

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Edgar W. Dickson, Circuit Court Judge

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S.C. Supreme Court

JEFFREY BATES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) COURT OF GENERAL SESSIONS

State of South Carolina)
vs.) Case No. 02-GS-18-0195
Jeffrey Bates,)
Defendant.)

TRANSCRIPT OF HEARING

The within Hearing was held on July 25, 2003, before The Honorable Diane S. Goodstein in Dorchester County Court of General Sessions; attended by Counsel, as follows:

APPEARANCES:

Walter Bailey, Solicitor
1st JUDICIAL CIRCUIT
St. George, South Carolina
Appearing for State of South Carolina

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1 THE COURT: All right. Yes, sir, Mr.

2 Bailey?

3 MR. BAILEY: May it please the Court,
4 Your Honor, the State calls the Court's attention to
5 Indictments 02-GS-18-0195, 0252 and 0251 charging
6 Jeffrey Bates, respectively, with murder, burglary
7 in the first degree and armed robbery. All three
8 indictments have been true billed by the Grand Jury.

9 Mr. Bates is represented by Mr. Gene Dukes.

10 COURT REPORTER: And your name?

11 MR. BAILEY: Walter Bailey.

12 COURT REPORTER: It is my understand-
13 ing that he wishes to plead guilty and there's a
14 negotiated plea, Your Honor.

15 THE COURT: Is that correct, Mr. Dukes?

16 MR. DUKES: That is correct, Your Honor.

17 THE COURT: Please swear him in.

18 THE CLERK: State your name, please.

19 DEFENDANT: My name is Jeffrey Bates.

20 THE CLERK: Do you swear to tell the
21 truth, the whole truth and nothing but the truth?

22 DEFENDANT: Yes, ma'am.

23 THE COURT: All right. You are Mr.
24 Jeffrey Wayne Bates?

25 DEFENDANT: Yes, Your Honor.

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1 THE COURT: And you are represented by
2 Mr. Gene Dukes?
3 DEFENDANT: Yes, Your Honor.
4 THE COURT: All right.
5 THE COURT: Mr. Bates, I've got some
6 questions for Mr. Dukes. Then we will be right back
7 with you.
8 DEFENDANT: Yes, ma'am.
9 THE COURT: So please listen very
10 carefully.
11 DEFENDANT: Yes, ma'am.
12 THE COURT: Mr. Dukes, Mr. Bates has
13 indicated that you represent him; is that correct?
14 MR. DUKES: That's correct, Your Honor.
15 THE COURT: Have you advised Mr. Bates
16 of the nature of these offenses, the maximum possible
17 punishment that he could receive, and his
18 Constitutional rights?
19 MR. DUKES: I have, Your Honor.
20 THE COURT: And in your opinion, does
21 he understand the nature of these offenses, the
22 maximum possible punishment and his rights?
23 MR. DUKES: He does, Your Honor.
24 THE COURT: Does he wish to plead guilty
25 or not guilty?

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1 MR. DUKES: Guilty.

2 THE COURT: To all three of these
3 offenses?

4 MR. DUKES: That's correct, Your Honor.

5 THE COURT: And do you concur, do you
6 agree with his decision?

7 MR. DUKES: I do.

8 THE COURT: And from your investigation
9 of the facts and circumstances of this case, do you
10 believe that the State could produce sufficient
11 evidence to convict and establish Mr. Bates' guilt
12 beyond a reasonable doubt, and that if he was to stand
13 trial that his conviction would be probable?

14 MR. DUKES: I do believe so, Your Honor.

15 THE COURT: Is there any question
16 regarding Mr. Bates' competency?

17 MR. DUKES: No, ma'am.

18 THE COURT: Very well. I understand that
19 there has been an evaluation.

20 MR. BAILEY: That's correct, Your Honor.

21 If I may approach, I would like to make the Hall
22 Institute report a part of the record.

23 THE COURT: Any objection to that?

24 MR. DUKES: No objection to that, Your
25 Honor. I have a copy of it myself.

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1 THE COURT: Make it Court's Exhibit 1.

2 (SO ENTERED AS COURT'S EXHIBIT 1)

3 THE COURT: (Upon review of Exhibit 1),
4 okay. I have reviewed the report from Hall Institute.
5 Just to be clear, it's signed by Lisa Slock, M.D.
6 (phonetic), Forensic Psychiatric Fellow, and Jeffrey
7 Musick, Ph.D., Chief Psychologist.

8 I have reviewed it and what it indicates is
9 that Mr. Bates was examined and evaluated on September
10 16th and March 25th and based on the examination and
11 observation and review and evaluation that Mr. Bates
12 is capable of understanding the nature of his charges,
13 is capable of assisting counsel in his defense, and
14 that he did have the ability to differentiate right
15 and wrong at the time of his alleged offenses on or
16 about July 14th, 2001. It should say "right from
17 wrong". And that he did have the capacity to conform
18 his conduct to requirements of the law.

19 With that, we can proceed. Now.

20 And to that end, Mr. Bates, I've got a
21 number of questions to ask of you. If you do not
22 understand my question, please do not answer it.
23 And if you need to take a break to speak to Mr.
24 Dukes, I want you to feel free to do that. All
25 right?

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1 DEFENDANT: Yes, ma'am.

2 THE COURT: Thank you for answering

3 audibly so that our court reporter may take down

4 everything that you are saying. Now, tell me how

5 old you are?

6 DEFENDANT: Forty (40) years old, Your
7 Honor.

8 THE COURT: How far did you go in school?

9 DEFENDANT: To the eighth (8th) grade.

10 THE COURT: All right, sir. And why did
11 you -- did you leave school in the eighth grade?

12 DEFENDANT: Yes, ma'am.

13 THE COURT: Why?

14 DEFENDANT: Well, I was from a broken
15 home. My father and my mother divorced in 1968.

16 THE COURT: Did you ever get your GED?

17 DEFENDANT: No, ma'am.

18 THE COURT: Did you ever get any other
19 educational training?

20 DEFENDANT: I got a year of welding.

21 THE COURT: And when was that?

22 DEFENDANT: 1978.

23 THE COURT: Are you married?

24 DEFENDANT: No, ma'am.

25 THE COURT: Do you have children?

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1 DEFENDANT: Yes, ma'am.

2 THE COURT: How many?

3 DEFENDANT: Three.

4 THE COURT: I note from the report, from

5 the psychiatric report, and I should also mention that

6 Tracy Gunter, who is a Forensic psychiatrist, also

7 participated in this. She's the doctor that made the

8 determination that I just mentioned and, of course,

9 adopted.

10 Mr. Bates, I know from reading that report

11 that you have received alcohol and drug treatment.

12 Is that right?

13 DEFENDANT: Yes, ma'am.

14 THE COURT: The report talks about you

15 having received alcohol and drug treatment -- your

16 first encounter, it says, was at the Dorchester County

17 Alcohol & Drug Commission in 1992. Then you were

18 referred to Morris Village, and you were admitted from

19 February 25th to March 17th, 1992.

20 That you'd had several assessments by the

21 Dorchester Alcohol & Drug Commission, and that those

22 assessments were on April 8th, 1992, and July 24th,

23 1992. It says that you were discharged because you

24 failed to return for treatment.

25 But you went back to the Dorchester Alcohol

1 & Drug Commission on April 10th, '96. You were
2 discharged on May 19th, 1996, because you became
3 incarcerated at that time.

4 Then it says that you successfully com-
5 pleted the program at the Dorchester Alcohol & Drug
6 Commission on August 12th, 1999.

7 Does that give a pretty good recitation of
8 the treatment that you have received for alcohol and
9 drug abuse?

10 DEFENDANT: Yes, ma'am, it does.

11 THE COURT: Now, had you -- well, let
12 me also relate that the report also talks about you
13 having gone to the Charleston County -- (review) --
14 it says that you presented yourself for assessment
15 to the Charleston County Mental Health Center for
16 treatment and evaluation of psychotic symptoms on
17 July 19th, 2001.

18 Then there is also a reference that you had
19 sought treatment at the Berkeley County Mental Health
20 office but that they could not -- but they couldn't
21 get any records from them indicating anything about
22 that treatment.

23 Does that sound like the psychological or
24 psychiatric treatment that you have received?

25 DEFENDANT: Yes, ma'am, it does.

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1 THE COURT: And are you currently on
2 medication?
3 DEFENDANT: Yes, ma'am, I am.
4 THE COURT: What is that medication?
5 DEFENDANT: Melaril.
6 THE COURT: Okay, and what do you
7 understand the Melaril is for?
8 DEFENDANT: To help me understand and to
9 deal with reality.
10 THE COURT: To control any episodes where
11 you think that you hear voices?
12 DEFENDANT: Yes, ma'am.
13 THE COURT: And I think you said that it
14 even helps you to sleep?
15 DEFENDANT: Yes, ma'am. It helps me with
16 the nightmares. Yes, ma'am.
17 THE COURT: And you take 200 milligrams,
18 I believe, at night?
19 DEFENDANT: Yes, ma'am.
20 THE COURT: And did you have your
21 medicine last night?
22 DEFENDANT: Yes, ma'am, I did.
23 THE COURT: All right. I would ask for
24 you just to tell me how you're doing today?
25 DEFENDANT: I am feeling okay, Your

1 Honor.

2 THE COURT: You're feeling okay today?

3 DEFENDANT: A little sad.

4 THE COURT: Are you hearing any voices
5 today?

6 DEFENDANT: No, ma'am.

7 THE COURT: And are you -- do you feel
8 like you're able to know what you're doing here today?

9 DEFENDANT: Yes, ma'am.

10 THE COURT: All right. If you will, for
11 the record, tell me in your own words what you under-
12 stand that you are doing here today.

13 DEFENDANT: To be punished for my crimes.

14 THE COURT: To be?

15 DEFENDANT: To be punished for my crime.

16 THE COURT: And are you going to have a
17 trial or are you having a plea or ---

18 DEFENDANT: Having a plea.

19 THE COURT: Very well. I've had a chance
20 now to observe Mr. Bates for several minutes and he
21 seems exactly as he's said. He seems sad, but he's
22 not tearful. But he seems quite, a little bit. His
23 demeanor certainly seems appropriate to me. He said
24 he had his medicine last night and that he's feeling
25 pretty good, he says. I don't see any evidence that

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1 he has not understood, and he's certainly been
2 responsive. I agree with the findings of the doctors
3 that I have mentioned. Do you concur with that, Mr.
4 Dukes?

5 MR. DUKES: I do, Your Honor.

6 THE COURT: Did you have a chance to
7 interact with him this morning?

8 MR. DUKES: I have, Your Honor.

9 THE COURT: Very well. All right.

10 Mr. Bates, are you aware of any other problems that
11 you have? Anything else going on with you this
12 morning? A physical problem? A drug or alcohol
13 problem? Mental health issue problem? Really, any
14 problem. Nervous problem. Any problem that you have
15 that might or could in any way interfere with your
16 ability to know what you're doing here today?

17 DEFENDANT: No, ma'am, Your Honor.

18 THE COURT: Okay. If that changes at any
19 point during the proceedings this morning, I want you
20 to let me know. Okay?

21 DEFENDANT: Yes, ma'am.

22 THE COURT: Very well. Now, let's talk
23 about the charges that you are facing, Mr. Bates. Of
24 course, the first one is murder. Murder carries with
25 it a mandatory minimum prison term of thirty years in

1 prison. It can carry up to life. And under certain
2 circumstances, which are not applicable at this moment
3 in this case, the death penalty. However, that
4 certainly is, under certain circumstances, the penalty
5 that the Solicitor could seek. At this point, while I
6 mention that to you -- at this point, I would tell you
7 that the possible maximum penalty is thirty years in
8 prison up to and including life; which of course is
9 life, day for day for life.

