relief.

Respondent interprets Applicant’s allegations of ineffective assistance of PCR counsel, specifically Applicant’s alleged impediment to filing an appeal of his PCR denial, as a request for *Austin* review. “An indigent defendant has the right to be informed of an appeal and the manner and method for taking the appeal.” *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989); *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395, 396 (1991). In *Austin*, the South Carolina Supreme Court framed the inquiry as whether the PCR applicant “requested and was denied an opportunity to seek appellate review.” *Austin* at 454, 409 S.E.2d at 396. Under *Austin*, an Applicant is entitled to appeal the denial of a PCR application when they have not voluntarily waived the right to appeal. An applicant may waive the right to appeal by making a “knowing and intelligent decision not to pursue the appeal.” *Simuel v. State*, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010).

The procedural history in this case suggests that Applicant intended to pursue an appeal when he became aware of the denial of his application by submitting a habeas petition. While Applicant pursued an appeal in an incorrect fashion, Respondent views Applicant’s subsequent

habeas petition and successive PCR application as an indication Applicant did not voluntarily waive his right to appeal the denial of his initial PCR action. As such, Applicant's current allegations are interpreted as raising a claim for belated appellate review of the original action due to PCR counsel's failure to file an appeal.

Attached to this return and incorporated herein are the Kershaw County Clerk of Court records regarding Applicant's convictions, Applicant's SCDC records, the plea transcript, the records from Applicant's prior post-conviction relief action, the records from Applicant's prior federal habeas corpus action, and the records of Applicant's current PCR action. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. RESPONSE TO AUSTIN CLAIM

In his application, Applicant asserts numerous procedural and substantive irregularities or problems with his initial post-conviction relief proceeding. Because Applicant was not afforded appellate review of the initial post-conviction relief proceeding and denial, and he asserts his initial PCR counsel was ineffective, Respondent interprets this second application as requesting relief pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).⁵

"The right to seek appellate review of the denial of PCR is expressly authorized by state law." *Austin*, 305 S.C. at 454, 409 S.E.2d at 396; S.C. Code Ann. § 17-27-100 (2014). Pursuant to *Austin*, a post-conviction relief applicant may petition the South Carolina Supreme Court for belated discretionary review of the dismissal of his or her application in some circumstances. A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to

⁵ In the event Applicant is not seeking appellate review of his initial PCR application, Respondent requests clarification from counsel once appointed.

appellate review of a previous PCR order was not knowingly and intelligently waived. *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999). Because this allegation raises questions of fact which cannot be conclusively refuted by the record, Respondent requests an evidentiary hearing limited to this ground for relief.

VI. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

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

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. As noted above, Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

IV. DENIAL OF REMAINING ALLEGATIONS

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

V. REQUEST FOR AN EVIDENTIARY HEARING

WHEREFORE, Respondent requests an evidentiary hearing **solely** to address the issue of whether counsel was ineffective in failing to appeal the order denying Applicant's initial application for post-conviction relief.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

YASMEEN E. KLEIN
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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Columbia, SC 29211
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March 2, 2021

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(There were no exhibits submitted.)

1 THE COURT: Mr. Lifsey, you represent
2 Mr. Jones?

3 MR. LIFSEY: Yes, sir, I do.

4 THE COURT: And your client, does he
5 consent to having this matter heard via Webex here
6 today?

7 MR. LIFSEY: Yeah, I -- I believe he
8 does. Based on our conversations over at the
9 jail, he wanted to get it heard, but I would ask
10 him -- I'd ask you to ask him to make sure it's
11 still okay with him to go forward.

12 THE COURT: All right, Mr. Jones,
13 you're appearing -- well, all the parties are
14 appearing via Webex today. Mr. Davidson is -- is
15 here in the courtroom with his computer in front
16 of him. Mr. Moak is here in the courtroom. Do
17 you have any objection to us proceeding today via
18 Webex?

19 THE PETITIONER: No, sir.

20 THE COURT: Okay. All right. I will
21 ask the State at this time if they would call the
22 case please.

23 MR. DAVIDSON: Thank you, Your Honor.
24 May it please the Court. This is the case of
25 Alonzo Jones v. the State of South Carolina,

1 docket No. 2017-CP-28-0226. Applicant was
2 indicted in February 2013 for possession of a
3 firearm by a prior convicted felon and unlawful
4 carrying of a pistol. Applicant was subsequently
5 indicted in May 2013 for resisting arrest. On
6 April 9th, 2013, applicant pleaded guilty as
7 indicted to unlawful carrying of a pistol and
8 resisting arrest before Judge Benjamin. In
9 exchange for his guilty plea, the State dismissed
10 the charge of possession of a firearm by a prior
11 convicted felon. Pursuant to the State's
12 recommendation, Judge Benjamin sentenced applicant
13 to imprisonment for concurrent terms of one year
14 suspended to six months probation and applicant
15 did not appeal.

16 On April 8th, 2014, Applicant filed
17 his first PCR application. The State made its
18 return on June 12th, 2014, requesting an
19 evidentiary hearing which was held on July 16th of
20 2015, before Judge Cooper. Applicant was in
21 federal custody at the time, and he was out of
22 state so he was not present, but he was
23 represented by counsel Ron Moak. On December 3rd,
24 2015, Judge Cooper issued an order of dismissal
25 denying and dismissing applicant's application

1 with prejudice. Counsel Moak did not file an
2 appeal on applicant's behalf.

3 This current second PCR application
4 was filed March 15th, 2017. In his application
5 applicant raises allegations that the State
6 interprets as seeking Austin review of the
7 procedural irregularities and other issues of his
8 first PCR action; and therefore, the State
9 requested this evidentiary hearing solely to
10 address the issue of whether counsel was
11 ineffective in failing to appeal the order denying
12 applicant's initial application for PCR. The
13 State is ready to proceed.

14 THE COURT: All right, Mr. Lifsey.
15 Hold on a minute. Hold on a minute.

16 MR. LIFSEY: And I was very recently
17 appointed on this case. He had a prior attorney,
18 and I was appointed. My understanding of this
19 hearing -- and please correct me if I'm wrong,
20 Mr. Attorney General -- but this hearing is
21 focused on the issue of is he entitled to a
22 belated appeal of his prior PCR. He alleges that
23 he was never given -- never notified of the
24 results and didn't even know anything about the
25 hearing being and prepared to put up testimony to

1 that effect. Whenever you want to go forward,
2 Judge.

3 MR. DAVIDSON: That is correct.

4 THE COURT: All right. Y'all prepared
5 to hear testimony to that issue?

6 MR. DAVIDSON: Yes, Your Honor.

7 MR. LIFSEY: Yes, sir.

8 THE COURT: All right, sir. Mr.
9 Lifsey?

10 MR. LIFSEY: I am, Your Honor.

11 THE COURT: All right. Who -- who are
12 you going to call first?

13 MR. LIFSEY: I -- I have no problem
14 going first, and I -- I'll put my client and let
15 him -- let me ask him some questions about
16 procedurally where we are and what happened on the
17 case. I'd be glad to do it that way if that suits
18 the attorney general in this matter.

19 THE COURT: Is that all right with
20 you, Mr. Davidson?

21 MR. DAVIDSON: Yes, Your Honor.

22 THE COURT: All right. Mr. Jones, let
23 me place you under oath. If you'd raise your
24 right hand please.

25 WHEREUPON,

PW - A. JONES - DIRECT

1

ALONZO JONES,

2 having been duly sworn by the Court, testified as
3 follows:

4 THE COURT: All right, Mr. Lifsey, go
5 ahead.

6 MR. LIFSEY: Thank you.

7 **DIRECT EXAMINATION**

8 BY MR. LIFSEY:

9 Q Mr. Jones, state your full name
10 please, sir.

11 A Alonzo Tarell Jones.

12 Q Mr. Jones, where are you currently
13 incarcerated right now?

14 A Lexington County, South Carolina.

15 Q All right. You are there in relation
16 to some federal matter. Is that my understanding?

17 A Yes, sir.

18 Q All right. Do you remember back when
19 you were convicted back in 2013 or when you pled
20 guilty back in 2013 in Kershaw County? Do you
21 remember that?

22 A Yes, sir.

23 Q All right. And -- and the charges,
24 were they as the solicitor stated, a gun charge
25 and a resisting arrest; is that correct?

PW - A. JONES - DIRECT

1 A Yes, sir.

2 Q All right. And you didn't appeal
3 from -- from that conviction; is that correct?

4 A No, sir.

5 Q At some point did you determine you
6 wanted to file a post-- an application for
7 post-conviction relief?

8 A Yes, sir.

9 Q All right. Did you hire -- did you
10 hire an attorney to help you with that matter?

11 A Yes, sir. I hired Mr. Ron Moak.

12 Q I'm sorry, speak up just a little bit.

13 A I say, yes, sir, I hired Mr. Moak.

14 Q All right. And tell me about that.
15 You hired him so I guess you had to talk to him at
16 least once; is that right?

17 A Yes, sir.

18 Q All right. How many times did you
19 talk to Mr. Moak?

20 A I had talked to Mr. Moak during that
21 time probably like two or three times, 'cause I
22 had got incarcerated for the past for the same
23 acquisition that I had in the State.

24 Q Yes, sir. And, in fact, I don't --
25 let me backtrack just a little bit. Part of the

PW - A. JONES - DIRECT

1 reason you filed, though -- this is not really the
2 purpose of the hearing today, but just by way of
3 background so everybody understands it. Part of
4 the reason you filed an application for
5 post-conviction relief had to do that the -- the
6 federal charges were related. You don't believe
7 you should have been convicted of both, at the
8 federal, state and federal; is that correct?

9 A Yeah. I believe I wasn't supposed to
10 be convicted for the state case because during the
11 time they convicted me, the cops had turned the
12 evidence over to the federal agency so when I got
13 convicted they never had the evidence in their
14 custody.

15 Q Got you. So that's why you went ahead
16 and filed -- or hired Mr. Moak to file application
17 of post-conviction relief; is that right?

18 A Yes, sir.

19 Q All right. Did you ultimately at some
20 point get incarcerated on federal charges?

21 A Yes. I got incarcerated on June 25th
22 of 2014.

23 Q Were you incarcerated on federal
24 charges at the time of your post-conviction relief
25 hearing?

PW - A. JONES - DIRECT

1 A Yes, sir.

2 Q Did you know anything about the
3 post-conviction relief hearing, when it was going
4 to be or even that it had happened?

5 A I didn't know anything about it. I
6 had hooked up an email system with Mr. Moak, and
7 he accepted the request; and I emailed him, but I
8 didn't know he didn't -- he didn't respond. He
9 didn't respond.

10 Q All right. Did you know -- did you
11 receive notice from Mr. Moak of the
12 post-conviction relief hearing?

13 A I received nothing from Moak.

14 Q Did -- obviously it's a dumb question,
15 but you weren't there at your post-conviction
16 relief hearing?

17 A Because I was involved -- I was
18 incarcerated in Butner, North Carolina, in the
19 federal system in Butner, North Carolina.