10 I would first of all ask if you understand
11 the nature of this offense as well as the maximum
12 possible penalty?

13 DEFENDANT: Yes, Your Honor, I do.

14 THE COURT: Now, under our statutory
15 configuration, Mr. Bates, there are -- the penalties
16 do not include any good time, any educational credits
17 and/or the like that would in any way to lessen the
18 penalty which could be imposed on you. Do you
19 understand that, as well?

20 DEFENDANT: Yes, ma'am.

21 THE COURT: In other words, Counsel has
22 shared with me that the negotiated sentence is 35
23 years. You understand that that is a real thirty-five
24 (35) years? Do you understand that?

25 DEFENDANT: Yes, Your Honor.

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1 THE COURT: That is a day-for-day
2 thirty-five years. You understand that?

3 DEFENDANT: Yes, ma'am.

4 THE COURT: However, the penalty that
5 could be imposed on you without the service of the
6 death penalty notice is up to and including life,
7 and there is a possibility that such a notice could
8 be served on you. You understand that, as well?

9 DEFENDANT: Yes, ma'am.

10 THE COURT: Now, the offense of armed
11 robbery, with which you are also charged, carries a
12 maximum possible penalty of thirty (30) years in
13 prison. It is a violent offense, a most serious
14 offense, and it has a mandatory minimum sentence of
15 ten years in prison and it is a no parole offense.
16 I would ask if you understand the nature of this
17 offense as well as the maximum possible punishment
18 and consequences?

19 DEFENDANT: Yes, ma'am.

20 THE COURT: All right. And burglary
21 first degree, Mr. Bates, carries with it a penalty
22 of fifteen years in prison up to and, of course,
23 including life imprisonment. I would ask if you
24 understand the nature of this offense, as well as
25 the maximum possible penalty.

1 DEFENDANT: Yes, ma'am.

2 THE COURT: It is also a violent offense,
3 it is also a most serious offense and a no parole
4 offense; do you understand that?

5 DEFENDANT: Yes, ma'am.

6 THE COURT: Very well. Understanding
7 then the nature of each and every one of these
8 offenses, as well as the maximum possible punishment
9 regarding each and every one of these offenses, tell
10 me how you wish to plead to the offense of murder.

11 DEFENDANT: Guilty, Your Honor.

12 THE COURT: Excuse me?

13 DEFENDANT: Guilty, Your Honor. Guilty,
14 ma'am.

15 THE COURT: And as to the armed robbery
16 charge?

17 DEFENDANT: Guilty.

18 THE COURT: And as to the burglary first
19 degree charge?

20 DEFENDANT: Guilty, Your Honor.

21 THE COURT: Do you understand, Mr. Bates,
22 that when you plead guilty that you give up certain
23 important Constitutional rights?

24 DEFENDANT: Yes, ma'am.

25 THE COURT: You give up the right to

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1 remain silent, the right against self-incrimination,
2 the presumption of innocence, you give up your right
3 to require the State to prove you guilty beyond a
4 reasonable doubt if they can, your right to confront
5 witnesses, your right to compel the attendance of
6 witnesses in your defense, your right to present
7 defenses, your right to challenge any incriminating
8 statement that you may have made in this case, and
9 your right to a jury trial. And there are other
10 rights. These rights are preserved for you at trial
11 and you waive them when you plead guilty. Do you
12 understand that?

13 DEFENDANT: Yes, ma'am, I do.

14 THE COURT: Is that what you wish to do?

15 DEFENDANT: Yes, Your Honor.

16 THE COURT: All right, sir. Do you
17 clearly understand that when you plead guilty that you
18 give up the right to have a jury determine your guilt
19 or innocence and that if I accept your plea that I
20 will sentence you?

21 DEFENDANT: Yes, ma'am.

22 THE COURT: Now, understanding the
23 nature of these offenses, the maximum possible
24 penalty and consequences and Constitutional rights,
25 do you still wish to continue with this plea?

1 DEFENDANT: Yes, ma'am.

2 THE COURT: I am going to ask that you

3 listen very carefully to what Mr. Bailey is going

4 to tell me, because he is going to give to me a

5 recitation of the facts from the perspective of the

6 State. In other words, those facts that the State

7 stands ready to present at trial for the purpose of

8 proving your guilt. When he has finished doing that,

9 I am going to ask you is that what happened, is that

10 what you did? I want you to be prepared to tell me if

11 you differ from what Solicitor Bailey is going to tell

12 me. All right?

13 DEFENDANT: Yes, ma'am.

14 THE COURT: Solicitor?

15 MR. BAILEY: Your Honor, these offenses

16 occurred on July 14th, 2001. The victim was George

17 Moore. He was an elderly man in poor health. He

18 lived in a camper trailer on some property that was

19 within sight of the Bailey's house, which is located

20 in Dorchester community, Dorchester County.

21 Someone entered the camper the evening of

22 July 14th, murdered Mr. Moore. The autopsy showed

23 three stab wounds to his back and also blunt trauma to

24 the head with abraded edges on the trauma to the head.

25 There was some foreign material around the head wound

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1 that was removed at the autopsy.

2 Mr. Moore's truck was seen parked at
3 Carter's Fast Stop on Highway 78 the next day. It was
4 still there the following day. Mr. Carter contacted
5 the sheriff's office and deputies came out and ran the
6 tag back to the owner, Mr. Moore. Deputy Kicklighter
7 went out to Mr. Moore's house to investigate what had
8 happened to him and went into the camper, observed the
9 body there.

10 Investigators also found some bloody foot-
11 prints on some newspaper inside of the camper.

12 In the back of the pickup truck, there was
13 an enamel-coated metal teapot that was recovered. The
14 trace department of SLED subsequently matched up the
15 tea kettle with the debris from the victim's head, the
16 enamel covering the teapot.

17 Also, for reasons that I will get into
18 later, it is significant that when the truck was first
19 observed that the cargo light in the back of the truck
20 was on.

21 Jeffrey and Randy Bates were at some point
22 later on developed as suspects and were arrested.
23 After some initial denials of knowledge, Randy Bates
24 gave a statement to law enforcement that Jeffrey Bates
25 planned on robbing their neighbor, Mr. Moore, prior to

1 doing so. Randy stated that he walked with Jeffrey to
2 the Bates (sic) house, Jeffrey went inside while Randy
3 waited outside as sort of a lookout, I guess; he saw a
4 police car come by, and he then walked back to the
5 Bates' house. There's a toolshed, work shed of some
6 type out there.

7 A short while later, Jeffrey Bates returned
8 to the Bates' house. He had a bayonet with him. He
9 told Randy Bates that he'd had to kill Mr. Moore
10 because he didn't want to leave a witness.

11 After that, Randy Bates and Jeffrey Bates
12 got in the victim's truck, drove to a trailer in
13 Berkeley County that's known as a crack house. There
14 were two individuals there, a guy named John Salisbury
15 and Todd Curry. We interviewed these two individuals
16 and both of them stated that the Bates brothers
17 arrived that night, the 14th, that they had a large
18 quantity of money with them. That several times
19 during the night they would leave, buy drugs and come
20 back and do the drugs. They'd run out, go out and buy
21 more drugs. They both gave statements that Jeffrey
22 Bates was barefooted when they arrived and looked for
23 a pair of shoes but couldn't find some to fit him.

24 At some point in the early morning, Todd
25 Curry followed Jeffrey Bates -- in Curry's truck,

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1 followed the truck that Jeffrey Bates was in to
2 Carter's Fast Stop and watched them park the truck
3 there. Jeffrey Bates had told him that the truck
4 belonged to a friend, that he had borrowed the truck.
5 Todd Curry recalled that as he dropped Jeffrey Bates
6 off at Carter's to drop the truck off where allegedly
7 Bates' friend was to pick the truck up, he observed
8 the dome light on in the truck, told Jeffrey Bates
9 about the dome light. He made some effort to cut it
10 off but was unable to. So they left with the dome
11 light still on.

12 Randy Bates told law enforcement that
13 Jeffrey's boots were thrown out of the truck on the
14 way from the crime scene to the crack house in
15 Berkeley County and that the knife, which turned out
16 to be a bayonet, was also thrown out. There was a
17 search conducted and they did recover boots and the
18 knife. The imprint on the paper inside of the
19 trailer, the bloody footprints, matched one of the
20 boots.

21 They also did barefoot impressions of the
22 interior of the boots. They have a protocol at SLED
23 to do that now, they've recently developed. They
24 excluded Randy Bates as being the person that wore
25 those boots, could not exclude Jeffrey Bates. They

1 can't say that it is or that it isn't, but they can
2 say that it is not Randy that was wearing the boots.
3 So we think that places Jeffrey inside of the house,
4 inside of the camper where this thing occurred.

5 As I said, the knife and the boots were
6 recovered where Randy Bates said that they would be,
7 which was on Highway 78 near the Four Hole bridge.
8 The bayonet was sent to the pathologist to compare
9 that with the photographs of the knife wounds and he
10 says that's consistent with the wounds on the victim's
11 back.

12 Randy stated that some money was taken from
13 the victim, as well as his truck, which is the basis
14 of the armed-robbery charge. The victim's wallet,
15 without any money, was found by Berkeley County
16 deputies at the driveway leading back to the crack
17 house where they went to do these drugs.

18 Your Honor, that's basically what the
19 State's case would be. It would be based primarily on
20 Randy Bates' testimony together with Todd Curry's and
21 John Salisbury who was with them afterwards.

22 THE COURT: Thank you. Is that what you
23 did, Mr. Bates?

24 DEFENDANT: Yes, ma'am.

25 THE COURT: Now, I understand that there

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1 have been plea negotiations. I am aware of that.

2 The next question that I am going to ask you is, I am
3 going to ask you if anyone has promised you anything
4 or held out any hope of a reward to get you to plead
5 guilty? I know that there have been plea negotiations
6 and I want you to know that I know that.

7 DEFENDANT: Yes, ma'am.

8 THE COURT: But excluding those
9 negotiations between your lawyer and the Solicitor,
10 has anyone promised you anything or held out any hope
11 of a reward to get you to plead guilty?

12 DEFENDANT: No, ma'am.

13 THE COURT: I need to ask this question.
14 You told me that you were on the Melaril, within the
15 last seventy-two hours, have you had any other drugs,
16 alcohol or prescription medication?

17 DEFENDANT: No, ma'am, Your Honor, I
18 haven't.

19 THE COURT: That's what I understood that
20 to mean but I wanted the record to be clear about
21 that. Now, Mr. Bates, has anyone tried to pressure
22 you to get you to plead guilty?

23 DEFENDANT: No, ma'am.

24 THE COURT: Has anyone tried to force,
25 threaten or intimidate you to cause you to plead

1 guilty?

2 DEFENDANT: No, ma'am.

3 THE COURT: Have you had enough time to
4 make up your mind if you want to plead guilty?

5 DEFENDANT: Yes, ma'am.

6 THE COURT: All right, sir. Are you
7 pleading here today of your own free will and accord?

8 DEFENDANT: Yes, Your Honor, I am.

9 THE COURT: Because you are in fact
10 guilty?

11 DEFENDANT: Yes, ma'am.

12 THE COURT: Do you believe that the
13 State could produce sufficient evidence to convict
14 and establish your guilt beyond a reasonable doubt,
15 and that if you were to stand trial that your
16 conviction would be probable?

17 DEFENDANT: Yes, ma'am.

18 THE COURT: Are you satisfied with the
19 services of your attorney, Mr. Dukes?

20 DEFENDANT: Yes, I am.

21 THE COURT: Have you and Mr. Dukes
22 discussed this matter for as often and for as long as
23 you feel necessary for him to properly represent you?

24 DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you need any more time to

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1 talk to him?

2 DEFENDANT: No, ma'am.

3 THE COURT: Have you understood your
4 talks with him?

5 DEFENDANT: Yes, ma'am.

6 THE COURT: Has Mr. Dukes done everything
7 for you in this case that you feel that he should have
8 done to properly represent you?

9 DEFENDANT: Yes, ma'am.

10 THE COURT: Has he done anything in your
11 case, in his representation of you, that you feel that
12 he should not have done?

13 DEFENDANT: No, ma'am.

14 THE COURT: Are you completely satisfied
15 with his services?

16 DEFENDANT: Yes, ma'am, I am.

17 THE COURT: Now, do you have any
18 complaint that you want to tell me about your lawyer,
19 the Solicitor, any of the police officers involved in
20 your arrest or any of the employees of the detention
21 center where you are or have been?

22 DEFENDANT: No, ma'am.

23 THE COURT: Have you understood my
24 questions?

25 DEFENDANT: Yes, ma'am.

1 THE COURT: Is there anything that you
2 would like to ask me about what we've just been over?

3 DEFENDANT: No, ma'am.

4 THE COURT: Do you have a right to appeal
5 the guilty plea and sentence of this Court and that
6 you or your lawyer must do so within ten days?

7 DEFENDANT: Yes, ma'am.

8 THE COURT: Now, has anyone suggested to
9 you how to answer my questions?

10 DEFENDANT: No, ma'am, they haven't.

11 THE COURT: Have your answers been your
12 very own answers?

13 DEFENDANT: Yes, ma'am.

14 THE COURT: Finally, with respect to each
15 and every answer that you have given me, have you been
16 absolutely candid and truthful with me?

17 DEFENDANT: Yes, ma'am, I have.

18 THE COURT: I find that there is a
19 substantial factual basis for this plea and I find
20 that Mr. Bates' decision to plead guilty is freely,
21 voluntarily, knowingly and intelligently made. He
22 has had the advice of counsel of Mr. Dukes, with whom
23 he says that he is satisfied. I will accept the plea.
24 Now, are you still doing okay?

25 DEFENDANT: Yes, sir.

State of South Carolina v. Jeffrey Bates
Case No. 02-GS-18-0195
Hearing of July 25, 2003
before The Honorable Diane S. Goodstein

25

1 THE COURT: Still feeling all right?
2 DEFENDANT: I'm a little dizzy.
3 THE COURT: You feeling a little bit
4 dizzy?
5 DEFENDANT: Yes, ma'am.
6 THE COURT: Do you want to sit down?
7 DEFENDANT: Yes.
8 THE COURT: Okay, here comes a chair
9 right behind you. Now, is the fact that you are
10 feeling a little bit dizzy in any way interfering
11 with your ability to know what you are doing here
12 today?
13 DEFENDANT: No, ma'am. Thank you.
14 THE COURT: I'm sorry, I didn't hear you.
15 The fact you're feeling a little bit dizzy, is that in
16 any way interfering with what you are doing here
17 today?
18 DEFENDANT: No, ma'am.
19 THE COURT: Okay. Very well. All right,
20 let me hear about his record, Solicitor, and if any of
21 the victim's family wants to speak, I ---
22 MR. BAILEY: Your Honor, the victim's two
23 children are here. I've told them that they have a
24 right to address the Court if they so wish. They told
25 me that they did not wish to address the Court.

1 THE COURT: Very well.

2 MR. BAILEY: Your Honor, Mr. Bates' record
3 starts in 1982 with a disorderly conduct conviction in
4 Berkeley County, a shoplifting conviction in
5 Summerville that same year.

6 In 1990, a disorderly conduct conviction.

7 In 1991, a General Sessions malicious injury
8 to real property conviction where he had a three-year
9 suspended sentence, and in December of 1991 a simple
10 assault conviction and also a criminal domestic
11 violence conviction that year.

12 1992, a subsequent criminal domestic
13 violence conviction.

14 1995, CDV third and there was also an arrest
15 at that time for ill treatment of children. I am not
16 certain which one that he pled to but he got a ten-
17 year suspended sentence.

18 2000, an arrest for possession of drug para-
19 phernalia, loitering and prowling. No disposition in
20 the records.

21 THE COURT: All right. Yes, sir, Mr.
22 Dukes?

23 MR. DUKES: Your Honor, it is amazing
24 that he's here pleading guilty to these serious
25 charges this morning because what you've seen is what

State of South Carolina v. Jeffrey Bates
Case No. 02-GS-18-0195
Hearing of July 25, 2003
before The Honorable Diane S. Goodstein

27

1 I've seen from the start since I've been dealing with
2 him. He's polite and he's quite spoken and he's been
3 honest with me, I think, the whole time. I truly
4 believe that he is remorseful. He's told me from the
5 start that he's sorry what happened and that he would
6 take responsibility for his deeds and his actions.
7 That's what he is doing here this morning.

8 I really believe that he is sorry that
9 something happened that night when it got out of hand.
10 There is no question that within the definition of the
11 charges that he's pled to that the State could prove
12 him guilty. And from what he has told me, you know,
13 he concurs with it.

14 He's always been wanting to take responsi-
15 bility for his actions. We just had to get together
16 on what we considered the proper penalty.

17 It's amazing to me. I believe that if he
18 got a grip on his alcoholism, which I really believe
19 is the cause of his problems. The Solicitor read you
20 his past record. Taking the drug that he is taking
21 now, if he'd had some function or some support in the
22 community that he could have been a very useful
23 citizen.

24 They tell me -- he's been in Walterboro most
25 of the time and the jailers over there say that they

1 don't even know that he's there, that he is just a
2 model prisoner. He's been a gentleman in all respects
3 in my talking with him and my representation of him.
4 I don't know if he would like to tell the Court
5 anything this morning but -- he says that he doesn't
6 want to speak with -- he's been a pleasure to
7 represent, Your Honor. I submit him to the mercy of
8 this Court. Thank you very much.

9 THE COURT: My understanding is that this
10 is a negotiated plea, is that right?

11 MR. BAILEY: That's correct, Your Honor.

12 MR. DUKES: Yes, ma'am.

13 THE COURT: And as I understand it, the
14 sentences are to run concurrent?

15 MR. BAILEY: Yes, ma'am.

16 THE COURT: I will go along with the
17 plea.

18 MR. BAILEY: Your Honor, for the record,
19 that negotiation was thirty-five (35) years for the
20 murder charge with concurrent time for the other two
21 charges.

22 THE COURT: Yes, sir.

23 MR. DUKES: That's correct.

24 THE COURT: Is that what you understand
25 as well, Mr. Bates?

State of South Carolina v. Jeffrey Bates
Case No. 02-GS-18-0195
Hearing of July 25, 2003
before The Honorable Diane S. Goodstein

29

1 DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. Does anyone know
3 of any reason why I should not at this time pass
4 sentence upon Mr. Bates? (No response).

5 Very well. With respect to 02-GS-18-0195,
6 the indictment for murder, I am going to commit you,
7 Mr. Bates, to the State Department of Corrections for
8 a period of thirty-five years (35 years).

9 With regards to Indictment 02-GS-18-0251,
10 which is an indictment for armed robbery, I am going
11 to commit you, Mr. Bates, to the State Department of
12 Corrections for a term of thirty years (30 years).

13 And with respect to 02-GS-18-0252, which is
14 an indictment for burglary, first degree, Mr. Bates, I
15 am going to commit you to the State Department of
16 Corrections for a period of thirty-five years (35
17 years).

18 All three of these sentences will run
19 concurrent.

20 MR. BAILEY: Thank you, Your Honor.

21 DEFENDANT: Thank you, Your Honor.

22 MR. DUKES: Thank you, Your Honor.

23 --- HEARING CONCLUDED ---

24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON)

3

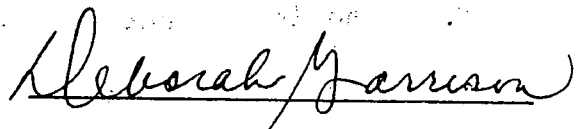
4 CERTIFICATE OF COURT REPORTER

5 I, the undersigned, Deborah Garrison, Circuit
6 Court Reporter for the 9th Judicial Circuit of the
7 State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate and complete transcript
9 of the Hearing before the Honorable Diane S. Goodstein
10 on July 25, 2003;

11 I do further certify that I am neither kin nor
12 counsel to any of the parties and have no interest in
13 the outcome of this action.

14

15


Deborah A. Garrison

16

17

18

19

20

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22

23

24

Charleston, South Carolina

25

March 5, 2004

STATE OF SOUTH CAROLINA)

County of DORCHESTER)

IN THE COURT OF COMMON PLEAS

JEFFREY BATES # 235301)

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

v.)

State of South Carolina)

2004-CP-18-00008

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 MCCORMICK CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence DORCHESTER COUNTY
COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) RANDY BATES (BROTHER)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) MAY 10, 2003 MURDER ; 35 YEARS ; INDICTMENT NUMBERS NOT KNOWN

- (b) MAY 10, 2003 ARMID REBERT; 30 YEARS; INDICTMENT NUMBERS NOT KNOWN
- (c) MAY 10, 2003 GRAND LARCENY AUTO; 30 YEARS; INDICTMENT NUMBERS NOT KNOWN

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

- (a) MAY 10, 2003
- (b) MAY 10, 2003
- (c) MAY 10, 2003

6. Check whether a finding of guilty was made:

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

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

No

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

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

- i. NA
- ii. _____
- iii. _____

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

- i. NA
- ii. _____
- iii. _____

(c) the date of each such result:

- i. NA
- ii. _____
- iii. _____

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

- i. NA
- ii. _____
- iii. _____

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

- (a) I WAS NOT INFORMED THAT I HAD A RIGHT TO AN APPEAL

- (b) _____
- (c) _____

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) AN ILLEGAL SENTENCE HAS BEEN IMPOSED UPON ME.
- (c) I WAS SENTENCED ON THE SAME DAY I PLEAD GUILTY TO MURDER

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

- (a) MY ATTORNEY BROKE THE RULE OF ATTORNEY-CLIENT PRIVILEGE
- (b) I WAS SENTENCED TO 35 YEARS FOR MURDER AND THE MAXIMUM PENALTY
- (c) I WAS SENTENCED ON THE SAME DAY I PLEAD GUILTY TO MURDER AND THE

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

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

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

(a) the specific nature thereof:

- i. NA
- ii. _____
- iii. _____
- iv. _____

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

- i. NA
- ii. _____
- iii. _____

11.

(a)(2) MY ATTORNEY ONLY VISITED ME TWICE BEFORE MY PLEA HEARING.

(a)(3) MY ATTORNEY ALLOWED ME TO PLEAD GUILTY WHILE I WAS HEAVILY MEDICATED, AND NOT ABLE TO TRULY UNDERSTAND THE PROCEEDINGS, OR THE CONSEQUENCES OF MY ACTIONS.

(a)(4) MY ATTORNEY NEVER INFORMED ME THAT I HAD A RIGHT TO A DIRECT APPEAL

11.

(b) PRESCRIBED BY STATUTE FOR MURDER WITH NO AGGRAVATING CIRCUMSTANCES IS 30 YEARS.

(b)(2) I WAS SENTENCED TO 30 YEARS FOR GRAND LARCENY (AUTO) AND THE MAXIMUM PENALTY PRESCRIBED FOR GRAND LARCENY IS 10 YEARS.

11.

(c) JUDGE SHOULD HAVE WAITED TWENTY-FOUR HOURS FOR MY SENTENCING PROCEEDINGS.

iv. _____

(c) the disposition thereof:

i. NA

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. NA

ii. _____

iii. _____

iv. _____

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

i. NA

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. NA

ii. _____

iii. _____

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

i. NA

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) I DID NOT KNOW I HAD A RIGHT TO APPEAL MY CONVICTION AND SENTENCE.

(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? NA

(c) your sentencing? YES

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

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

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

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

i. GENE DUKES, P.O. Box 622, ST. GEORGE, S.C. 29477

ii. _____

iii. _____

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

i. ARRAIGNMENT

ii. PLEA

iii. SENTENCING

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

REVERSAL OF CONVICTION AND SENTENCE

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of DARCHESTER)

VERIFICATION

I, JEFFREY BATES, 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.