20 Q How did you ultimately find out that
21 there had even been a PCR hearing?

22 A Because I had wrote to South Carolina
23 Supreme Court disciplinary counsel on -- on
24 Mr. Moak, and then I think her name is Sabrina C.
25 Chart had contacted me and she was -- she was

PW - A. JONES - DIRECT

1 doing the case, like, she was, I guess she was
2 investigating the case and she got me to send the
3 emails that I tried to contact Mr. Moak and he
4 didn't respond. So I said, I guess in two
5 thousand -- the end of 2016, I got a letter in the
6 mail from -- from them, and that's how I found out
7 that they had the hearing and I wasn't there at
8 the hearing. I didn't know nothing about the
9 hearing.

10 Q Okay. So you filed at some point in
11 2015/2016 a disciplinary complaint against
12 Attorney Moak; is that correct?

13 A Yes. Yes, sir.

14 Q And you're saying at some point in
15 the -- probably summer to fall of 2016 when you
16 received the outcome of that disciplinary
17 complaint, is when you first understood there to
18 be that the actual PCR had been heard; is that
19 correct?

20 A Yes. It wasn't a complaint. It was a
21 reprimand saying that he -- okay, okay.

22 Q Got you. Got you. I just want y'all
23 -- I just want to put -- but you didn't even --
24 you're saying you didn't find out that the PCR had
25 been held until you got the results of your

1 complaint?

2 A I didn't even know till I got the
3 complaint back, I mean, to the -- what I just
4 said. I didn't know.

5 Q Thank you.

6 MR. LIFSEY: Your Honor, I'd -- I'd
7 ask you -- I don't have the ability to hand it up
8 to you, but I ask you to take judicial notice of a
9 public reprimand that was issued to Attorney Moak
10 on July 20th of 2016, In Re: Ronald Wade Moak.
11 It is opinion No. -- appellate case, no, excuse
12 me, opinion number 27649 issued on July 20th of
13 2016. And I would just point out that what is
14 denoted matter three in that judicial reprimand is
15 my client's complaint.

16 THE COURT: Okay.

17 BY MR. LIFSEY:

18 Q All right. Mr. Moak -- I mean, excuse
19 me, I'm sorry. Mr. Jones.

20 A Yes, sir.

21 Q What did you do when -- first of all,
22 did you -- did you -- had you been given the
23 opportunity to file an appeal at this point?

24 A No, sir, because I never knew that the
25 hearing didn't even -- didn't even took place.

PW - A. JONES - DIRECT

1 Q Okay, all right. What -- and, of
2 course, by the time -- you're saying by the time
3 you found out about it, it was too late to file an
4 appeal; is that correct?

5 A Correct.

6 Q So what did you file? Did you
7 actually file an action then at that point?

8 A That's when I wrote -- I wrote the
9 motion for saying that -- that he was ineffective
10 by not filing appeal for me, and I was trying to
11 get a new appeal.

12 Q You filed a state habeas action?

13 A Yeah. I don't have it with me because
14 I'm in the process of -- I had to mail all my
15 paperwork so I really don't have it in front of
16 me.

17 Q Got you. But that habeas case was
18 ultimately dismissed because the Supreme Court
19 said you had not exhausted your remedies and
20 should file a post-conviction relief action; is
21 that correct?

22 A Yes, sir. Yeah.

23 Q Okay.

24 A I think -- I think because I got a
25 letter back from the five panel -- the five panel

1 judge, and they told me to file -- I can file a
2 PCR. I can have a PCR on the hearing against Moak
3 because he was ineffective for not doing an
4 appeal.

5 Q Yes, sir.

6 MR. LIFSEY: And, Your Honor, I -- I
7 point to you, I believe in the packet including
8 his application is a copy of the opinion
9 dismissing the habeas action, Judge.

10 THE COURT: Yes, sir.

11 BY MR. LIFSEY:

12 Q All right. So, now you have filed --
13 once you got that decision you, in accordance to
14 what the Supreme Court suggested, you filed an
15 application for post-conviction relief again; is
16 that correct?

17 A Yes, sir. Yes, sir.

18 Q And you are seeking an opportunity for
19 appellate review of your prior denial of -- of
20 your application for post-conviction relief; is
21 that correct?

22 A Yes, sir.

23 Q All right. And at no point did Mr.
24 Moak offer you the opportunity of filing an appeal
25 from your original post-conviction relief matter,

1 did he?

2 A I haven't talked to Mr. Moak since
3 2013/2014.

4 Q Okay, all right. Thank you. I don't
5 have any further questions. If you would answer
6 anything the attorney general may have to ask you,
7 sir.

8 A Yes, sir.

9 THE COURT: All right, Mr. Davidson.

10 **CROSS-EXAMINATION**

11 BY DAVIDSON:

12 Q Good afternoon, Mr. Jones.

13 A Yes, sir.

14 Q Mr. Jones, can you hear me?

15 A Yes, sir. Can you hear me?

16 Q So you ---

17 A Yeah, I can hear you.

18 Q So you testified that you hired
19 Mr. Moak and he met with you two or three times?

20 A Yes, I seen him, like, two or three
21 times before I got convicted for the federal case.

22 Q Okay. And do you recall discussing
23 with him the issues you wanted him to raise?

24 A Yeah, I -- I discussed the issues that
25 I wanted him to raise, but he didn't -- he did not

1 -- as I look, like I said, I sent -- I sent the
2 paperwork. I sent the paperwork wrong, but the
3 issue that he brought, all -- it wasn't an issue
4 that we talk about.

5 Q Okay. And you understand that if you
6 were granted relief today, that you are just
7 getting appellate review of what he did raise,
8 right?

9 A Yeah, I understand.

10 Q Okay. I have no further questions.

11 A But I got a question because what he
12 and Mr. Moak -- I had mention Mr. Moak -- I asked
13 Mr. Moak about the chain of custody, and he told
14 me that's what we were supposed to do. He said
15 file a PCR. Then when we talked about the
16 situation about the city-county police department
17 not having the weapon in their possession when I
18 pled guilty, that's why he said file PCR to find
19 out where the weapon was. So I don't understand
20 why he went in court and argued something else
21 saying that I said I didn't have the weapon. I
22 don't understand it.

23 THE COURT: All right.

24 MR. LIFSEY: Your Honor, I would
25 just -- if I may, the only thing I would point out

1 is obviously I only -- I don't have any records of
2 a post-conviction relief hearing beyond the order,
3 or my understanding of it. All I have is his most
4 recent application, so I can't really argue
5 anything substantive of the trial. My
6 understanding of today's hearing is the issue is,
7 is he entitled to a -- to a belated appeal is my
8 understanding of the ---

9 THE COURT: Yeah, correct. All right.
10 Did you have anything else you wanted to put up,
11 Mr. Lifsey?

12 MR. LIFSEY: No, sir. No, sir. I
13 assume the State is going to call Mr. Moak, and I
14 might have a question or two of him, sir.

15 THE COURT: Okay. All right,
16 Mr. Davidson.

17 MR. DAVIDSON: The State calls Ron
18 Moak.

19 THE CLERK: Come forward to be sworn.
20 Place your left hand on the Bible, raise your
21 right, and face the judge.

22 WHEREUPON,

23 **RONALD MOAK,**
24 having been duly sworn by the Court, testified as
25 follows:

1 THE COURT: All right. You can have a
2 seat on the witness stand.

3 BY MR. DAVIDSON:

4 Q Good afternoon, Mr. Moak.

5 A Yes.

6 Q How are you?

7 A I'm trying to hear everything. I
8 don't hear too good so.

9 Q How long have you been practicing law,
10 Mr. Moak?

11 A I got sworn in in 2000. I got
12 suspended on two thousand -- October 2nd, 2018, so
13 going on 18 years.

14 Q Okay. And ---

15 THE COURT: Can you hear him, Mr.
16 Lifsey?

17 MR. LIFSEY: I apologize, I just -- I
18 can't really make out all of his answers.

19 THE COURT: All right. Let's try it
20 again. Go ahead.

21 BY MR. LEISY:

22 Q Can you repeat how long you've been
23 practicing law, Mr. Moak?

24 A I was sworn in in 2000 and suspended
25 in October 2nd, 2018, so 18 years.

RW - R. MOAK - DIRECT

1 Q And how much of that has been in
2 criminal law?

3 A All of it.

4 Q And how did you come to represent
5 applicant in this case?

6 A I was in the clerk's office and I
7 think I either filed something or -- I forget why
8 I was here in the first place. But Mr. Jones was
9 highly upset, I think he just got a -- served a --
10 been put on notice that the U.S. Attorney's Office
11 had indicted him for the same thing that he'd
12 already pled guilty in state court. While I was
13 there he was kind of agitated, and again, I -- the
14 vast majority of my time practicing, or practicing
15 law, has actually been at the Solicitor's Office
16 in Kershaw County so. A lot of times I was over
17 there at the clerk's office helping them resolve
18 issues and stuff so even though I was no longer at
19 the Solicitor's Office, I just went back in that
20 mode and explained to him why he had, like, you
21 know what a post-conviction relief action is. I
22 told him what it was, and they pulled out a form
23 and I don't remember if he filled the form out
24 there or if he -- if I filled it out for him,
25 haven't seen anything. But that's -- that's how I

1 got involved just talking to him. I had met with
2 him many times over my career over at Kershaw
3 County. I never had a problem with him. You
4 know, he was -- had various infractions that we
5 had to deal with and, you know, he -- when we got
6 along pretty good.

7 One of the things I did tell him was
8 what -- before I left the Solicitor's Office in
9 December of 2012, we actually had a meeting with
10 the U.S. Attorney's Office where they had a
11 program where if we identified people like him
12 that with a record and -- or possession of a gun,
13 they wanted us to refer to -- refer those cases to
14 U.S. attorney, and if -- if at all possible, get
15 them to give them whatever they wanted, they
16 wanted by way of plea offer to get them to plead
17 guilty so that by the time the feds indicted him,
18 they would have the certified record that put him
19 in the category where they were a federal felon
20 and also the certified record of the plea, the
21 guilty plea, putting the gun in his hands. So we
22 had that discussion and like, hey, you pled guilty
23 to having it so it's going to be kind of a hard
24 problem going to trial in federal court saying he
25 didn't have that gun and we know what your record

RW - R. MOAK - DIRECT

1 is so, you know, that's -- that's why we talked
2 about post-conviction relief. I talked to him a
3 few times after that, and at some point his phone
4 quit working because apparently he was taken into
5 federal custody. There was a -- I don't remember
6 if it was his girlfriend, sister. It was a young
7 lady or that I was in contact with, like, trying
8 to communicate back and forth 'cause she had a way
9 to get a hold of him. At some point that phone
10 number, like, went bad, and I couldn't get a hold
11 of her and then we had -- we started having PCR
12 hearing dates scheduled. Every time we came up I
13 would ask, like, Your Honor, I would like to have
14 my client here because I think he deserves to hear
15 what's going on and everything. It was continued
16 several times. And then ultimately Judge Cooper,
17 you know, decided that, like, he was -- he just
18 wanted to hear what -- hear what the case was, and
19 ordered me, myself, to basically tell the Court
20 what I believed his argument was and what his
21 motivations were which it's kind of hard to do
22 when he's not there. And there were -- I think
23 they had Neil Riley who was the attorney that
24 represent him on the guilty plea in state court
25 and, again, like I had told him about this program

1 with U.S. Attorney's Office which was actually
2 asking for people like him to be referred to them,
3 we -- I remember having a meeting with the public
4 defenders when I was at the Solicitor's Office.
5 Was, like, hey, this is what's going on, just to
6 make sure that they would tell their clients that
7 like, hey, this is a setup, you're going to end up
8 in federal court, this is not the end of it. Mr.
9 Jones had stated that -- okay, I asked him did
10 Neil ever tell you anything other than, hey, this
11 is a good deal and apparently Neil, his position
12 is Neil had never told him that. So that's what I
13 thought was a big part of the PCR was, in addition
14 to the fact that I just simply called over the
15 city/county police department and asked them if
16 they had the gun, that the gun still in evidence,
17 and would they have transferred it and they'd
18 actually had transferred it, I believe it was
19 before the guilty -- so not only did Neil not tell
20 him that, that -- that it was a setup, Neil didn't
21 tell him like, hey, he didn't have the evidence --
22 if he had went to trial and if they tried, like I
23 said, hey, this is your gun and he didn't have the
24 gun to put in evidence. So, I mean, that was
25 the -- the purpose of the PCR.

RW - R. MOAK - DIRECT

1 Judge Cooper heard what I had to say.
2 Judge Cooper heard what Neil had to say. I don't
3 remember what the, you know, what the U.S., the
4 state's attorneys, the attorney general assistant
5 had to say other than he wanted it dismissed and
6 Judge Cooper dismissed, dismissed it. At that
7 point I had no good phone number for Mr. -- Mr.
8 Jones. I had -- I had been trying to contact the
9 facility he was -- he was held at that point. I
10 was calling them regularly, hey, I need to talk to
11 him and they kept telling me no. And then later
12 on after Mr. Jones filed a disciplinary complaint,
13 I -- I called to talk with the discipline --
14 disciplinary attorney Sabrina Todd, you know. She
15 was telling me, like, hey, this is how you're
16 supposed to do it like, like if somebody would
17 have told me that, I would have done it; but, you
18 know, I kept calling the facility and was told,
19 told no, so, it was kind of hard for me to talk --
20 to call him and tell him, hey, this is what
21 happened when I did not have a phone number.

22 I think there was a email I got, and I
23 found that after -- after I was told I was sent --
24 sent them by Ms. Todd. I saw the emails, and I
25 don't remember ever getting them. I don't know if

1 they went to my spam, my spam folder; but no, I
2 mean, I -- I agree with Mr. Jones that he didn't
3 know the hearing was taking place because even --
4 even I -- even I, when I came over here from
5 Camden that day for the -- for the court date for
6 the PCR, I was expecting to have another
7 conference. I was like, hey, how do we get him
8 here, how do we get him on the phone or at least
9 let him hear what's going on. And Judge Cooper
10 decided to go ahead and put on the record what the
11 issues were and he was just gonna rule -- rule on
12 it. You know, that was not something we -- I
13 expected either. So, I mean, that's literally
14 what happened.

15 Q Okay. And was that hearing an
16 evidentiary hearing, or was it a State's motion to
17 dismiss?

18 A That's been -- that's been like, six,
19 seven years ago. I mean, I don't remember -- I
20 don't remember what -- what his motion was. My
21 motion was, again, to try to at least get him on
22 the phone or something and, you know, 'cause I
23 just want -- I just thought it was only fair for
24 him to know what was going on.

25 Q Okay. And based on the situation, is

RW - R. MOAK - DIRECT

1 there any reason why you didn't just file an
2 appeal after that hearing because it did not go
3 the way that you thought it should have?

4 A Probably one of the reasons why I was
5 suspended.

6 Q Okay.

7 THE COURT: Say that again, Mr. Moak.

8 THE WITNESS: Probably one of the
9 reasons I'm suspended. I mean, I -- I didn't do
10 it. I believe I was still in contact with that --
11 the female, and I think I -- I told her. And, I
12 mean, it's been -- it's been so long. My memory
13 is not clear. I mean, I know I did not do it.
14 One of the issues I have with disciplinary counsel
15 I should have done it so. I'm not going to sit
16 here and say I -- say I -- say I did it. I'm not
17 going to lie. I'm not going to lie. And it's
18 clear that I didn't do it, and it's clear now that
19 I should have done it and -- and that's on me.

20 Q Okay.

21 MR. DAVIDSON: Nothing further, Your
22 Honor.

23 THE COURT: All right. Mr. Lifsey, do
24 you have any questions?

25 MR. LIFSEY: Just to clarify, and I

1 don't mean to be repetitive. I just want make
2 sure in case I didn't hear the last little bit of
3 that.

4 **CROSS-EXAMINATION**

5 BY MR. LEISY:

6 Q Mr. Moak, can you hear me okay?

7 A Yeah, I can now.

8 Q Thank you. And I don't mean to be
9 repetitive, but I just -- it was a little hard of
10 hearing the last question or two so just to
11 clarify. You agree that Mr. Jones never knew when
12 his hearing was going to be?

13 A I don't think there's any question he
14 didn't know, that he didn't know what was going to
15 happen.

16 Q And that the hearing went forward in
17 his absence without his knowledge, right?

18 A Right, yeah.

19 Q And that he was never -- or certainly
20 not within 30 days the issuance of an order
21 informed that he had a right to an appeal; is that
22 right?

23 A Right.

24 Q He wasn't forward to that?

25 A Yeah, right.

RW - R. MOAK - DIRECT

1 Q And you, looking back on it, you
2 acknowledge you should have either filed the
3 appeal yourself or certainly have let him know and
4 give him the opportunity to file the appeal; is
5 that right?

6 A Yes.

7 Q And that didn't happen, did it?

8 A No, it did not.

9 Q Okay.

10 MR. LIFSEY: Thank you, Judge. I
11 don't really have any other questions related to
12 that matter.

13 THE COURT: Any redirect?

14 MR. DAVIDSON: No, Your Honor.

15 THE COURT: All right. Mr. Moak, you
16 may step down.

17 All right, Mr. Lifsey, anything by way
18 of argument?

19 MR. LIFSEY: I would just say, I
20 think, Judge, it's pretty undisputed that -- that
21 he was not afforded the right to file an appeal
22 from his post-conviction relief action previously.
23 His actions are, first of all, further he
24 testified to that really without any real dispute.
25 His actions in filing habeas were consistent with

1 someone who just found out that he had -- the PCR
2 had been turned down. And I think Mr. Moak
3 acknowledges that he should have filed the appeal,
4 or at least should have let my client know and
5 file appeal.

6 So I think he's entitled as a -- as a matter of
7 law to a -- to a belated appeal of Judge Cooper's
8 prior order, Judge.

9 THE COURT: All right. Mr. Davidson.

10 MR. DAVIDSON: Your Honor.

11 THE COURT: Hold on a second. Yes.

12 MR. DAVIDSON: Under Austin an
13 applicant is entitled to an appeal if you -- the
14 judge finds either he requested and was denied an
15 opportunity to seek appellate review, or the right
16 to appellate review of the previous PCR order was
17 not knowingly and intelligently waived. That's
18 under Odom v. State, which is cited at 337 S.C.
19 256 and that came out in 1999. Here, I think it's
20 clear that applicant has met that burden so the
21 State would concede that he's entitled to belated
22 appellate review.

23 THE COURT: All right. Pursuant --
24 pursuant to Austin v. State 305 S.C. 453, based
25 upon what I've heard here today, the testimony of

1 Mr. Jones as well as Mr. Moak, I am going to grant
2 Mr. Jones' request to file belated appeal pursuant
3 to Austin. All right?

4 MR. DAVIDSON: Yes, Your Honor.

5 MR. LIFSEY: Thank you, Judge.

6 THE COURT: All right. Anything else?
7 Is the timeline to file the appeal ten days?

8 MR. DAVIDSON: For this ruling?

9 THE COURT: For him to file an appeal
10 on the PCR matter. What were you going to say,
11 Mr. Lifsey?

12 MR. LIFSEY: I assume one of us, I
13 guess me, needs -- somebody needs to -- someone
14 needs -- do we need -- I need to draft an order,
15 formal written order to this effect then, Judge?

16 THE COURT: Yes, sir, if you don't
17 mind.

18 MR. LIFSEY: Oh, I will, yes, sir.
19 That will be no problem. I'll draft it. I'll get
20 it to the attorney general and let them look at it
21 and get it to you. And I presume -- please
22 correct me if I'm wrong, Mr. Attorney General --
23 the actual time to appeal would run from Judge
24 Brown's signing of that order; is that correct?

25 THE COURT: Right.

1 MR. LIFSEY: Okay.

2 THE COURT: All right. Thank you.

3 MR. LIFSEY: I'll try to get you
4 something in the next week or so.

5 THE COURT: All right. That will
6 conclude the matter as it relates to Mr. Jones.

7

8 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 9th day of May, 2022.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW	)	FOR THE FIFTH JUDICIAL CIRCUIT
Alonzo Tarell Jones,)	
	)	Case No.: 2017-CP-28-0226
Applicant,)	
	)	ORDER GRANTING BELATED
	)	APPEAL PURSUANT TO AUSTIN v. STATE
v.)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

This matter came before the court for a hearing on January 24, 2022. The Applicant, Alonzo Tarell Jones, was represented by Counsel Michael H. Lifsey. The Respondent, State of South Carolina, was represented by Assistant Attorney General Michael D. Davidson.

PROCEDURAL HISTORY

On April 19, 2013, Applicant pled guilty to Unlawful Carrying of a Pistol and Resisting Arrest in Kershaw County General Sessions Court and was sentenced to concurrent terms of one year suspended to six months of probation on each charge. No direct appeal was taken from these convictions or sentences. On April 8, 2014, Applicant, with the assistance of retained counsel Ronald W. Moak, filed his first PCR application. That action was docketed as 2014-CP-28-0302. Subsequent to the filing of this action, Applicant was incarcerated on federal charges. A hearing on the PCR action was held on July 16, 2015. Counsel Moak represented Applicant at this hearing but Applicant was not present and no evidence was presented on behalf of the Applicant. An order was issued on December 3, 2015, dismissing Applicant's application with prejudice. Counsel Moak did not file an appeal on Applicant's behalf.

Applicant ultimately filed a complaint with the Office of Disciplinary Counsel concerning Counsel Moak's representation of him alleging that Counsel Moak never attempted to call or explain what was happening in regard to his PCR action, failed to respond to emails requesting status updates and other communications, failed to inform Applicant his PCR hearing was scheduled and arrange a means by which Applicant could participate, and failed to advise Applicant that his application was denied at the end of the hearing. Counsel Moak's representation of Applicant was cited as one of the bases for discipline imposed on Counsel Moak. *Matter of Moak*, 417 S.C. 73, 789 S.E. 2d 42, (2016). In that opinion, the Supreme Court found that Counsel Moak violated Rules 1.3 and 1.4, South Carolina Rules of Professional Conduct, Rule 407, SCACR, because he did not act with reasonable diligence in his representation of Applicant, and did not keep Applicant reasonably informed about the status of the matter or comply with requests for information.

In November of 2016, Applicant filed a petition for writ of Habeas Corpus in the original jurisdiction of the South Carolina Supreme Court. On December 1, 2016, the Supreme Court issued an order holding that habeas relief was not proper as applicant had not exhausted all other available remedies pursuant to *Gibson v. State*, 329 S.C. 37, 495 S.E. 2d 426 (1998). Accordingly, the South Carolina Supreme Court denied the petition without prejudice and advised Applicant to file a subsequent application in the circuit court asserting these claims. Applicant filed this action in conformity with that advice. A hearing was held on January 24, 2022, to determine if Applicant was entitled to appellate review of his prior PCR application bearing the docket number 2014-CP-28-0302.