Jeffrey W Bates

SWORN to and subscribed before me this 31
day of December, 2003.

Bob Anderson (L.S.)
Notary Public

My Commission Expires: OCT. 15, 2013

SUPPLEMENT TO APPLICATION FOR POST CONVICTION RELIEF

APPLICANT, JEFFREY BATES # 235301, THROUGH THIS SUPPLEMENT HEREBY
RESERVES THE RIGHT TO AMMEND HIS APPLICATION FOR POST CONVICTION
RELIEF PURSUANT TO S.C. CODE OF LAWS, § 17-27-10 ET. SEQ. AND THE
S.C. RULES OF CIVIL PROCEDURE, RULE 71.1. POST CONVICTION RELIEF ACTIONS

Jeffrey Bates
JEFFREY BATES # 235301

SWORN OR AFFIRMED TO AND SUBSCRIBED BEFORE ME THIS

31 DAY OF December, 2003

Bob Anderson

MY COMMISSION EXPIRES: OCT. 15, 2013.

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

I, JEFFREY BATES, 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.

Jeffrey W Bates
Applicant

SWORN or affirmed to and subscribed before me this
31 day of December, 2009.

Bob Anderson
Notary Public

My Commission Expires: OCT-15, 2013.

RECEIVED
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COURT CLERK

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2004-CP-18-008
COUNTY OF DORCHESTER	)	
Jeffery Bates,	)	
S.C.D.C. No. 235301,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief application filed January 5, 2004, the Respondent

would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Dorchester County Clerk of Court's orders of commitment. The Dorchester County Grand Jury indicted the Applicant at the February 2002 term of General Sessions for Murder (02-GS-18-0195), Armed Robbery (02-GS-18-0251), and Burglary in the First Degree (02-GS-18-0252). Gene W. Dukes, Esquire represented the Applicant. On July 25, 2003, the Applicant pled guilty as indicted. The Honorable Diane S. Goodstien sentenced the Applicant to two thirty-five (35) year terms for murder and burglary and thirty (30) years for armed robbery. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

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

II.

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

1. Involuntary guilty plea due to the ineffective assistance of counsel;
2. Illegal sentence;
3. "Sentenced on the same day that I pled guilty."

III.

The Respondent respectfully submits that the Applicant's allegation that his guilty plea was involuntary due to the ineffective assistance of trial counsel is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United

States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 416, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

V.

WHEREFORE, the Respondent requests counsel be appointed to represent the Applicant and an evidentiary hearing be convened solely for the purpose of determining whether the Applicant was rendered the effective assistance of counsel.

Respectfully submitted,

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

PAULA S. MAGARGLE
Assistant Attorney General

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

By: Paula S. Magargle
Attorneys for Respondent

Columbia, South Carolina

10/11, 2004



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

Case No. 2004-CP-18-008

JEFFERY BATES, S.C.D.C. NO. 235301,

Applicant,

v.

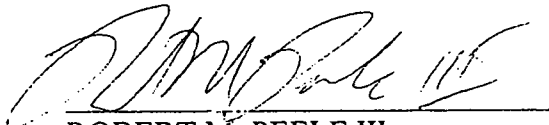
STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Return of the Respondent been served upon opposing counsel, Christopher D. Lizzi, by mailing one (1) copy in an envelope properly addressed with postage prepaid this 30th day of November, 2004, to the below address:

Christopher D. Lizzi, Esquire
Lizzi Law Firm, PC
2170 Ashley Phosphate Road, Suite 402
North Charleston, South Carolina 29406


ROBERT M. PEELE III
LEGAL ASSISTANT

STATE OF SOUTH CAROLINA ; IN THE COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

PLAINTIFFS,

VS.

JEFFREY WAYNE BATES,

DEFENDANTS.

04-CP-18-0008

November 7, 2005
DORCHESTER COUNTY, SOUTH CAROLINA

B E F O R E:

THE HONORABLE B. HICKS HARWELL, JUDGE

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

Paula Magargle, ESQUIRE
ATTORNEYS FOR THE STATE

Christopher Lizzie, ESQUIRE
ATTORNEY FOR THE DEFENDANT

HILDA M. JORDAN, CVR
CIRCUIT COURT REPORTER

State v. Jeffrey Bates 11/7/05

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THERE WERE NO EXHIBITS MARKED TO THIS PROCEEDING.

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State v. Jeffrey Bates 11/7/05

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1 MS. MACARGLE: Your Honor, I think Bates is ready.

2 THE COURT: All right. Are you ready to proceed,
3 counsel?

4 MR. LIZZIE: Yes, Your Honor.

5 THE COURT: The case of Jeffrey Bates is called.

6 MR. LIZZIE: Your Honor, at this time I make a
7 motion to withdraw the PCR.

8 THE COURT: Well, let me speak with him.

9 Mr. Bates, if I grant your motion to withdraw, the
10 proper motion is to grant a dismissal. The dismissal can be
11 granted with prejudice. Now, it used to be when I first
12 went on the bench and prior to that, for some 45 years,
13 there would be newly discovered evidence, a number of
14 different things that have come up, and you get a second --
15 I've even had some second, third, fourth PCRs, and the
16 Supreme Court said no, -- not the Supreme Court, but the
17 Supreme Court addressed that issue and sent it to the
18 General Assembly with a ruling and the General Assembly put
19 it in the law and they said you -- a person has got to have
20 final resolution and the state's got to have final
21 resolution. You get one bite at the apple. One time only,
22 that's it. And if any applicant moves to dismiss it it's
23 with prejudice, whatever the circumstance is you don't get
24 another one. Might get one on an appeal if you didn't have
25 a direct appeal. But I'm not going to address that

State v. Jeffrey Bates, 1/7/05

1 question, but if you look at your record, but there's only
2 one Post Conviction Relief hearing and that is today.

3 Continuance to look into something, yes. One time only for
4 a PCR. If I grant you your motion you will never have
5 another opportunity for Post Conviction Relief because the
6 statute says you can't do it, you can't have it. It's what
7 you call a successive application, a second opportunity.

8 There is no second opportunity if I grant this motion. Do
9 you understand that?

10 MR. BATES: Yes, sir.

11 THE COURT: And how old are you -- I see you have
12 an eighth grade education.

13 MR. BATES: Yes, sir.

14 THE COURT: Are you satisfied with the services
15 your lawyer has given you; got any complaints against him?

16 MR. BATES: Yes, sir.

17 THE COURT: Has he done everything for you you
18 wanted him to do, expected him to do?

19 MR. BATES: Yes, sir.

20 THE COURT: Been no duress or coercion or twisting
21 of your arm, this is free and voluntary?

22 MR. BATES: Yes, sir.

23 THE COURT: You don't have any history of any
24 emotional problems do you?

25 MR. BATES: No, sir.

State v. Jeffrey Bates 11/7/05

5

1 THE COURT: Taking any medication to day that would
2 impair your ability to understand what you're doing?

3 MR. BATES: No, sir.

4 THE COURT: You do understand what you're doing?

5 MR. BATES: Yes, sir.

6 THE COURT: Do you have any complaints with your
7 lawyer, are you satisfied with his services?

8 MR. BATES: Yes, sir.

9 THE COURT: I'm going to grant you your motion. I
10 find it been voluntary and that you understand the
11 consequences of it. You will not have an opportunity to
12 file another PCR. I've explained that to you in detail, and
13 you tell me that you have met and had the opportunity to
14 meet with your lawyer and you spoke with him briefly here
15 this morning. Had you met with him prior to meeting here
16 this morning with him?

17 MR. BATES: Yes, sir.

18 MR. LIZZIE: Your Honor, he takes a medication. He
19 has been treated before for mental illness and he had an
20 evaluation at the time at William S. Hall. While on that
21 medication he was found competent. The medication actually
22 makes him more actually able to understand things more. We
23 can put in the record the medication?

24 MR. BATES: Thorazine.

25 THE COURT: How much time has he already served on

1 this sentence of 35 years?

2 MR. BATES: Two and a-half years.

3 THE COURT: Two and a-half. And how old are you
4 now?

5 MR. BATES: Forty-two.

6 THE COURT: Forty-two?

7 MR. BATES: Yes, sir. There one thing I'd like to
8 bring up, too, Your Honor, on the record. When I signed
9 this plea that was 35 years. Now, when I got to the
10 Department of Corrections they're making me do every day of
11 it. You said so yourself that I was doing 85 percent of
12 that time. I'm not. I don't get out until the year 2037.
13 I'll be 74 years old.

14 MR. LIZZIE: Your Honor, I advised him that there's
15 a procedure through the department of corrections where he
16 can file as to the application of the sentence not by the
17 Department of Corrections and I actually told him that I
18 would assist him in filing the paper work.

19 THE COURT: Under Shabaz, you've explained that to
20 him?

21 MR. LIZZIE: Yes.

22 THE COURT: And that's an administrative law judge?

23 MR. LIZZIE: Yes.

24 THE COURT: Only thing I can do is determine
25 whether or not he had effective or ineffective assistance of

State v. Jeffrey Bates 11/7/05

7

1 counsel and if he did just grant him another bite at the
2 apple. And it would be a trial, probably, rather than a
3 negotiated plea. Well, I don't know whether he would or
4 not. I can't speak for the solicitor or what attitude he
5 might take.

6 All right. I'm going to grant his motion. And I feel
7 that's he's competent and that he understands the colloquy
8 that I've had with him. He impresses me as a person with
9 the ability to understand and knows what he's doing. And it
10 is free and voluntary and he's had competent counsel who is
11 experienced, I know personally, in criminal defense as well
12 as PCRs. And they pronounce that Lizzie don't they.

13 MR. LIZZIE: Lizzie.

14 THE COURT: Well, it's good to see you again, Mr.
15 Lizzie and thank you for your effort on his behalf.

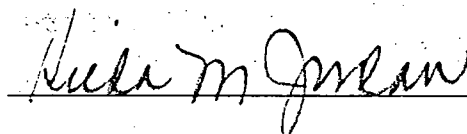
16 MR. LIZZIE: Thank Your Honor.

17 (This proceeding was concluded.)
18
19
20
21
22
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24
25

CERTIFICATE

I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT
REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF
THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF
COMMON PLEAS FOR DORCHESTER COUNTY, SOUTH CAROLINA, ON THE
7TH DAY OF NOVEMBER, 2009.

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


HILDA M. JORDAN, CVR

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 7, 2010

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTERJUDGMENT IN A CIVIL CASE
2004CP1800008JEFFREY BATES, #235301STATE OF S.C.

CERTIFIED COPY
 2005 NOV 28 PM 3:37
 Cheryl Graham
 CLERK OF COURT
 DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

- ☐ JURY VERDICT. THIS ACTION CAME BEFORE THE COURT FOR A TRIAL BY JURY. THE ISSUES HAVE BEEN TRIED AND A VERDICT RENDERED.
- ☐ DECISION BY THE COURT. THIS ACTION CAME TO TRIAL OR HEARING BEFORE THE COURT. THE ISSUES HAVE BEEN TRIED OR HEARD AND A DECISION RENDERED.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ RULE 12b, SCRPC; ☐ RULE 41a SCRPC (VOL NONSUIT); ☐ RULE 43k, SCRPC (SETTLED) ☐ OTHER
- ☐ ACTION STRICKEN (CHECK REASON): ☐ RULE 40(j) SCRPC; ☐ BANKRUPTCY ☐ BINDING ARBITRATION, SUBJECT TO RIGHT TO RESTORE TO CONFIRM VACATE OR MODIFY ARBITRATION AWARD; ☐ OTHER

IT IS ORDERED AND ADJUDGED: ☒ See Attached order; ☐ Statement of Judgment by the court.

DATED AT ST. GEORGE, S.C. THIS 28TH DAY OF NOVEMBER, 2005.