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FINDINGS OF FACT

Applicant testified on his own behalf. His recitation of the procedural history of the case was consistent with the history outlined above. He testified that Counsel Moak never informed him of the date of his PCR hearing or the outcome of that hearing. Applicant testified that Counsel Moak never informed him of his right to appeal from a decision dismissing his application and that he did not knowingly and intelligently waive that right. Applicant further testified that if he had been informed of his right to appeal the dismissal of his application, he would have requested Counsel Moak file an appeal. He further testified that his purpose in filing the habeas action in the original jurisdiction of the South Carolina Supreme Court was to seek appellate review of his prior PCR application.

Ronald W. Moak testified at the call of the State. Mr. Moak is currently suspended from the practice of law for other, unrelated misconduct. *In the Matter of Moak*, 427 S.C. 1, 828 S.E. 2d 760 (2019). Mr. Moak testified that he did not keep Applicant informed of the status of his prior PCR application and that he did not inform him of the dismissal of his application or of his right to appeal the dismissal.

At the conclusion of the evidentiary hearing, the State conceded that Applicant had met his burden showing he was entitled to appellate review pursuant to *Austin*.

Based on the testimony of both Applicant and Mr. Moak, it is uncontroverted that Applicant was not informed of his right to appeal the dismissal of his prior PCR action and Applicant did not knowingly and intelligently waive his right to appeal.

DCR
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CONCLUSIONS OF LAW

PCR applicants have a right to seek appellate review. Section 17-27-100, S.C. Code of Laws, as amended, and *Austin v. State*, 305 S.C. 453, 409 S.E. 2d 395 (1991). A PCR Applicant is entitled to a belated *Austin* appeal if the PCR judge find either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. *Odom v. State*, 337 S.C. 256, 523 S.E. 2d 753 (1999).

THEREFORE, IT IS ORDERED that Applicant is entitled to appellate review of the dismissal of his prior PCR application, 2014-CP-28-0302.

AND IT IS SO ORDERED this 31 day of Jan., 2022.



D. CRAIG BROWN
Circuit Court Judge

Florence, South Carolina

DCh
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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Kershaw County

Honorable D. Craig Brown, Circuit Court Judge

ALONZO TARELL JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-000158

MOTION TO HOLD APPEAL IN ABEYANCE
AND
MOTION TO REMAND FOR RECONSTRUCTION OF
POST-CONVICTION RELIEF HEARING

Pursuant to Rule 240 of the South Carolina Appellate Court rules, undersigned counsel requests an order requiring the parties to reconstruct petitioner's post-conviction relief hearing originally held before the Honorable G. Thomas Cooper on July 16, 2015. While this motion is pending, petitioner asks this Court to hold the timelines for filing his appendix and petition for certiorari in abeyance.

In support of his motion, petitioner would present the following:

1. The undersigned represents petitioner in his appeal before this Court.

2. The transcript from petitioner's post-conviction relief hearing cannot be produced or ascertained by the Court Reporter, Keshia Reed. (See letter from Court Reporter dated June 30, 2022, attached as Exhibit A).

3. To allow for meaningful appellate review, the record must be reconstructed.

PROCEDURAL HISTORY

4. Petitioner was indicted by a Kershaw County grand jury in February 2013 for unlawful carrying of a pistol. Petitioner waived presentment for resisting arrest.

5. Petitioner pled guilty to both offenses before the Honorable DeAndrea G. Benjamin on April 9, 2013 and was sentenced to concurrent terms of one year imprisonment for unlawful carrying of a pistol and one year imprisonment for resisting arrest.

6. Petitioner filed an application for post-conviction relief on April 8, 2014.

7. The state filed its Return on June 12, 2014.

8. An evidentiary hearing was held before the Honorable G. Thomas Cooper, Jr., on July 16, 2015, at the Richland County Courthouse. Ronald Moak represented petitioner; J. Clayton Mitchell appeared on behalf of the state.

9. Defense counsel Cornelius Riley was the only witnesses at the evidentiary hearing.¹

10. According to an Order of Dismissal signed by Judge Cooper on December 3, 2015, relief was denied on all claims.

11. Counsel Moak did not file an appeal on petitioner's behalf.

12. Petitioner filed a complaint with the Office of Disciplinary Counsel alleging that Moak failed to: inform petitioner his PCR hearing was scheduled, make arrangements for

¹ The December 3, 2015, Order of Dismissal only references testimony by defense counsel. The undersigned is unaware of any other witnesses.

petitioner to participate in his PCR hearing, advise petitioner that his claims were denied, and call or explain to petitioner what happened in regard to his PCR action

13. In November of 2016, petitioner filed a petition for a writ of Habeas Corpus in the original jurisdiction of this Court. On December 1, 2016, this Court issued an order stating that habeas relief was not proper as petitioner had not exhausted all other available remedies pursuant to *Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426 (1998). In its order the Court advised petitioner to file a subsequent application for PCR to assert these claims.

14. On March 15, 2017, petitioner filed a second post-conviction relief action. The state filed its return March 4, 2021.

15. A hearing was held on January 24, 2022, to determine if petitioner was entitled to appellate review of the denial of his prior PCR application. At the conclusion of the hearing, the state conceded that petitioner had met his burden showing he was entitled to appellate review pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

16. On January 31, 2022, the Honorable D. Craig Brown signed an Order Granting Belated Appeal Pursuant to *Austin v. State*.

17. The undersigned's office requested the transcript from the July 16, 2015, hearing on June 1, 2022. The court reporter was unable to produce the transcript because the five-year window under Rule 607, SCACR, had closed. The court reporter advised "I no longer have my file or digital audio recordings for 2015." See Exhibit A.

ARGUMENT

When a trial transcript has been lost or destroyed, the Court may vacate the conviction and sentence and remand for a new trial if meaningful appellate review is not possible. See *Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); *overruled on other grounds by State v.*

Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (2002); *Deaton v. Leath*, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983); *China v. Parrott*, 251 S.C. 329, 162 S.E.2d 276 (1968); *Dolive v. J.E.E. Developers, Inc.*, 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); *State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007).

In *Deaton, supra*, the defendant's convictions were set aside, and a new trial had where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal. Citing *Deaton*, this Court denied a request for reconstruction in *State v. Serrette*, 375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App. 2007) where the reason for the lack of transcript was due to the defendant's absence for a ten-year period, which this Court explained was "not a situation where the court reporter's equipment malfunctioned at trial leading to a loss of the trial transcript." In the matter at hand, petitioner was not at fault for any of the difficulties in his case; rather, the transcript is not available from the court reporter due to matters outside petitioner's control. Upon realization that his prior PCR counsel did not perfect the appeal following the denial of his PCR application, Petitioner followed the proper procedure and filed another application under *Austin*.²

The case which first provided a remedy in the form of delayed appellate review, *Austin v. State*, saw this Court reverse the summary dismissal of a second PCR application and remand for an evidentiary hearing, where the petitioner alleged in his second application that his first PCR counsel was ineffective for failing to seek appellate review. 305 S.C. 453, 409 S.E.2d 395 (1991). Specifically, this Court stated: "Because petitioner

² The court reporter's tapes from Petitioner's post-conviction relief hearing were presumably available until July 2020, based on the timelines set forth in Rule 607(i), SCACR. In future cases, either PCR counsel or counsel for the state could request the tapes in cases involving belated review under *Austin* to keep the deadline from passing and the tapes being destroyed.

is entitled to the assistance of appellate counsel on PCR, and because we must craft a remedy to correct the unfairness which has occurred, we find his allegation that counsel failed to seek review in this case sufficiently states a claim for ineffective assistance.” *Id.* at 454, 409 S.E.2d at 396. Thus, “[u]nder *Austin*, a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review or did not knowingly and intelligently waive the right to appeal.” *Odom v. State*, 337 S.C. 256, 260, 263, 523 S.E.2d 753, 755, 756 (1999) (“The one-year statute of limitations for PCR applications is not applicable to appeals filed pursuant to *Austin v. State*.”); *see also Whitehead v. State*, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002) (“We have held that the PCR statute of limitations found in S.C. Code Ann. § 17–27–45(A) (Supp.2001) does not apply to *Austin* claims.”).

Petitioner respectfully requests an order for the remand of this matter and subsequent reconstruction of petitioner’s PCR hearing to perfect the certiorari appeal in this case. A reconstruction hearing is appropriate because the absence of the PCR hearing transcript prevents this Honorable Court from conducting a meaningful appellate review. *Ladson* at 325, 644 S.E.2d 271, 274. *See also In re D.W.*, 171 N.C.App. 496, 615 S.E.2d 90, 94 (2005); *State v. Chanze*, 211 W.Va. 257, 565 S.E.2d 379, 382-83 (2002) (finding criminal defendant is entitled to meaningful appellate review of his lower court proceedings, and if this is not possible from a reconstructed record, a new trial is appropriate).

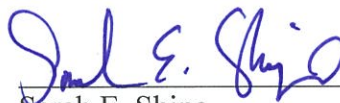
In the present case, the entire PCR hearing transcript cannot be produced. A reconstructed transcript of his PCR hearing is necessary for appellate counsel to represent him effectively, and for this Court to give meaningful appellate review of his conviction. Petitioner also respectfully requests that the Order remanding this matter contain language giving the trial court the option to

conclude that the record cannot be reconstructed with the specificity to support meaningful appellate review. “It is simply unrealistic and unreasonable to think that a trial judge and counsel can—under these circumstances—reconstruct a proper record that will permit meaningful appellate review, especially in light of our issue preservation rules.” *Ladson*, 373 S.C. at 326, 644 S.E.2d at 274.

While this motion is pending, petitioner asks this Court to hold the timelines for filing the petition for certiorari and appendix in abeyance. The undersigned discovered this predicament early and endeavored to prepare this motion before taking any extensions in petitioner’s case.

The undersigned emailed counsel for the state Russel Barlow regarding this matter on June 21, 2022, no response was received.

Respectfully submitted,



Sarah E. Shipe
Appellate Defender

This 1st day of July, 2022.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Kershaw County

Honorable D. Craig Brown, Circuit Court Judge

ALONZO TARELL JONES,

PETITIONER,

V.

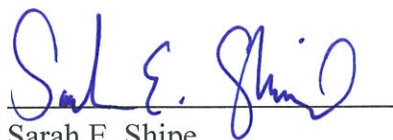
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000158

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the motion for order to remand in the above-referenced case has been served upon D. Russell Barlow, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 1st day of July, 2022.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

The Supreme Court of South Carolina

Alonzo Tarell Jones, Petitioner,

v.

State of South Carolina, Respondent.

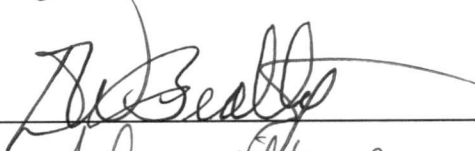

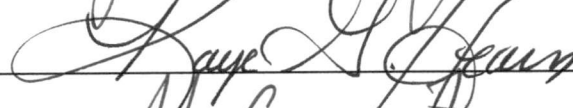


Appellate Case No. 2022-000158

ORDER

This matter is before the Court by way of a notice of appeal from an order of the circuit court finding Petitioner is entitled to a belated appellate review of the order issued in Petitioner's first post-conviction relief (PCR) action pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 396 (1991). However, Petitioner's counsel states the record of Petitioner's first PCR hearing is not available. Accordingly, counsel asks this Court to hold this matter in abeyance and remand the case to the circuit court for reconstruction of the record of the PCR hearing. The State has not filed a return to the motion.

We hereby hold this matter in abeyance and remand the matter to the circuit court to reconstruct the record of the evidentiary hearing on Petitioner's first PCR application. *See Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) (holding where a transcript has been lost or destroyed, this Court may remand the matter to have the record reconstructed), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). The circuit court may consider affidavits of trial counsel, the Assistant Attorney General who represented the State at the hearing, the court reporter, retired Judge G. Thomas Cooper, Jr., and any other person who may assist in determining what transpired at the hearing. *China v. Parrott*, 251 S.C. 329, 333–34, 162 S.E.2d 276, 278 (1968) (holding the trial court properly considered affidavits of the plaintiff's counsel and the court reporter in determining what transpired at a hearing). Petitioner's counsel shall contact counsel for the State and the circuit court within ten days of the date of this order to schedule such hearings as the circuit court deems appropriate. Petitioner's counsel shall provide an update to the Clerk of this Court not later than thirty days

from the date of this order, and every thirty days thereafter, with copies of the updates provided to counsel for the State. If the circuit court determines reconstruction is not possible, the court shall immediately notify this Court and the parties of that determination. If the record is reconstructed, Petitioner's counsel shall notify this Court, and the matter will proceed on Petitioner's receipt of the transcript from the reconstruction hearing.


 _____ C.J.

 _____ J.

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 _____ J.

Columbia, South Carolina
 August 23, 2022

cc:
 D. Russell Barlow, II, Esquire
 Sarah Elizabeth Shipe, Esquire

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STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW) COURT OF COMMON PLEAS NONJURY

ALONZO T. JONES,) TRANSCRIPT
APPLICANT,) OF
vs.) RECORD
STATE OF SOUTH CAROLINA,) 2017-CP-28-226
RESPONDENT.)

December 17th, 2024

B E F O R E:

THE HONORABLE DANIEL COBLE, Judge.

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

SARAH SHIPE
ESQ.
Attorney for the Applicant

D. RUSSELL BARLOW, II
ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

Transcribed by Pamela E. Green, from
WebEX

I N D E X

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(WHEREUPON, there were no exhibits marked or
testimony taken during this hearing.)

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P R O C E E D I N G S

THE COURT: All right. Good morning, ladies and gentlemen.

MR. BARLOW: Morning, judge.

THE COURT: Mr. Barlow, Ms. Shipe.

All right. We are here for the Alonzo Jones PCR case. I believe Mr. Jones is present via the call-in.

Mr. -- Ms. Shipe, let me hear from you as to just a quick status update on this case.

MS. SHIPE: Sure. Yeah.

Before we get started, I just wanted to make the Court aware, on October 10th, Mr. Jones made a motion to the Supreme Court asking to have me relieved and appoint new counsel. On November 14th the Court issued an order ruling that it would not appoint new counsel and warning Mr. Jones about the dangers of self-representation. The order also stated that, if Mr. Jones wrote to the Court within 20 days, it would relieve me as counsel and he could proceed, proceed pro se.

Mr. Jones wrote back to the Court six days later on November 20th asking again for the Court to relieve me so that he could represent himself.

As of this morning though, the Court has not issued an order relieving me as counsel and I am prepared to go

1 forward this morning.

2 THE COURT: Okay. And, Mr. Jones, I believe is he
3 the call-in?

4 Are you able to unmute yourself or anyone there with
5 him?

6 MR. JONES: Hello.

7 THE COURT: All right. Yes.

8 Can you hear us?

9 MR. JONES: Yeah, I can hear y'all.

10 THE COURT: All right. Is this Mr. Jones?

11 MR. JONES: Yes, sir.

12 THE COURT: All right. Did you hear everything your
13 attorney just said?

14 MR. JONES: Yes. Yes, sir.

15 THE COURT: All right. You filed a motion to relieve
16 her.

17 Is that correct?

18 MR. JONES: Yes, sir.

19 THE COURT: And you still want to go -- you want to
20 proceed pro se?

21 MR. JONES: No, I want to proceed with her. But I
22 want to, I want to say what I have to say too.

23 THE COURT: Well, no. You can either proceed pro se
24 or she can represent you.

25 MR. JONES: So, I'm not gon' be able to say what I,

1 say what I have to say if she representing me?

2 THE COURT: well, I'm gonna let her speak and do her
3 job.

4 MR. JONES: Uh-huh. (Affirmative).

5 But I still want to---

6 THE COURT: And so---

7 MR. JONES: ---put what I need to put on the record
8 too.

9 THE COURT: You can -- you'll be given a chance to
10 put that on the record at the appropriate time.

11 Okay?

12 MR. JONES: Okay. well, I want to proceed with her.

13 THE COURT: All right. Mr. Barlow, give me just a
14 brief -- I'm familiar with the procedure of this case
15 today. We met a few months ago for this hearing and we
16 are doing a -- the reconstruction.

17 Is that correct?

18 MR. BARLOW: Yes, Your Honor.

19 This is -- I think February 2nd of 2022 he was
20 granted an Austin -- it was issued by then Judge D. Craig
21 Brown. It was an order granting a belated appeal pursuant
22 to Austin and this was on his PCR action that was held
23 June, or excuse me, July 16th of 2015.

24 Counsel Moak represented him at that. And, Your
25 Honor, this is on remand for reconstruction of that

1 hearing because the transcript is no longer available.

2 And I do want to also put on the record, Your Honor,
3 Mr. Moak -- special -- Assistant Attorney General John
4 Meadors found Mr. Moak. Unfortunately, Mr. Moak is not
5 available until January and he is one of our only
6 witnesses other than Mr. Mitchell who was the AAG at the
7 original PCR hearing that has any record of that hearing.
8 He has, I think, one and a half pages of notes.
9 Mr. Mitchell does.

10 THE COURT: Mr. Mitchell.

11 But Mr. Moak was the attorney who represented
12 Mr. Jones at the guilty plea.

13 Is that correct?

14 MS. SHIPE: No, Mr. Moak was his PCR counsel.

15 MR. BARLOW: Right.

16 THE COURT: Okay. And who was his -- and his
17 original counsel passed away?

18 MR. BARLOW: Yes, Your Honor.

19 THE COURT: Okay. So -- all right. So, Mr. Moak is
20 available though?

21 MR. BARLOW: He is, Your Honor.

22 We found him and, as you know, he's suspended from
23 the practice of law right now. But he is willing to
24 appear. He's just not available until January.

25 THE COURT: When is the next PCR term of court in

1 January?

2 MR. BARLOW: Mine is January -- it's the week of
3 January the 6th that the -- and it's in the Sixth Circuit.

4 THE COURT: Are we able to add this to that docket?

5 MR. BARLOW: I can look. That docket has already
6 been published. But I can definitely look and see about
7 adding it on.

8 THE COURT: What about the -- another -- when's the
9 next Fifth Circuit PCR?

10 MR. BARLOW: March 14th and that's with Judge
11 McFadden I think. Let me double-check that, Your Honor.
12 May be wrong on that.

13 THE COURT: Okay.

14 MR. BARLOW: It's -- no, I'm sorry. Let me correct
15 myself.

16 It's March 10th. It -- nope. Nope. April 7th
17 through the 11th is Fifth and that's with Judge Curtis.

18 THE COURT: April?

19 MR. BARLOW: Yes, sir.

20 THE COURT: But -- well, we, we have -- so the
21 witnesses will be Moak and Mr. Mitchell.

22 Is that right?

23 MR. BARLOW: Yes, Your Honor.

24 THE COURT: All right. We have -- let's just do
25 it -- I -- well, let me hear from Ms. Shipe what you --

1 I'm fine going forward with it today. I believe
2 Mr. Mitchell would be able to provide good information.
3 But if y'all want to wait for Mr. Moak.

4 Let me hear from Ms. Shipe.

5 MS. SHIPE: Thank you.

6 We're, we're prepared to go forward. I, I think
7 Mr. Jones is probably anxious to have this go ahead. But
8 I also think, you know, it's gonna be pretty difficult
9 without Mr. Moak present.

10 But to be, to be candid, I think it's gonna be
11 difficult to reconstruct this anyways because of the
12 length of time. It's been nine years since this hearing.
13 Obviously, the only witness that testified at that
14 hearing, Mr. Riley, plea counsel, is not with us anymore.

15 So I, I think it's just gonna be difficult to
16 reconstruct regardless of Mr. Moak or Mr. Mitchell's
17 presence. That's my position on it.

18 THE COURT: Yeah, I'm, I'm afraid we'll wait till
19 April and Mr. Moak's gonna say I don't remember and, you
20 know --.

21 MR. BARLOW: It's, it's my understanding, from what
22 Mr. Meadors has indicated to me, Your Honor, and, and I
23 don't want to misrepresent anything, but Mr. -- it's my
24 understanding that Mr. Moak does have an -- have a, a
25 memory as to the things that occurred. That's my

1 understanding.

2 I, I, I could definitely provide something better.
3 Mr. Meadors, unfortunately, is in -- I would have him here
4 right now. But he's in Texas right now in a two week
5 trial.

6 THE COURT: No, that's, that's fine.

7 well, Ms. Shipe, are you able to communicate with
8 Mr. Jones privately?

9 MS. SHIPE: I, I can't do it -- I don't know. I'm
10 sorry. I'm not tech savvy enough to know how to do it
11 within this. I can, I can -- I'm sure I can get -- speak
12 with him, you know---

13 THE COURT: I mean I would---

14 MS. SHIPE: ---outside of this. But --.

15 THE COURT: I would ask him right now, but I don't
16 want to ask him while he's represented, if he wants to go
17 forward, you know. If, if defense wants to go forward,
18 the appellate, I'm -- I'll go forward today, Ms. Shipe.
19 whatever y'all want to do.

20 MS. SHIPE: Let me see if I can find -- let me see if
21 I can -- could we take a, a quick little recess and let me
22 see if I can contact him through the institution and, and,
23 and just stay in the meeting but maybe mute myself?

24 THE COURT: Okay.

25 MS. SHIPE: would that be possible?

1 THE COURT: Yep, do that.

2 MS. SHIPE: Okay.

3 THE COURT: We'll take a short little recess.

4 MS. SHIPE: Thank you, Your Honor.

5 (Whereupon, a short recess was taken at this time.)

6 THE COURT: All right. Yes. Yes, ma'am, Ms. Shipe.

7 MS. SHIPE: He, he wants to go forward today. So --.

8 THE COURT: All right. All right. Mr. Barlow---

9 MS. SHIPE: I guess we'll---

10 THE COURT: We're ready to go.

11 Mr. Barlow, you ready to go forward?

12 MR. BARLOW: Yes, Your Honor.

13 THE COURT: All right. And with the reconstruction,
14 what's the procedure for calling the witnesses and the
15 burden?