Cheryl Graham
 CHERYL GRAHAM
 CLERK OF COURT

THIS JUDGMENT WAS ENTERED ON THE 28th DAY OF Nov., 2005
 AND A COPY WAS MAILED FIRST CLASS THIS 28th DAY OF Nov.
 2005 TO ATTORNEY OF RECORD OR TO PARTIES WHEN APPEARING PRO SE
 AS FOLLOWS:
 CHRISTOPHER LIZZI
 PAULA MAGARGLE

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

04-CP-18-008

Jeffrey Bates,
S.C.D.C. # 235301,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CERTIFIED COPY
2005 NOV 28 PM 3:37
DORCHESTER COUNTY
Clerk of Court

This matter comes before the Court by way of an application for post-conviction relief.

A hearing was convened at the Dorchester County Courthouse on November 7, 2005, at which time the Applicant was present in court and represented by Christopher Lizzi, Esquire. The Respondent was represented by Paula S. Magargle of the South Carolina Attorney General's Office. At the hearing, the Applicant and his attorney informed this Court that the Applicant wished to withdraw his application for post-conviction relief with prejudice.

The Applicant was sworn and questioned by the Court about his withdrawal request, to ensure that the withdrawal of the application was free and voluntary and that the Applicant had not been promised anything or threatened, coerced, or induced into withdrawing the application; and that the Applicant was fully satisfied with the services of his appointed attorney in this matter.

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

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also

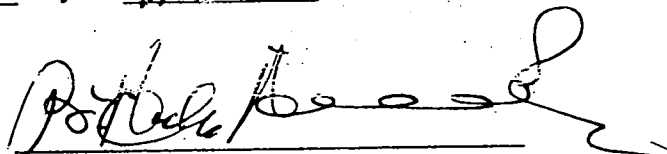
[Signature]
a. #1

directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 16th day of Mar, 2005.



B. Hicks Harwell, Jr.
Presiding Judge
First Judicial Circuit

Florence, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

JEFFREY BATES, 235301

☐ Plaintiff

v.

State Of S.C.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2004-CP-18-008

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Christopher D. Lizzi, Bar No.

Address:

2170 Ashley Phosphate Rd. Ste. 402

N. Charelston SC 29406

phone:

fax:

e-mail:

other:

Defendant's Attorney:

Pauls S. Magargle, Bar No.

Address:

P.O. Box 11549

Columbia, SC 29211

phone:

fax:

e-mail:

other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

November 17, 2005

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:☒ EXEMPT:(check reason) ☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:☐ CONTESTED - AMOUNT DUE:

FORM 5

STATE OF SOUTH CAROLINA)

County of DORCHESTER)

#235301

JEFFREY WAYNE BATES)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2008-CP-18-623

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 MCCORMICK CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence DORCHESTER
COUNTY COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) RANDY BATES (BROTHER)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2002 G-518-0195 (MURDER)

FILED-RECORDED
2008 APR 14 PM 4:16
CLERK OF COURT
DORCHESTER

- (b) 2002 GS18-0251 (ARMED ROBBERY)
 (c) 2002 GS18-0252 (BURGLARY 1ST DEGREE)

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

- (a) MAY 10, 2003 — 35 YRS
 (b) MAY 10, 2003 — 30 YRS
 (c) MAY 10, 2003 — 30 YRS

6. Check whether a finding of guilty was made:

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

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

NO

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

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

- i. N/A
 ii. _____
 iii. _____

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

- i. N/A
 ii. _____
 iii. _____

(c) the date of each such result:

- i. N/A
 ii. _____
 iii. _____

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

- i. N/A
 ii. _____
 iii. _____

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

- (a) I WAS NOT INFORMED THAT I HAD A RIGHT TO AN APPEAL

- (b) _____
 (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: THE APPLICANT DID NOT KNOWINGLY AND VOLUNTARILY WITHDRAW HIS PCR APPLICATION.
 (a) RILY WITHDRAW HIS PCR APPLICATION.
 (b) COUNSEL FAILED TO FILE A NOTICE OF INTENT TO APPEAL.
 (c) THE COURT LACKED SUBJECT MATTER JURISDICTION OF THE MURDER CONVICTION.

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

- (a) SEE ATTACHED MEMORANDUM
 (b) " " " → DFE
 (c) " " " ALSO

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? ORIGINAL APPLICATION

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

- (a) the specific nature thereof:
 i. ORIGINAL PCR FILED (NOTARIZED DEC.
 ii. 31ST, 2003)
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. DORCHESTER COUNTY COURT OF COM-
 ii. COM PLEAS
 iii. _____

iv.

(c) the disposition thereof:

i.

DISMISSED BY ATTORNEY

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?

YES

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

(a) which grounds have been presented:

i.

SENTENCED SAME DAY AS CONVICTED

ii.

INEFFECTIVE ASSISTANCE OF COUNSEL

iii.

NO OPPORTUNITY TO APPEAL

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

i.

PCR WAS DISMISSED

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) DENIED TWO ATTORNEYS
 (b) UNKNOWNLY & INVOLUNTARILY WITHDREW PCR
 (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? N/A
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

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

(a) the name and address of each attorney who represented you:
 i. A & C GENE DUKES, ATTORNEY AT LAW
100 RIDGE STREET
 ii. P.O. BOX 622
ST. GEORGE, SC 29477
 iii. CHRISTOPHER LIZZI - ADDRESS UNKNOWN
 (b) the proceedings at which each such attorney represented you:
 i. GENE DUKES (PLEA & SENTENCING)
 ii. CHRISTOPHER LIZZI (PCR DISMISSAL)
 iii. _____

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

REVERSAL OF CONVICTION(S) & SENTENCE(S)

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

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

Jeffery W Bates

SWORN to and subscribed before me this 28
day of February, 2008.

Jennifer C Franklin (L.S.)
Notary Public

My Commission Expires: 01-31-2010

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

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

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

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, _____.

Notary Public

My Commission Expires: _____

10.(c) THE MURDER CONVICTION.

(d) THE APPLICANT WAS NOT APPOINTED TWO ATTORNEYS
PURSUANT TO SOUTH CAROLINA LAW.

(e) THE APPLICANT DID NOT WAIVE THE 24 HOUR
GRACE PERIOD MANDATED BY LAW.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT⁶⁵
OF
COMMON PLEAS

JEFFERY BATES,
#235301 APPLICANT,

MEMORANDUM IN S
PORT OF APPLICATION
FOR POST-CONVICT
ION RELIEF.

STATE OF SOUTH CAROLINA,
RESPONDENT,

04-CP-18-008

COMES NOW THE UNDERSIGNED PRO SE, APPLICANT, JEFFERY BATES BEFORE THIS HONORABLE COURT OF DORCHESTER COUNTY COURT OF COMMON PLEAS WITH A APPLICATION FOR POST-CONVICTIO. RELIEF AND WILL RESPECTFULLY DEMONSTRATE THE FOLLOWING:

THAT PURSUANT TO THE APPLICATION FOR POST-CONVICTIO. RELIEF, PAGE (3), QUESTION 10. (A), (B), & (C), THE FOLLOWING LANGUAGE WILL BE BROUGHT FORTH: (AMENDED TO ADD (D & E))

10. (A) THE APPLICANT DID NOT KNOWINGLY AND VOLUNTARILY WITHDRAW HIS POST-CONVICTIO. RELIEF APPLICATION.

ON NOVEMBER 7, 2005, A PCR HEARING WAS CONVENED AT THE DORCHESTER COUNTY COURT HOUSE, AT WHICH TIME HE WAS BEING REPRESENTED

00

ED BY ATTORNEY CHRISTOPHER LIZZI, ES-
QUIRE. AT THE HEARING, THE APPLICANT WAS INFOR-
MED BY SUCH COUNSEL TO WITHDRAW HIS PCR APPLI-
CATION FOR REASONS UNKNOWN BY APPLICANT AND
DUE TO THE APPLICANT'S MENTAL ILLNESS THAT HAD
HAMPERED THE APPLICANT'S JUDGMENT IN THE PRO-
CEEDINGS APPOINTED COUNSEL WENT ON RECORD AND
INFORMED THE ABOVE MENTIONED COURT THAT THE
APPLICANT DID WISH TO WITHDRAW HIS PCR APPLI-
CATION.

THE APPLICANT CONTENDS THAT HE DID NOT
KNOWINGLY AND VOLUNTARILY WITHDRAW HIS PCR
APPLICATION BECAUSE HE DID NOT HAVE COGNITION
OF WHAT HIS APPOINTED COUNSEL WAS LEADING HIM
INTO, BUT HAD APPLICANT REALIZED AT THE TIME
OF THE HEARING, HE WOULD HAVE INFORMED THE PC
COURT THAT HE DID WISH TO PROCEED WITH THE HE-
ARING AND DID NOT WANT TO WITHDRAW HIS PCR APPLI-
CATION, NEVERTHELESS, THE PCR COURT DID NOT MAKE
AN INQUIRY ON RECORD AS REQUIRED TO ASCERTAIN
WHETHER THE APPLICANT WAS KNOWINGLY AND VOL-
UNTARILY WANTING TO WITHDRAW HIS PCR APPLICATI-
IN BRANNON VS. STATE, 548 S.E. 2d 866 (S.
2001), WALLER, JUSTICE, GRANTED A WRIT OF HABEAS
CORPUS TO REVIEW THE DENIAL OF POST-CONVICTION
RELIEF (PCR) TO PETITIONER; JOHN BRANNON.

WALLER, JUSTICE, REMAND FOR AN EVIDENTIARY HEARING TO ASCERTAIN WHETHER BRANNON KNOWINGLY AND VOLUNTARILY WITHDREW HIS PCR APPLICATION...

HENCE, THE APPLICANT CONTENDS THAT THE PCR COURT DID NOT MAKE ANY INQUIRY TO ASCERTAIN THE VOLUNTARINESS OF THE WITHDRAWAL NOR WAS THE APPLICANT ADVISED THAT HIS WITHDRAWAL WOULD RESULT IN A DIRECT DISMISSAL WITH PREJUDICE, HERE, THERE IS NO EVIDENCE TO SUPPORT THE PCR COURT'S RULING THAT THE APPLICANT HAD WITHDREW HIS PCR APPLICATION KNOWINGLY AND VOLUNTARILY. AS IN BRANNON, CONTRARY TO THE LANGUAGE IN THE PCR COURT'S ORDER, THERE WAS NO INQUIRY CONDUCTED TO ASCERTAIN THE VOLUNTARINESS OF THE WITHDRAWAL, NOR WAS MR. BATES ADVISED THAT HIS WITHDRAWAL WOULD RESULT IN A DISMISSAL WITH PREJUDICE.

A DEFENDANT'S KNOWING AND VOLUNTARY WAIVER OF STATUTORY OR CONSTITUTIONAL RIGHTS MUST BE ESTABLISHED BY A COMPLETE RECORD, AND MAY BE ACCOMPLISHED BY COLLOQUY BETWEEN COURT AND DEFENDANT, BETWEEN COURT AND DEFENDANT'S COUNSEL, OR BOTH. RODDY VS. STATE, 339 S.C. 29, 52 S.E. 2d 418 (2000); STATE VS. RAY, 310 S.C. 431, 437, 4 S.E. 2d 171, 174 (1993); WHITEHEAD VS. STATE, 310 S.C.

532, 426 S.E.2d 315 (1992) (A PCR JUDGE MUST, IF A HEARING IS HELD, EITHER APPOINT COUNSEL FOR INDIGENT DEFENDANTS OR OBTAIN A KNOWING, VOLUNTARY WAIVER THEREOF); CARTER VS. STATE, 293 S.C. 528, 362 S.E.2d 20 (1987) (WHERE PCR APPLICANT IS REPRESENTED BY HIS TRIAL COUNSEL AT PCR, COURT MUST OBTAIN A WAIVER OF CLAIMS OF INEFFECTIVE ASSISTANCE ON THE RECORD,

10. (B) THE APPLICANTS PCR COUNSEL FAILED TO FILE A NOTICE OF INTENT TO APPEAL.

ON NOVEMBER 18, 2005, THE HONORABLE B. HICKS HARWELL JR., PRESIDING JUDGE OF THE FIRST JUDICIAL CIRCUIT SIGNED AN ORDER DISMISSING THE APPLICANTS POST-CONVICTION RELIEF APPLICATION, AT WHICH TIME, THE APPLICANT SUBSEQUENTLY RECEIVED A COPY FROM SAID APPOINTED COUNSEL, AT WHICH TIME, THE APPLICANT HAD INFORMED COUNSEL THAT HE WISHED TO APPEAL THE ORDER SIGNED BY THE HONORABLE B. HICKS HARWELL JR.

INASMUCH, THE APPLICANTS PCR COUNSEL FAILED TO FILE A TIMELY NOTICE OF INTENT TO APPEAL EVEN AFTER THE APPLICANT HAD INFORMED HIM THAT HE DID WISH TO APPEAL THE JUDGES ORDER.

UNDER WHITE VS. STATE, 263 S.C. 110, 208 S.E. 2d 35 (1974), A CRIMINAL DEFENSE ATTORNEY MUST MAKE CERTAIN THAT HIS CLIENT IS FULLY AWARE OF HIS RIGHT TO APPEAL AND, IN THE ABSENCE OF AN INTELLIGENT WAIVER BY THE CLIENT, COUNSEL MUST EITHER PURSUE AN APPEAL OR FILE A BRIEF UNDER ANDERS VS. CALIFORNIA, 386 U.S. 738, 87 S.Ct. 1396 (1967); SEE ALSO... IN RE ANONYMOUS MEMBER OF BAR 303 S.C. 306, 400 S.E. 2d 483 (1991). WHITE, CREATE AN AFFIRMATIVE DUTY WHICH PETITIONERS COUNSEL FAILED TO PERFORM. APPOINTED COUNSEL CHRISTOPHER LIZZI WAS INEFFECTIVE, AND APPLICANT DID NOT WAIVER HIS RIGHTS TO AN APPEAL...

10. (C) THE COURT OF GENERAL SESSIONS OF DORCHESTER COUNTY LACKED SUBJECT MATTER JURISDICTION OF THE MURDER CONVICTION,

IMPROPER INDICTMENT

THE APPLICANT STRONGLY CONTENDS THAT HIS CONVICTION FOR MURDER MUST BE VACATED BECAUSE THE INDICTMENT FAILED TO ALLEGE THE ESSENTIAL ELEMENTS OF MURDER AS REQUIRED BY S.C. CODE § 17-19-30 (1985). THE APPLICANT CON-

70

TENDS THAT IN ORDER TO PROPERLY CHARGE AN ACCUSED WITH THE CRIME OF MURDER, AN INDICTMENT MUST ALLEGE THE TIME & PLACE OF THE ASSAULT UPON THE DECEASED AND THE TIME & PLACE OF THE DEATH OF THE DECEASED.

THUS, THE APPLICANT CONTENDS THAT THE INDICTMENT DOES NOT SATISFY THE NOTICE REQUIREMENTS OF SUBJECT MATTER JURISDICTION SET FORTH IN THE SOUTH CAROLINA CONSTITUTION AND STATUTES.

THE CIRCUIT COURT DOES NOT ORDINARILY HAVE SUBJECT MATTER JURISDICTION TO CONVICT A DEFENDANT OF AN OFFENSE UNLESS (1) THERE HAS BEEN AN INDICTMENT WHICH SUFFICIENTLY STATES THE OFFENSE; (2) THERE HAS BEEN A WAIVER OF PRESENTMENT; OR (3) THE OFFENSE IS A LESSER INCLUDED OFFENSE OF THE CRIME CHARGED IN THE INDICTMENT. CARTER VS. STATE 329 S.C. 255, 495 S.E. 2d 773; STATE VS. LYNCH, 344 S.C. 635, 545 S.E. 2d 511 (2001); JOSEPH VS. STATE, 2002 WL 31296304 (S.C. 2002). LACK OF SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANY TIME, INCLUDING FOR THE FIRST TIME ON APPEAL OR PCR. STATE VS. FUNDERBUR 259 S.C. 256, 191 S.E. 2d 520 (1972)...

HENCE, AN INDICTMENT FOR MURDER IS

SUFFICIENT "IF THE OFFENSE IS STATED WITH SUFFICIENT CERTAINTY AND PARTICULARITY TO ENABLE THE COURT TO KNOW WHAT JUDGMENT TO PRONOUNCE, THE DEFENDANT TO KNOW WHAT HE IS CALLED UPON TO ANSWER, AND IF AN ACQUITTAL OR A CONVICTION THEREON MAY BE PLEADED AS A BAR TO ANY SUBSEQUENT PROSECUTION". STATE VS. OWENS, 293 S.C. 161, 165, 359 S.E. 2d 275, 277 (1987); JOSEPH, SUPRA,. SOUTH CAROLINA CODE SECTION 17-19-30 STATES:

"EVERY INDICTMENT FOR MURDER SHALL BE DEEMED AND ADJUDGED SUFFICIENT AND GOOD IN LAW WHICH, IN ADDITION TO SETTING FORTH THE TIME & PLACE, TOGETHER WITH A PLAIN STATEMENT, DIVESTED OF ALL USELESS PHRASEOLOGY, OF THE MANNER IN WHICH THE DEATH OF THE DECEASED WAS CAUSED, CHARGES THAT THE DEFENDANT DID FELONIOUSLY, WILLFULLY, AND OF HIS MALICE AFORETHOUGHT KILL AND MURDER THE DECEASED."

THIS STATUTE IS CONSISTENT WITH STATUTES ENACTED IN 1880 AND AMENDED IN 188. S.C. CODE ANN. § 17-19-30 (HISTORY). BASED ON

CASE LAW INTERPRETATION AS DISCUSSED HEREIN, IT APPEARS THIS STATUTE CAN BE BROKEN DOWN AND CONSTRUED AS FOLLOWS:

1. THE INDICTMENT MUST SET FORTH THE TIME & PLACE "OF MURDER". ALTHOUGH THE WORDS "OF MURDER" ARE NOT PART OF THE STATUTE, CASES HAVE APPARENTLY READ THESE TERMS INTO THE STATUTE;
2. THE INDICTMENT MUST INCLUDE A PLAIN STATEMENT OF THE MANNER IN WHICH THE DEATH OF THE DECEASED WAS CAUSED AND...
3. THE INDICTMENT MUST CHARGE THAT THE DEFENDANT, WITH MALICE AFORETHOUGHT MURDERED THE DECEASED.

S.C. CODE § 16-3-10 (1985) DEFINES MURDER AS THE KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED. ALTHOUGH THIS STATUTORY DEFINITION OF MURDER EXISTS, IT REMAINS, NEVERTHELESS, A COMMON LAW CRIME. THE STATUTORY DEFINITION...

" IN NO WISE AFFECTS THE INGREDIENTS WHICH ARE NECESSARY TO CONSTITUTE MURDER, BUT LEAVES THEM EXACTLY AND IN EVERY PARTICULAR AS THEY STOOD AT COMMON LAW." STATE VS. JUDGE, 208 S.C. 497, 385 E.2d 715, 719 (1946).

THE CRIME OF MURDER IS A COMPOSITE ONE. IT INCLUDES THE ASSAULT COMMITTED UPON A PERSON WITH INTENT TO KILL, AND THE RESULTING DEATH FROM THAT ASSAULT. THE ASSAULT ALONE DOES NOT CONSTITUTE THE CRIME. NEITHER DOES THE DEATH OF THE PERSON OF ITSELF MAKE THE CRIME. THE CRIME CAN NOT BECOME COMPLETE UNTIL AFTER THE DEATH OF THE ASSAULTED PERSON HAS OCCURRED. THE STATE MUST PROVE NOT ONLY THE ASSAULT AND THE DEATH OCCURRING FROM IT, BUT THE TIME OF THE ASSAULT AND THE TIME OF THE DEATH, AS TIME IS RECOGNIZED IN THE LAW. IN ADDITION, THE STATE MUST PROVE THE PLACE OF THE ASSAULT AND THE PLACE OF DEATH. THESE NECESSARY ELEMENTS OF THE CRIME OF MURDER MUST NOT ONLY BE PROVEN, BUT

FORE A PERSON ACCUSED MAY BE LAWFULLY CONVICTED, BUT THEY MUST BE ALLEGED IN THE INDICTMENT RETURNED AGAINST THE ACCUSED BY THE GRAND JURY.

10(D.) THE APPLICANT WAS NOT APPOINTED TWO ATTORNEYS PURSUANT TO SOUTH CAROLINA LAW, SECTION 16-3-26(B).

INEFFECTIVE ASSISTANCE OF COUNSEL, DENIED DUE PROCESS OF THE LAW.

ON JULY 25, 2003, THE APPLICANT WAS BROUGHT BEFORE THE COURT, AND WAS AT THAT TIME FACING THE DEATH PENALTY. THE APPLICANT'S PLEA WAS GIVEN UNKNOWINGLY & ^{IN} UNINTENTIONALLY BECAUSE MR. BATES WOULD HAVE PLEADED DIFFERENTLY (OR GONE TO TRIAL) HAD HE KNOWN HE WAS ENTITLED TO TWO ATTORNEYS w/ MURDER - DEATH PENALTY EXPERIENCE.

THE LAW PLAINLY STATES, "WHENEVER ANY PERSON IS CHARGED WITH MURDER & THE DEATH PENALTY IS SOUGHT, THE COURT, UPON DETERMINING THAT SUCH PERSON IS UNABLE FINANCIALLY TO RETAIN ADEQUATE LEGAL COUNSEL SHALL APPOINT TWO ATTORNEYS TO DEFEND SUCH PERSON IN THE

TRIAL OF THE ACTION."

THE APPLICANT STRONGLY CONTENTS THAT WHEN THE D.A. WALTER BAILEY FILED A NOTICE OF INTENT TO SEEK THE DEATH PENALTY HE SHOULD HAVE BEEN APPOINTED TWO ATTORNEYS BY THE COURT, OR AT THE VERY LEAST TOLD BY HIS ATTORNEY THAT HE WAS ENTITLED TO TWO ATTORNEYS SO THAT HIS PLEA IN COURT WOULD BE VALID, S.C. CODE § 16-3-26(B), 5th & 14th AMENDMENTS - UNITED STATES CONSTITUTION

10(E.) THE APPLICANT DID NOT WAIVE THE 24 HOUR GRACE PERIOD MANDATED BY LAW.

PURSUANT TO SOUTH CAROLINA CODE THE COURT, UPON CONVICTION FOR MURDER, MUST WAIT 24 HOURS BEFORE IMPOSING A SENTENCE.

THE APPLICANT DID NOT SIGN A WAIVE OR STIPULATION THIS RULE (LAW), NOR DID HE GIVE HIS ATTORNEY PERMISSION TO WAIVE OR SIGN A STIPULATION TO FOREGO THIS RULE, THUS VIOLATING THE APPLICANTS / DEFENDANTS RIGHT TO DUE PROCESS & DUE COURSE OF THE LAW.