16 MR. BARLOW: So -- go ahead, Sarah.

17 MS. SHIPE: I mean I feel like it's done differently
18 every time, Russ. I'm, I'm happy to -- I'm happy to defer
19 to you. It's -- they're kind of rare. So, you've
20 probably done more of them than I have.

21 MR. BARLOW: They are very rare and typically I'm not
22 directly involved in them.

23 So -- but here, Your Honor, I'll just -- let's go
24 ahead and put on the record that the original PCR action
25 was 2014-CP-28-00302. That was before Judge G. Thomas

1 Cooper, Junior, and the hearing on that was held
2 July 16th of 2015 at the Richland County Courthouse.

3 Mr. Ronald W. Moak, Esquire, was retained by
4 applicant and was present. Applicant was not present and
5 J. Clayton Mitchell, Esquire, of the South Carolina
6 Attorney General's Office represented the respondent.

7 At the PCR hearing, Mr. Cornelius J. Riley, Esquire,
8 testified and, of course, the Court had before it Kershaw
9 County Clerk of Court records, applicant's South Carolina
10 Department of Corrections records, the PCR application,
11 the return, and the guilty plea transcript.

12 Your Honor, before that Court on that day were two
13 allegations. The two allegations were ineffective
14 assistance of counsel and failing to properly investigate
15 the charges against applicant, and ineffective assistance
16 of counsel and failing to advise applicant that he would
17 be subject or could be subject to federal prosecution.

18 Your Honor, Judge Thomas Cooper ultimately denied and
19 dismissed the application with prejudice. That order was
20 signed December 3rd, 2015, and filed December 9th, 2015,
21 and I believe that there was testimony -- well, in this
22 matter, Your Honor, I -- at, at this point I guess we
23 would ask that Mr. Mitchell kind of walk us through what
24 he remembers of the case, like who was called.

25 There -- again, there were only two allegations and I

1 will say that the second allegation, the failure to advise
2 the applicant that he could be subject to federal
3 prosecution, that was a -- the Court found that that was a
4 collateral matter and that was not proper for PCR.

5 So, we would argue that really the only allegation is
6 the failure to investigate the charges against applicant.
7 We need to walk through that and what happened with that
8 the testimony taken so that, I guess, proper review of
9 that allegation could be done by the Supreme Court.

10 THE COURT: All right. Mr. Mitchell, can you hear
11 us?

12 MR. MITCHELL: Yes.

13 THE COURT: All right. You can -- and you're an
14 officer of the Court. So I'm not gonna put you under
15 oath.

16 If you will, just give a brief background of, of what
17 happened with those (sic) case, kind of your role, and
18 what you remember from.

19 MR. MITCHELL: All right. Yeah. So, I do remember
20 this case when it went forward.

21 I took pretty detailed notes when I was doing these
22 and I've got, like Mr. Barlow said, like a page and a half
23 or probably a page and a quarter of notes of what happened
24 and that's mostly all reflected in the order that was
25 written.

1 So, the way it would of gone, this would of been with
2 Judge Cooper. Mr. Moak represented Mr. Jones. I would of
3 put the caption on the record. I would of given a, a
4 brief opening of just detailing the issues and the
5 introduction to the case when I called it. I would of
6 noted that Mr. Jones was not present at the hearing and
7 that efforts were made to have him included and that we
8 were not able to work that out.

9 So, the matter went forward without him, without his
10 testimony, and Mr. Moak then called Neal Riley who
11 represented Mr. Jones in his guilty plea and I'll just
12 kind of read through my notes.

13 He, he gave a -- Mr. Riley gave a background that he
14 pled in April of 2013. He was originally charged,
15 Mr. Jones was, with being a felon in possession. But he
16 did not have a felony. So, I believe the charge was
17 changed to unlawfully carrying a pistol.

18 Mr. Riley testified he was advised of collateral
19 consequences. He was asked about the federal prosecution.
20 Mr. Riley responded he didn't know the Feds were
21 investigating Mr. Jones for any issues.

22 As to the failure to investigate the gun, Mr. Riley
23 testified -- that was the allegation that the gun was not
24 processed and that it was not reviewed. Mr. Riley
25 testified he did not check the gun, not check for the gun

1 is what I have written.

2 He testified there was no dispute of whether a gun
3 was present. He testified Mr. Jones was happy with the
4 sentence, which I believe is just one year. Mr. Riley
5 testified that Mr. Jones was eager to take the guilty plea
6 and that he believed he would still have taken the plea.
7 That was the -- my notes from the direct examination.

8 I then crossed him on the charges being reduced
9 identifying that he wasn't actually a felon at the time.
10 So the charge should be reduced and how that went. And
11 then I asked him about dual sovereignty of whether it was
12 proper for law -- federal law enforcement to pursue
13 charges.

14 Mr. Riley believed that it was but he didn't know
15 anything about any other investigation. So, he did not
16 advise him of kind of the theoretical investigation that
17 could be out there.

18 Mr. Riley testified that it was his practice to
19 advise of collateral consequences. Mr. Riley testified
20 that he's normally contacted before any state charges are
21 upgraded to federal. He didn't think of any federal
22 interests.

23 He believed Mr. Jones had a pending charge in a
24 different jurisdiction on a drug charge. I believe that's
25 all the cross at least from my notes.

1 There was a redirect done by Mr. Moak. He asked
2 what's the procedure basically for if the -- if there are
3 federal charges involved and Mr. Riley testified that the
4 solicitor, solicitor will usually take a hands-off
5 approach and wait for the federal charges to resolve
6 themselves and then usually dismiss the state charges.

7 So, that's kind of a reading of my notes. I got a
8 little bit more in the order I think in that Mr. -- it's a
9 little better organized.

10 So, there's the failure to investigate, kind of the
11 facts of the case. Mr. Riley testified that applicant was
12 originally charged with being a felon in possession of a
13 firearm. But that charge was dropped because he did not
14 have a requisite felony conviction.

15 Mr. Riley testified there was no dispute about
16 whether there was a gun found on applicant. He testified
17 that applicant was eager to plead guilty and was happy
18 with the sentence.

19 As to the issue of whether applicant could be subject
20 to federal prosecution, the allegation was that he was not
21 advised -- this is what Mr. Mark -- Moak, how he presented
22 it. Applicant alleged that he was not advised that he
23 could be subject to federal prosecution from the incident.
24 He alleged that, if he had known this, he would not have
25 pleaded guilty.

1 Mr. Riley testified he did not know federal
2 authorities were investigating the case. He noted that
3 the, like I said, solicitor will usually take a hands-off
4 approach and wait to see if the defendant is convicted in
5 Federal Court before moving forward with the state
6 charges. He noted that state charges are usually not
7 proessed in this situation if the defendant is convicted in
8 Federal Court.

9 Yeah, I -- and I do remember this part. Mr. Riley
10 testified he did not believe this sort of incident would
11 draw the attention of federal authorities and, therefore,
12 had no reason to consider it cause that was kind of my
13 view on it. It's not something that would of prompted him
14 to think about that.

15 And then he did testify about the doctrine of dual
16 sovereignty and those were the allegations presented.
17 That's my recollection of the testimony of how it went on
18 the two issues.

19 I looked back. I didn't have a note about how the
20 order or how Judge Cooper ruled. I looked back at Mr.
21 Moak's ODC order from 2016 and it said that Judge Cooper
22 ruled from the bench denying the application. I don't
23 recall that but that was in the order.

24 So, that, that very well may have been the case.
25 Judge Cooper had a tendency not to take things under

1 advisement and he was the -- we basically had like six out
2 of eight terms with Judge Cooper. So, I was quite
3 familiar with how he was doing things.

4 But that's my recollection of everything. That's
5 what I pieced together from my notes. I don't think it
6 would of been a very long hearing and that's the order of
7 things. Mr. Moak called Mr. Riley. Mr. Riley testified
8 as to those issues and I did some cross-examination. He
9 did a redirect and then we likely would of both just kind
10 of given a final, you know, brief summation of what we
11 believed the arguments were.

12 Mr. Moak would of argued, you know, in applicant's
13 favor that he -- failing to investigate the gun and then
14 in failing to advise on the federal -- possibility of the
15 federal charges. I would of argued consistent with the
16 order and, from that, that's all I recall of this.

17 I do recall that the case had been on previous
18 rosters and it was continued in order to attempt to figure
19 out a way to get Mr. Jones available for testimony. So,
20 it, it had been on before. But that -- I couldn't say how
21 many times or anything.

22 THE COURT: All right. Thank you, Mr. Mitchell.

23 Ms. Shipe, do you have any follow-up questions for
24 Mr. Mitchell about his recollection?

25 MS. SHIPE: I mean I, I guess -- I think he -- I mean

1 I think you answered everything I would of probably asked
2 as far as like he was the only person that gave testimony
3 to your recollection. Mr. Riley was the only witness.

4 I know the order says that but that's also what you
5 remember?

6 MR. MITCHELL: That's correct. There's definitely no
7 one else.

8 MS. SHIPE: Okay. And then -- and as far -- I mean
9 you don't have any other recollection, outside of your
10 notes, as to any other questions that you might of asked
11 Mr. Riley?

12 MR. MITCHELL: No, I believe -- and I don't know.
13 Y'all may want to make this an exhibit.

14 Just the way I did it, I, I take notes and then I
15 draw a line and kind of do a star and then have some notes
16 on the side and that's what a -- that would of been my
17 guide just to kind of go through what I would of asked.

18 MS. SHIPE: Uh-huh. (Affirmative).

19 MR. MITCHELL: But, no, I don't have any other
20 recollection of any other questions that I would of asked
21 him.

22 MS. SHIPE: Okay. Okay.

23 MR. BARLOW: And, Sarah, do you want to make his --
24 well, it's kind of up to him since it's his work product.

25 But do you want to make his notes -- he just said we

1 could --

2 MS. SHIPE: I mean---

3 MR. BARLOW: -- as an exhibit?

4 MS. SHIPE: ---I think we, we should.

5 MR. BARLOW: Okay.

6 MS. SHIPE: I think we should.

7 THE COURT: Mr. Mitchell, will you just confirm that
8 you're okay with that and there's no -- any privileged
9 information in there and just confirm?

10 But if, if not, we would of -- appreciate making that
11 an exhibit.

12 MR. MITCHELL: No, I was thinking that'd probably be
13 the best way to do it. I mean it's, it's mostly what's in
14 the order. But it is probably, you know, a little -- more
15 evidence that it was taken that -- contemporaneously with
16 the hearing. There's not much in that that's not in the
17 order. But it, it is my notes from the hearing live.

18 So, yeah, no problem with that at all.

19 THE COURT: Okay. Great. If you'll just maybe email
20 a copy to the attorneys and then Mr. Barlow will make sure
21 it gets filed as an exhibit with the file.

22 MR. MITCHELL: Okay. I think they both have a copy
23 and Mr. Barlow sent it to me yesterday. So, I know he's
24 got a copy.