HENCEFORTH, THE APPLICANT RELIES
UPON STATE VS. RECTOR, 158 S.C. 212, 155 S.E.
2d 385 (1930); STATE VS. PLATT, 154 S.C. 1,
151 S.E. 206 (1930); RECTOR, 155 S.E. 385 AT
387; STATE VS. SHOEMAKER, 276 S.C. 86, 275
S.E. 2d 878 (1981); STATE VS. COLEMAN, 17 S.C.
473, 1882 WL 5605 91882); PLATT, 151 S.E. 206
AT 211; STATE VS. BLAKENEY 33 S.C. 111, 11 S.E.
637 (1890); BLAKENEY, 11 S.E. 637, AT 637 -
638; STATE VS BOSTICK, 243 S.C. 14, 131 S.E. 2d
841 (1963); STATE VS. SUTTON, 333 S.C. 192, 508
S.E. 2d 41 (CT. APP. 1998) (AFFIRMED AS MODI-
FIED, 532 S.E. 2d 283, 340 S.C. 393 (2000); BROU-
NING VS. STATE, 320 S.C. 366, 465 S.E. 2d 358
(1995); JOSEPH VS STATE, 351 S.C. 551, 571 S.E.
2d 280 (2002).

AND THE 4th, 5th, 6th, $\frac{1}{2}$ 14th AD-
MENDMENTS TO THE UNITED STATES CONSTITU-
TION.

BASED UPON THE FOREGOING PLEAS
INGS THE APPLICANT PRAYS UNTO THIS HONORABLE
COURT OF DORCHESTER COUNTY COURT OF COM-
MON PLEAS THAT IT WILL GRANT HIM RELIEF

RESPECTFULLY SUBMITTED,
Jeffery W Bator

VERIFICATION

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

I, JEFFREY BATES, BEING DULY
SWORN UPON MY OATH, DEPOSE AND SAY THAT
I HAVE SUBSCRIBED TO THE FOREGOING MEM-
ORANDUM IN SUPPORT OF APPLICATION FOR
POST-CONVICTION RELIEF, AND THAT THE
MATTERS AND ALLEGATIONS THEREIN SET
FORTH ARE TRUE.

Jeffrey W Bates
APPLICANT

* SWORN TO AND SUBSCRIBED BEFORE
ME THIS DAY OF 28, February, 2008.

Jennifer C Franklin
NOTARY PUBLIC

MY COMMISSION EXPIRES 01-31-2010

STATE OF SOUTH CAROLINA)

IN THE COMMON PLEAS COURT)

COUNTY OF DORCHESTER)

JEFFREY BATES, 235301)

DOCKET NO.: 2008-CP-18-673)

Applicant)

AMENDED APPLICATION FOR POST
CONVICTION RELIEF)

STATE OF SOUTH CAROLINA)

Respondent,)

2008 JUL 23 AM 10:35
CERTIFIED COPY
Handwritten: Cheryl H. [illegible]
CLERK OF COURT
DORCHESTER COUNTY

The Applicant through undersigned Counsel wishes to Amend his Application for Post-Conviction Relief which was filed on April 1, 2008, and wishes to add the following to that application:

SECTION I

I was served a True Bill before my charges went to the Dorchester Grand Jury. I was unaware that I was supposed to have two (2) lawyers represent me since the State was seeking the death penalty.

I was sentenced the same day I plead guilty and should have had a twenty-four (24) hour waiting period.

At my original PCR evidentiary hearing on November 7, 2005, at the Dorchester County Courthouse, my attorney Christopher Lizzie, Esquire did not appeal the denial of my PCR Application. I was not in a proper state of mind because I did not receive my Thorazine medication that day. Also, the Thorazine was not really very much help because I'm now a Seraquil 1200 mg a day and its helped me a lot. I'm diagnosed as a schizophrenia (I hear voices) to which SCDC treats me. My psychiatric care provider is Ms. Delany and she can be subpoenaed

to testify to my mental condition. Since being placed on seraquil my thought process is clear. Without it I cannot process rational thoughts.

SECTION II

1. I did not receive my thorazine medication that day and as I stated earlier it was not the proper medication I needed to think and act clearly.
2. Attorney Christopher Lizzy, Esquire did not file for my appeal nor did he question my mental state that day.
3. I was only represented by one attorney in a capitol case.

SECTION III

In Land v State 274 S.C. 243, 262 S.E 2d 235 (1980) S.C. Code Ann§17-27-90(1985)

In contrast:

All grounds for relief available must be raised. I could not raise the new grounds because I was unaware of the Laws concerning my indictment and also I was mentally unstable, I could not respond in an intelligent fashion nor could I aide in my defense or understand said proceedings.

SECTION IV.

My Lawyer, Christopher Lizzy, Esquire, failed to appear at PCR.

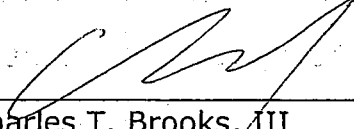
SECTION V

I did not know my indictment was improper nor was I advised by counsel, Gene W. Dukes, Esquire, that the indictment could be quashed. Statue of Limitations should not apply as my ability to intelligently process said procedures did not occur until I became stable under proper medication.

SECTION VI

Ineffective assistance of counsel on prior PCR application should be proper ground when defendant is under mental health care and counsel did not appear for PCR denial.

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, Jeffrey Bates



Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

July 21, 2008

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

Jeffrey Bates, #235301,

08-CP-18-673

Applicant,

v.

AMENDED RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed April 1, 2008, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Dorchester County Clerk of Court's orders of commitment. The Dorchester County Grand Jury indicted the Applicant at the February 2002 term of General Sessions for Murder (02-GS-18-0195), Armed Robbery (02-GS-18-0251), and Burglary in the First Degree (02-GS-18-0252). Gene W. Dukes, Esquire represented the Applicant. On July 25, 2003, the Applicant pled guilty as indicted. The Honorable Diane S. Goodstein sentenced the Applicant to two thirty-five (35) year terms for murder and burglary and thirty (30) years for armed robbery. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

The Applicant subsequently filed an application for post-conviction relief (PCR) on January 5, 2004. An evidentiary hearing was convened on November 7, 2005, at the Dorchester County Courthouse, at which the Applicant was present and represented by Christopher Lizzi, Esquire. At the hearing, Applicant withdrew his application with

prejudice. The Honorable B. Hicks Harwell, Jr., denied and dismissed Applicant's application by written Order on November 18, 2005. The Applicant did not appeal the denial of his PCR application.

II.

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

1. "The Applicant did not knowingly and voluntarily withdraw his PCR application.
2. "Counsel failed to file a notice of intent to appeal."
3. "The Court lacked subject matter jurisdiction of the murder conviction."

For the purpose of this Return, the Respondent incorporates the Dorchester County Clerk of Court records and the South Carolina Department of Corrections' records, and the prior PCR records. Any of these not previously filed will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the current Application with regard to Applicant's guilty plea because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court

finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed with regard to Applicant's guilty plea for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the

sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on July 25, 2003. This Application was filed on April 1, 2008, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, Op. No. 25949, 2005 WL 524813, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has

nothing to do with the indictment document. See Gentry, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45 and -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 610 S.E.2d 494; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

VI.

The Applicant’s contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115

L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394.

Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. The Respondent lacks sufficient information to admit or deny this allegation. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.; Austin, 305 S.C. 453, 409 S.E.2d 395. See also Rush v. State, 368 S.C. 144, 628 S.E.2d 42 (2006) (petitioner not entitled to appellate review of order granting his motion to withdraw post-conviction action).

VII.

The Applicant has filed this application seeking belated appeal of his withdrawal of his first PCR application well over two (2) years after the withdrawal. Following the withdrawal of his PCR application on November 7, 2005, an Order of Dismissal dated November 18, 2005, was filed on November 28, 2005. This Order clearly gave the Applicant thirty (30) days from receipt of the order to secure the appropriate appellate review. The Applicant also seeks review of his guilty plea on November 25, 2003.¹

¹ Plea counsel passed away in August 2007.

The Respondent submits that the doctrine of laches bars the Applicant from raising these allegations in the present post-conviction relief application. Laches is "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party." Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002). See also Bray v. State, 366 S.C. 137, 620 S.E.2d 743(2005).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." McElrath, 276 S.C. at 283. Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of laches. The Rule states in pertinent part:

A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

Furthermore, the South Carolina legislature has recognized this problem and instituted a one-year statute of limitations. See S.C. Code Ann. §17-27-45(a).

Even if the facts in Applicant's Amended Application are true, no satisfactory explanation for the two-year delay in seeking appellate review has been provided. Therefore, the Court should dismiss the Application based on the Applicant's lack of diligence in processing his claim for relief.

VIII.

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

IX.

WHEREFORE, Respondent moves to summarily dismiss the application with regard to Applicant's guilty plea because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired. Respondent further requests an evidentiary hearing solely on the issue of Applicant's right to a belated appeal of the withdrawal and dismissal of his prior PCR application.

Respectfully submitted,

HENRY DARGAN MCMASTER
Attorney General

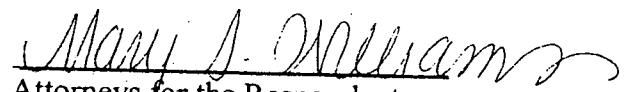
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

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

By:


Attorneys for the Respondents.

Columbia, South Carolina

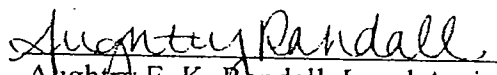
Sept. 25, 2008.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	
	)	2008-CP-18-0673
JEFFREY BATES, 235301	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

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

DATED this 1st day of October, 2008.


Aughtrey E. K. Randall, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF DORCHESTER

CIRCUIT COURT
2008-CP-18-00673

3
4 JEFFREY WAYNE BATES,
5 Applicant,

6 -vs-

TRANSCRIPT OF RECORD TWO STATE

7 STATE OF SOUTH CAROLINA,
8 Respondent.

9 Post Conviction Relief Hearing

10 Heard on Wednesday, December 8, 2010

11 Orangeburg, South Carolina

12 BEFORE:

13 THE HONORABLE EDGAR W. DICKSON
14
15

16 APPEARANCES:

17 Counsel on Behalf of the Applicant:
18 Charles T. Brooks III, Esq.

19 Counsel on Behalf of the Respondent, State of SC:
20 Mary S. Williams, Esq.
21
22

23 Cheri L. Young, RPR
24 Circuit Court Reporter
25 P O Box 1154
Aiken, SC 29802-1154

EXAMINATION INDEX

JEFFREY WAYNE BATES

DIRECT BY MR. BROOKS 7

EXHIBIT INDEX.

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

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1 ON WEDNESDAY, DECEMBER 8, 2010 AT 2:30 P.M.:

2 MS. WILLIAMS: I'll give you a little background
3 here.

4 THE COURT: Okay.

5 MS. WILLIAMS: This application, Mr. Bates has
6 already had a previous application for a post conviction
7 relief. And he withdrew that application..

8 And in this current application, 2008-CP-18-0673,
9 Mr. Bates had alleged that his withdrawal was involuntary.
10 And due to that allegation -- he had also alleged he was
11 denied an appeal, I believe, from His withdrawal but I
12 believe that Rush versus State takes care of that. There
13 is no appeal from a withdrawal.

14 But I procured the transcript of this matter just
15 because of my concern that there may have been some sort
16 of issue with him at that time.

17 And I believe that the transcript speaks for itself
18 in terms of, there was A thorough colloquy between he and
19 the Court regarding his mental state, medication, things
20 of that nature.

21 You may recall Mr. Lizzi was here earlier today, he
22 had another matter he had to leave to take care of, but
23 it's our position that the transcript speaks for itself at
24 this time. And we are moving for dismissal of the
25 application.

1 THE COURT: Okay. And Mr. Brooks?

2 MR. BROOKS: Judge, be it as it may, you know, my
3 client, Mr. Bates, is only asking for his day in court,
4 his bite at the apple.

5 He really didn't understand what all was going on
6 then. He's had some mental health issues that obviously
7 were cited during the plea.

8 And obviously, Judge, in speaking with him, he just
9 was not fully understanding of what was going on on that
10 first PCR.

11 I have talked to him at great length today and I
12 think it would be appropriate to allow this gentleman to
13 be able to go forward in his post conviction relief
14 application.

15 He only gets one bite at this, and he got a sentence
16 of approximately 35 years.

17 He's in his mid 50s, aging, Judge, and we just think
18 that it's just appropriate to give this man his day on his
19 application.