25 THE COURT: Perfect.

1 Ms. Shipe, any other follow-up questions for Mr.
2 Mitchell?

3 MS. SHIPE: I don't have any follow-up questions. I,
4 I have a, a very short argument when, when it's
5 appropriate.

6 THE COURT: Mr. Barlow, anything -- follow-up with
7 Mr. Mitchell?

8 MR. BARLOW: No, Your Honor.

9 THE COURT: All right. Anybody object to having Mr.
10 Mitchell be excused from this hearing at this point?

11 MS. SHIPE: Not, not for me.

12 THE COURT: All right. Thank you, Mr. Mitchell. We
13 appreciate you being here.

14 MR. MITCHELL: Thank you-all. Appreciate it.
15 Bye-bye.

16 MR. BARLOW: Thank you.

17 THE COURT: Yes, ma'am, Ms. Shipe, I'm happy to hear
18 from you.

19 MS. SHIPE: I, I can appreciate that Mr. Mitchell has
20 good recall and that he has notes. I still think good
21 recall after nine plus years is gonna be subject to a lot
22 of forgetfulness.

23 We obviously can't do anything about the availability
24 of Mr. Riley. That's out of all of our hands, and just in
25 fairness to Mr. Jones, I think it's gonna be difficult to

1 have meaningful appellate review with just, you know, the
2 AG, Mr. Mitchell's recollection of the events.

3 That -- that's my argument. Just according to
4 Ladson, State v. Ladson, I just think too much time has
5 passed and we don't have a witness. But I can appreciate
6 Mr. Mitchell's recall.

7 THE COURT: Okay. Thank you.

8 Mr. Barlow.

9 MR. BARLOW: And, Your Honor, I, I would -- I would
10 tend to agree with Ms. Shipe on, on this issue except that
11 here we are. I, I realize that it's nine years out. But
12 it, it really is only two issues. It's one issue of
13 failure to investigate and it's -- the other issue is, is
14 an issue that's not even proper for PCR.

15 So, you know, I would say that, with his notes and
16 what he's testified to, I think that we have plenty for
17 the -- a Court to review because that's all that happened.
18 So, that's what we would stand on, Your Honor.

19 THE COURT: All right. Let me, let me take this
20 under advisement. I review kind of the case file y'all
21 presented so far as well as what -- as well as what I've
22 heard today as well as Mr. Mitchell notes.

23 So, let me take this under advisement and I'll try to
24 get something to you-all shortly. If, if y'all think
25 y'all need something else for me, let me know. But let me

1 take this under advisement.

2 All right. Thank you, Mr. Jones, for being here
3 today.

4 MR. BARLOW: Thank you, Your Honor.

5 THE COURT: All right. Thank you-all.

6 MS. SHIPE: Thank you.

7 THE COURT: All right. Thank you, Mr.---

8 MR. JONES: Hello.

9 THE COURT: Yes, sir, Mr. Jones.

10 MR. JONES: Yeah, I want to -- can -- I want to, I
11 want to speak too.

12 Can I speak?

13 THE COURT: All right. You can speak. You can
14 speak. Just remember everything you say is being recorded
15 and it could potentially---

16 MR. JONES: Yes, sir.

17 THE COURT: ---be used against you.

18 Okay?

19 MR. JONES: Yes, sir.

20 All right. The whole argument---

21 THE COURT: And your attorney would probably advise
22 you not to speak. But, you know, here we are. So you can
23 go right ahead.

24 MR. JONES: I mean, I mean here's the -- what's my --
25 my appli -- my PCR application.

1 I had got locked up. I sent you a motion to dismiss
2 this whole case because I got locked up on August of 2000
3 and, and, and 12 for the felony possession of firearm.

4 On -- I don't know if you got it. I told them to
5 forward, forward, forward it -- forward, forward it -- my
6 motion to you.

7 On January 7th, 2013, the ATF agent, Lee Rapley
8 (phonetic), took possession of the weapon from the Camden
9 Police Department. On February, 2020 -- I mean 2013, I
10 got indicted in the state for unlawful possession of a
11 fire, firearm.

12 On April 9th, 2013, I pled guilty. That was the
13 purpose of the -- purpose of the PCR hearing. Mr. Moak
14 didn't argue it right. That was the purpose of the PCR
15 hearing because the ATF took subject matter over the, the
16 weapon.

17 So, the, the Kershaw County didn't have jurisdiction
18 over it no more to even prosecute me for the weapon. That
19 was the purpose of the PCR hearing because the AFT took
20 the weapon from the Camden Police Department before I even
21 pled guilty. They didn't even have the weapon in they
22 possession.

23 THE COURT: Okay.

24 MR. JONES: So, that was the purpose of the PCR
25 hearing.

1 So when Mr. Moak -- it was never, it was never, it
2 was never to investigate the case. It was that the, that
3 the, the police department, Camden Police Department,
4 didn't have the evidence when it was time for me to plead
5 guilty.

6 So, when I went back to Brett Perry, Brett Perry say
7 he didn't even know that the Camden Police Department gave
8 the evidence up before I even pled guilty. He said that
9 the cop, Damon Burrows, came to him and try to told --
10 tell him that I was -- he was trying to get me to work for
11 him.

12 So, I guess he was mad or whatever because I went
13 and -- I wouldn't work for him and I didn't have no
14 charge -- no other drug charge in no other jurisdiction.

15 That was my whole argument --

16 THE COURT: All right.

17 MR. JONES: -- that the, that the ATF took the weapon
18 before I, I even was indicted. I got indicted in February
19 of 2000 -- 2013. The ATF agent, Jessie Lee Rapley, took
20 the weapon in his, in his possession on January 7th,
21 2013. So, that's where -- that was my whole argument.

22 So, I don't, I don't understand how can they -- I, I
23 mean as you being a, a judge, I, I need -- I need some
24 explaining on how can they -- how, how can they do that,
25 how can they give up the jurisdiction and then come indict

1 me and then give me time for it and then the Feds had the
2 weapon the whole time.

3 THE COURT: All right. All right. Well, let me, let
4 me take this under advisement, Mr. Jones. I'm gonna
5 review everything and I'll get a decision to you shortly.
6 okay?

7 MR. JONES: Uh-huh. (Affirmative).

8 And did -- I want to know did you get my motion
9 because of my motion has everything that I'm explaining to
10 you in that?

11 I asked them to forward it to you.

12 THE COURT: I will double-check and see if I received
13 it.

14 MR. JONES: Okay.

15 THE COURT: Okay. All right. Thank y'all very much.

16 MS. SHIPE: Thank you.

17 MR. JONES: All right.

18 THE COURT: All right. Thank y'all.

19 Have a good day.

20

21 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

22

23

24

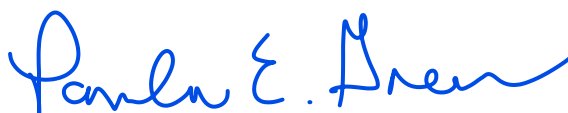
25

C E R T I F I C A T E

1
2
3 I, Pamela E. Green, Official Court Reporter for the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate and complete Transcript of
6 Record of the proceedings had and evidence introduced in
7 the trial of the captioned case, relative to appeal, in
8 the Court of Common Pleas Nonjury for Kershaw County,
9 South Carolina, on the 17th day of December, 2024.

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

12
13
14
15 January 24th, 2025

16
17
18 

19
20 _____
PAMELA E. GREEN, Court Reporter

Jones, Alonzo

• using state charge or federal charge

• dual sovereignty

• Neil Rily (Dist. Atty's witness)

• 4.9.17 phd

• originally charged w/ felon in possession *
but didn't have felony

• advised of collateral offense

• was presented by felo

• didn't know felo was investigating * dual sovereignty

• investigate? didn't check for gun * didn't know about felo

• no suspect of what a gun

• happy w/ return

• eager to take guilty ph

• ^{speak} would have still taken ph * pract. to advise of collateral offense

• * no suspect

• normally arrested by my state charges

• don't think of my federal interest

• party case in other jurisdiction

• drug case *

Redempt

- State can ~~not~~ - SI will take hands off approach
to wait for fed. can to be ready to take out pass

represented by Cornelius J. Riley, Esquire¹ (Plea Counsel). Fifth Circuit Deputy Solicitor Brett A. Perry prosecuted the case.

Applicant did not appeal his convictions or sentences.

On April 8, 2014, Applicant filed his first PCR application (2014-CP-28-00302) with the assistance of retained counsel Ronald W. Moak (Counsel Moak).² Subsequent to the filing of this action, Applicant was incarcerated on federal charges. A hearing on the PCR action was held on July 16, 2015, before the Honorable G. Thomas Cooper, Jr. Counsel Moak represented Applicant at this hearing, but Applicant was not present because he was in federal custody. Plea Counsel was present and testified. On December 9, 2015, Judge Cooper dismissed Applicant's application with prejudice by filed order. Counsel Moak did not file an appeal on Applicant's behalf.

Applicant ultimately filed a complaint with the Office of Disciplinary Counsel concerning Counsel Moak's representation of him, alleging that Counsel Moak never attempted to call or explain what was happening regarding his PCR action, failed to respond to emails requesting status updates and other communications, failed to inform Applicant his PCR hearing was scheduled and arrange a means by which Applicant could participate, and failed to advise Applicant that his application was denied at the end of the hearing. Counsel Moak's representation of Applicant was cited as one of the bases for discipline imposed on Counsel Moak. Matter of Moak, 417 S.C. 73, 789 S.E. 2d 42 (2016). In that opinion, the Supreme Court found that Counsel Moak violated Rules 1.3 and 1.4, South Carolina Rules of Professional Conduct, Rule 407, SCACR, because he

¹ Counsel Riley has since passed away and was not available to testify at the reconstruction hearing.

² Respondent informed the Court that Mr. Moak had been located but was not available till January for testimony. The Court decided to proceed with just Counsel Mitchell's testimony as Respondent could not guarantee Mr. Moak would appear in a later proceeding.

did not act with reasonable diligence in his representation of Applicant, and did not keep Applicant reasonably informed about the status of the matter or comply with requests for information.

In November 2016, Applicant filed a petition for Writ of Habeas Corpus in the original jurisdiction of the South Carolina Supreme Court. On December 1, 2016, the Supreme Court issued an order holding that habeas relief was not proper as applicant had not exhausted all other available remedies pursuant to Gibson v. State, 329 S.C. 37, 495 S.E. 2d 426 (1998). Accordingly, the South Carolina Supreme Court denied the petition without prejudice and advised Applicant to file a subsequent application in the circuit court asserting these claims.

Applicant filed his second PCR action (2017-CP-28-00226) on March 15, 2017. An evidentiary hearing was held on January 24, 2022, to determine if Applicant was entitled to belated appellate review of the dismissal of his prior PCR application (2014-CP-28-00302). On February 2, 2022, the Honorable D. Craig Brown filed an Order Granting Belated Appeal Pursuant to Austin v. State³. On February 22, 2022, Applicant filed his Notice of Appeal. The South Carolina Office of Indigent Defense requested the initial PCR hearing transcript on June 1, 2022, and was informed that the court reporter could not produce the transcript because the five (5) year window under Rule 607, SCACR, had closed. On August 23, 2022, the South Carolina Supreme Court issued an order remanding the case to the circuit court for a reconstruction hearing.

On December 17, 2024, this Court held a reconstruction hearing to attempt to reconstruct the initial PCR evidentiary hearing. The only witness available to testify was former Assistant Attorney General J. Clayton Mitchell, Esquire (Counsel Mitchell), who represented the State at Applicant's initial PCR evidentiary hearing. Counsel Mitchell testified to his recollection of the matter and had his notes from the hearing, which were entered as an exhibit.

³ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

**SUMMARY OF TESTIMONY ADDUCED AT RECONSTRUCTION
HEARING**

Counsel Mitchell

Counsel Mitchell testified that he took notes during the original PCR evidentiary hearing, and the Order of Dismissal primarily reflected his notes on what transpired. (Reconstruction Tr. p. 12). Counsel Mitchell testified that the Applicant was not present at the hearing, but efforts were made to include him. (Reconstruction Tr. p. 13). Counsel Mitchell testified that Counsel Moak called Plea Counsel, who represented the Applicant in his guilty plea, to testify.

Counsel Mitchell testified that during direct examination, Counsel Riley provided a background stating that he pled in April 2013. Counsel Mitchell indicated that Counsel Riley mentioned Applicant was initially charged with being a felon in possession of a weapon; however, since he did not have a felony, the charge was changed to unlawfully carrying a pistol. Counsel Mitchell further testified that Counsel Riley said he advised Applicant of any collateral consequences, but Counsel Riley was unaware that federal agents were investigating the Applicant.

Counsel Mitchell testified that Counsel Riley stated he did not investigate whether the gun was processed or reviewed. Counsel Mitchell indicated that Mr. Riley mentioned there was no dispute over whether a gun was present. Counsel Mitchell also testified that Mr. Riley remarked that Applicant was satisfied with the one-year sentence. Furthermore, Counsel Mitchell testified that Counsel Riley noted Applicant was eager to accept the guilty plea and he believed Applicant would still have taken the plea offer.

Counsel Mitchell testified that during cross-examination, he questioned Counsel Riley about the reduction of charges and the concept of dual sovereignty, specifically whether it was appropriate for federal law enforcement to pursue charges. Counsel Mitchell further testified that

Counsel Riley testified that he believed it was appropriate for federal law enforcement to pursue charges, but he was unaware of any other investigation. Additionally, Counsel Mitchell testified that Counsel Riley mentioned he did not inform Applicant about any potential theoretical investigation that could exist. Counsel Mitchell also testified that Counsel Riley noted it was his practice to advise about collateral consequences.

Counsel Mitchell testified that Mr. Riley stated he is usually contacted before any state charges are upgraded to federal. Counsel Mitchell also testified that Mr. Riley was unaware of any federal interests. Additionally, Counsel Mitchell reported that Mr. Riley indicated that Applicant had a pending drug charge in a different jurisdiction.

Counsel Mitchell testified that during redirect, Counsel Moak asked Counsel Riley about the procedure when federal charges are involved. Counsel Mitchell noted that Counsel Riley stated the solicitor usually takes a hands-off approach, waits for the federal charges to resolve, and then typically dismisses the state charges.

Counsel Mitchell testified that he recalled the case had appeared on previous rosters and was continued in an effort to find a way to make Applicant available for testimony.

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 of Counsel Mitchell who represented the State in the original PCR evidentiary hearing on July 16, 2015. This Court has further had the opportunity to observe the witness presented at the hearing, closely pass upon his credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law concerning the reconstruction of Applicant's July 16, 2015, PCR evidentiary hearing.

The Record Has Been Successfully Reconstructed

This Court finds that the reconstruction hearing has successfully recreated the record in this matter. A new PCR hearing is not necessary in light of the reconstructed testimony provided by the witness. Applicant should be permitted to proceed with a PCR Appeal based upon this reconstructed record, the existing Order of Dismissal, and the admitted exhibit.

Discretion in determining how to proceed with a reconstruction of an unavailable transcript lies with the trial court. Adams v. H.R. Allen, Inc., 397 S.C. 652, 658, 726 S.E.2d 9, 13 (Ct. App. 2012). This Court acknowledges that a reconstruction hearing will never be so effective as to provide a verbatim recreation of every question and response elicited during the original hearing. Nor is such a reconstruction necessary to avoid reversal or rehearing. See State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). Instead, it is the burden of the Applicant to demonstrate prejudice stemming from the condition of the reconstructed record. Id. The Court is convinced that the recollection of the witness of this matter was sufficient when combined with the PCR exhibit and the Order of Dismissal. This Court finds that there has not been a showing of prejudice by Applicant.

There is limited case law concerning the reconstruction of prior hearings. Appellate Counsel for Applicant noted her pessimism toward the ability to recreate the record in this matter and cited State v. Ladson to support her reasoning. In State v. Ladson, the trial court endeavored to reconstruct the three-day trial of the defendant, who had been convicted of first-degree burglary a little over a year prior. State v. Ladson, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007). However, the only participants in the reconstruction were the trial court, the solicitor, the defense attorney, and the defendant. None of the original witnesses were present or examined, nor were any of the

exhibits or evidence discussed during the hearing. Instead, two witnesses' affidavits were presented, and the attorneys summarized the remaining testimony. Id. at 322. The Court of Appeals found numerous and significant discrepancies in the recollections of the judge and the parties involved. Id.

The Ladson court found the information provided by the state to be conclusory, noting that it was often characterized or prefaced by statements such as "his testimony generally would be," "he testified generally to the following," and "the next witness. . . will be by summation." Id. Without access to his notes, the trial court merely and repetitively conceded that the State had presented an accurate summation of the testimony. Id. Additionally, discrepancies were identified in the incorrect recollection of the court as to the expert qualification of the witness and the unchallenged chain of custody for certain evidence, the failure by the State to recall that certain witnesses testified at all, and even dispute amongst the parties as to whether Ladson testified in his own defense. Id. at 322-23.

In summary, the Court of Appeals noted that the trial court's conclusions and findings were repeatedly found to be inaccurate compared to the recollections of the other individuals and the available reference materials. The Court of Appeals also noted that despite the good faith efforts of those involved, "the reconstructed record is largely conclusory, with testimony, objections, and the like recalled only in summary fashion." Id. at 323.

The facts of Ladson are distinguishable from the case at hand. Here, this Court did not have a three-day trial to reconstruct; rather, it was a PCR hearing where two issues were presented. Also, this Court has the Order of Dismissal that was drafted to coincide with the evidence that was presented, and the Court had the witness from which testimony was taken and was able to evaluate the substance of their testimony as it was memorialized in the Order.

It is important to note that the Court of Appeals in Ladson was attempting to reconstruct a three-day trial, complete with original testimony, objections, and evidence. Applicant's PCR evidentiary hearing lasted less than one day, and was based upon two issues raised by Applicant. While Ladson is instructive in the sense that it demonstrates the potential pitfalls that can accompany a reconstruction hearing, the availability of the original witnesses, their successful recollections, and the differing nature of a trial versus a PCR hearing all greatly distinguish Ladson from Applicant's reconstruction. The facts of Ladson are simply too dissimilar to serve as a legal precedent in this matter.

Nothing in the reconstructed record leads this Court to believe that significant omitted testimony pertinent to the Applicant's claims still exists. Likewise, this Court is well satisfied that the limited scope of Applicant's first PCR action, alongside the witness testimony and Order of Dismissal, is sufficient, and the records have been reconstructed.

[CONCLUSION PAGE FOLLOWS]

CONCLUSION

Based on the foregoing, this Court finds and concludes that the PCR evidentiary hearing record has been successfully reconstructed.

IT IS THEREFORE ORDERED:

1. That the South Carolina Supreme Court be notified that the record has been reconstruction successfully; and
2. That Applicant's PCR Appeal should no longer be held in abeyance.

AND IT IS SO ORDERED this 21 day of Feb, 2025.



DANIEL COBLE
Presiding Judge

Richland, South Carolina

WITNESSES

157

(S) Damien Burris – Camden Police Department

ARREST WARRANT NUMBER

2012A2820200068

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury Date: FEB 20 2013

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 2013-GS-28-0083

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

K96

THE STATE vs.

Alonzo Tarell Jones

Indictment for UNLAWFUL CARRYING OF A PISTOL

SC Code: 16-23-0500 (B) CDR Code: 3434

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD 2013 FEB 20 PM 12:24 JOYCE McDONALD CLERK OF COURT KERSHAW COUNTY, S.C.

ATTEST True, Correct & Certified Copy of Original on File in this Court

Joyce W. Donald Clerk of Court Kershaw County

WITNESSES

159

(S) Tyrrell Coleman – Camden Police Department

ARREST WARRANT NUMBER

2013A2820200008

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-28-0334

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

MAY TERM 2013

K96

THE STATE
vs.

Alonzo Tarell Jones

Indictment for
RESISTING ARREST

SC Code: 16-09-0320(A)
CDR Code: 0326

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

[Signature]
Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

[Signature]
Clerk of Court Kershaw County

COUNTY OF Kershaw
STATE VS.
Alonzo Tarell Jones
AKA:
Race: BLACK Sex: M Age: 32
DOB: 80 SS#:
Address:
City, State, Zip: Cassatt, SC 29032
DL#: SID#:

INDICTMENT/CASE#: 2013-GS-28-0083
A/W#: 2012A2820200068
Date of Offense: 8/13/2012
S.C. Code § : 16-23-0500 (B)
CDR Code #: 3434

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Weapons / Unlawful carrying of pistol

CONVICTED OF or PLEADS

in violation of § 16-23-0020 of the S.C. Code of Laws, bearing CDR Code # 0044
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Perry, Brett SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 6

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

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation. Clerk of Court Kershaw County

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (03/2011)

Presiding Judge
Judge Code:
Sentence Date: 4/2/13

COUNTY OF Kershaw
STATE VS.

Alonzo Tarell Jones

AKA:

Race: BLACK Sex: M Age: 32

DOB: [redacted] 80 SS#: [redacted]

Address: [redacted]

City, State, Zip: Cassatt, SC 29032

DL#: [redacted] SID#: [redacted]

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was [] CONVICTED OF or [X] PLEADS TO: Resisting / Resisting Arrest; Oppose, resist, or assault law enforcement officer serving process

INDICTMENT/CASE#: 2013-GS-28-0334

A/W#: 2013A2820200008

Date of Offense: 1/5/2013

S.C. Code § : 16-09-0320(A)

CDR Code #: 0326

SENTENCE SHEET

in violation of § 16-09-0320(A) of the S.C. Code of Laws, bearing CDR Code # 0326
[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: [] As Indicted, [] Lesser Included Offense, [X] Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: [] Without Negotiations or Recommendation, [] Negotiated Sentence, [X] Recommendation by the State.

ATTEST: [Signature] SC Bar# 6991 Defendant [Signature] SC Bar# 6468 Attorney for Defendant

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center, for a determinate term of 1 days/months/years or [] under the Youthful Offender Act not to exceed ___ years and/or to pay a fine of \$ ___; provided that upon the service of ___ days/months/years and/or payment of \$ ___; plus costs and assessments as applicable*; the balance is suspended with probation for 6

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

[X] CONCURRENT or [] CONSECUTIVE to sentence on:
[] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered
Total: \$ ___ plus 20% fee: \$ ___
Payment Terms: ___
[] Set by SCDPPPS

PTUP ___ days/hours Public Service Employment

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$18.90, TOTAL \$648.90

Obtain GED []
Attend Voc. Rehab. or Job Corp. ___
May serve W/E beginning ___
Substance Abuse Counseling []
Random Drug/Alcohol testing []
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ ___ beginning ___
\$ ___ paid to Public Defender Fund

Other: ATTEST True, Correct & Certified Copy of Original on File in this Court

[Signature] Clerk of Court, Kershaw County
[X] Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2161
Sentence Date: 4/9/13