20 MS. WILLIAMS: If I can also mention, we also had a
21 latches defense. He waited two years after withdrawing
22 his application, his first application to file this one.
23 And his plea counsel, Mr. Dukes, did pass away in August
24 2007. We feel that's pretty prejudicial to the State as
25 well.

1 MR. BROOKS: Judge, if I could respond.

2 THE COURT: Yes, sir.

3 THE APPLICANT: May I say something?

4 MR. BROOKS: Sssssshhhhhhhhh.

5 THE COURT: I'm going to let Mr. Brooks respond.

6 THE APPLICANT: Thank you.

7 MR. BROOKS: I just don't, you know, I don't see how
8 the State is ever prejudiced in these cases. Judge, they
9 hold all the cards. They have everything. This poor
10 gentleman, you know, he's in SCDC.

11 Of course, you know, he's not getting the rocket mail
12 that you or I are getting to be able to sit down and put
13 his application together in a timely manner. I can see if
14 this was five years down the road and he's put on the
15 record about some mental health issues.

16 We just think that it's still appropriate. The State
17 is really not prejudiced. You got the transcript. Let
18 this gentleman have his day in court.

19 THE COURT: Well, the first thing I've got to decide
20 is whether he voluntarily withdrew his first PCR. And
21 I'll be glad to hear that.

22 While he's on the stand, okay, over Ms. Williams'
23 upcoming objection --

24 MR. BROOKS: And we're happy to say, Judge --

25 THE COURT: -- I'm going to let him tell me why. It

JEFFREY WAYNE BATES - DIRECT

1 looks like he made a guilty plea in front of Judge
2 Goodstein in 2003; is that correct?

3 MR. BROOKS: That's correct.

4 THE COURT: You hit the high spots of the last one.
5 I'll let you do that again.

6 MR. BROOKS: Okay. We'll call Mr. Bates to the
7 stand.

8 THE COURT: All right, Mr. Bates. Mr. Bates, if you
9 would put your left hand on the Bible when you get up
10 there.

11 THE APPLICANT: Yes, sir.

12 JEFFREY WAYNE BATES, having been duly sworn, was
13 examined and testified as follows:

14 THE COURT: If you'd please sit down, make yourself
15 comfortable.

16 THE APPLICANT: Yes, sir. Thank you.

17 THE COURT: State your full name for the record once
18 you get seated.

19 THE APPLICANT: My name is Jeffrey Wayne Bates.

20 THE COURT: All right. Mr. Brooks?

21 DIRECT EXAMINATION

22 BY MR. BROOKS:

23 Q. Now, Mr. Bates, you heard the Judge. You've heard the
24 Attorney General talk about you coming into court prior to
25 today, and putting on the record about voluntarily

JEFFREY WAYNE BATES - DIRECT

1 withdrawing a PCR.

2 And here we are today and we're asking the Court to
3 overlook that, overturn that, and give your day in court.

4 A. Yes, sir.

5 Q. Why should the Court do that? Tell the Court what you
6 wanted to tell me about that.

7 A. Well, initially my -- I just pretty much did what my
8 lawyer asked me to do which was to plead guilty.

9 THE COURT: Now first of all, the first thing I want
10 you to address is the last time you were in court was in
11 2005?

12 THE APPLICANT: Yes, sir.

13 THE COURT: And you are represented by Mr. Lizzi?

14 THE APPLICANT: Yes, sir.

15 THE COURT: And when you came to court in front of
16 Judge Harwell, you advised Judge Harwell that you wanted
17 to withdraw your PCR?

18 THE APPLICANT: Right.

19 THE COURT: That's what I want to know. That was not
20 -- tell us why did you tell Judge Harwell that?

21 THE APPLICANT: At that point in time on that date,
22 sir, I was on -- I was taking medication because I hear
23 voices and I hear things that just ain't there.

24 And they had me on Thorazine and I really couldn't
25 comprehend right from wrong what, why I was even in this

JEFFREY WAYNE BATES - DIRECT

1 hearing at that time. I was not taking the right
2 medication. I couldn't comprehend.

3 Since 2007, I've been placed on a large amount of
4 Seroquel which is 800 milligrams. I mean, most people
5 only take 50. I take 800. And I also take Remeron. I'm
6 not sure of the amount of the Remeron. And this medicine
7 helps me deal with reality a lot better.

8 I can understand what I'm doing here and what a great
9 error that I made by pleading guilty and giving up my
10 right to a trial.

11 THE COURT: And we'll get back to that.

12 THE APPLICANT: I realized as soon as I got back
13 there, you know, I went to and talked to the doctors and
14 everything. I told them I was having a hard time
15 understanding what was going on. Even while I was in the
16 Department of Corrections in the first place much more of
17 my hearing.

18 And, see, Judge, she said, well, let's take you off
19 of Thorazine. Really I was in a stupor. I had slobber
20 coming out of my mouth, I'd just stare off in space with
21 this medicine. I mean, I couldn't comprehend. And that
22 was a large dose, too, it was 500 milligrams Thorazine.

23 THE COURT: You're telling me you're under a large
24 doze of medication now?

25 THE APPLICANT: Yes, sir. But it helps me. This

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1 medicine is helping me where the Thorazine was not.

2 THE COURT: Are you hearing any voices in the
3 courtroom today other than mine and your attorney's?

4 THE APPLICANT: That's all I'm hearing, sir.

5 THE COURT: Okay.

6 THE APPLICANT: Yes, sir. The medicine helps me
7 understand that.

8 THE COURT: And you're telling me that because you
9 were medicated at the time of your PCR hearing you didn't
10 understand what you were doing at that time?

11 THE APPLICANT: Not only was I medicated, I was
12 medicated with the wrong medicine.

13 THE COURT: And what medication were you taking in
14 2005?

15 THE APPLICANT: It was Thorazine, and it was a
16 medicine called Thorazine, it's Millaril (phonetically) I
17 believe the proper name for it.

18 THE COURT: That's what you were on? That's the only
19 drug you were on?

20 THE APPLICANT: That's the only type that they was
21 trying to medicate me for. It just wasn't helping me,
22 sir.

23 THE COURT: And you're saying it's the wrong
24 medicine?

25 THE APPLICANT: It wasn't helping me; no, sir, it was

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1 not.

2 THE COURT: And by not helping you, what does that
3 mean?

4 THE APPLICANT: That I couldn't -- I couldn't differ
5 from right from wrong, what I needed to do.

6 THE COURT: Okay. And how long after that did they
7 put you on the right medicine?

8 THE APPLICANT: It was about two years later on after
9 that, sir. I was like going through different phases and
10 everything. And then trying to find out the right doses
11 for the Seroquel. Initially they had me on 1200
12 milligrams, 2007. And it was too much. So I had them --
13 they dropped it back down to 800 and it seems to be
14 appropriate for what -- what was my problems, Your Honor.

15 THE COURT: Okay.

16 THE APPLICANT: I believe it helps me a lot. I can
17 understand what's went on, you know, and why was all of
18 this stuff happening to me, you know.

19 THE COURT: Okay.

20 THE APPLICANT: I couldn't understand none of it, why
21 I was even in prison.

22 THE COURT: All right. Mr. Brooks, I'm sorry. I
23 just wanted to get him straight -- get me straight on
24 that.

25 MR. BROOKS: Judge, that's all the questions I have

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1 for him about that issue.

2 THE COURT: Okay. Now --

3 MR. BROOKS: Depending on how the Court rules.

4 THE COURT: -- I'm going to let you ask him questions
5 about the plea, but I'm going to note, Ms. Williams, I'm
6 noting your objection to going into any testimony about
7 that. I'm assuming you are objecting to this?

8 MS. WILLIAMS: Well, yes, sir.

9 THE COURT: Okay. Thank you, ma'am.

10 BY MR. BROOKS:

11 Q. Now talk about the plea. You pled guilty to these
12 charges. Why did you plead guilty to these charges?

13 A. I was -- like I said, I was not even on medication at
14 that time and I was definitely hearing voices and
15 hallucinating. I pleaded guilty under duress.

16 Q. So you felt --

17 A. I was prone to make irrational --

18 Q. I'm sorry. You felt pressured?

19 A. It wasn't pressure. It was a little more than that
20 going on. A lot going up in my -- up there.

21 Q. This is back during the plea, now? You're talking
22 about when you're doing the plea.

23 A. When I was seeing the Judge?

24 Q. When you were seeing Judge Goodstein and represented
25 by Mr. Dukes.

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1 A. Right. I gave -- I gave a guilty plea under duress.

2 If I may, can I -- may I read something, Your Honor?

3 THE COURT: Is it short?

4 THE APPLICANT: It's about a page and a half long.

5 THE COURT: Is it something -- you want to hand it

6 up?

7 MR. BROOKS: Why -- why -- --

8 THE COURT: Why don't you look at it, Mr. Brooks, and
9 if you want to make a copy of it and give it to the Court,
10 I'll be happy --

11 THE APPLICANT: It's -- it really is short, Your
12 Honor. I can read --

13 THE COURT: I still would like Mr. Brooks to look at
14 it first.

15 THE APPLICANT: Okay. It would be right there, Haley
16 versus Ohio.

17 BY MR. BROOKS:

18 Q. You don't have to tell the Judge the law. The Judge
19 knows the law.

20 A. Okay. Well, I was showing you where it was located at
21 there.

22 Q. That's fine. But why don't you just go ahead and --

23 A. It has -- it has a -- really a lot to do with why, why
24 I plead guilty, Your Honor.

25 Q. Tell the Judge why you pled guilty.

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1 A. Okay. My decision to plead guilty was not voluntary
2 but was a result of the duress as much as choice
3 reflecting physical constraints. I was served a notice of
4 intent to seek the death penalty on me, Your Honor.

5 And that -- just that alone it really, it really upset
6 me very much. I was not taking medicines and I was in the
7 jail or a cell rather, a nine by 12 cell for a year and a
8 half in a county jail. I was allowed not to intermingle
9 with no other person, no other person, for a year and a
10 half.

11 Now here come my lawyer. I was only seeing him three
12 times in this period of time. And he served me in a
13 notice from the D.A., a Walter Bailey, that he served a
14 notice on me to seek the death of my life.

15 That same week being my mother passed away.

16 THE COURT: Okay.

17 THE APPLICANT: Now this same week they take me out
18 of the county jail at four o'clock in the morning and
19 bring me before Judge Goodstein. And with my lawyer's
20 advice I was to plead guilty. He had -- let's see --
21 let's see.

22 He gave me a notice of intent to seek the death
23 penalty upon my life for crimes I did not commit. These
24 being the same week as the passing of my mother. I had
25 been in a cell for, nine by 12 for over a year and a

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1 half. This being the same week of July 25th, 2003, my
2 lawyer informed me that due to his bad health which he
3 passed away shortly after helping me with my timing, he
4 told me that he was in bad health, too.

5 THE COURT: You had this hearing in 2003; is that
6 correct?

7 THE APPLICANT: Yes, sir. That's when I pleaded
8 guilty; yes, sir.

9 THE COURT: I think Mr. Dukes didn't pass away until
10 2007.

11 THE APPLICANT: Yes. He was in bad health then. He
12 said he was suffering. Right. He could not give me
13 this -- if I finish this here, it will bear a little
14 reference to it, Your Honor.

15 THE COURT: Okay.

16 THE APPLICANT: Okay. And informed me that to his
17 bad health and the lack of funds from the State that I
18 needed to plead guilty to crimes I did not commit with no
19 funds for investigation of my defense, Your Honor.

20 THE COURT: All right.

21 THE APPLICANT: I did not -- I did what my lawyer
22 told me to do and that was to plead guilty.

23 Now at this time and date I was taking Thorazine.
24 And it wasn't the right medication for my problems there,
25 sir.

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1 THE COURT: When you pled guilty you were taking
2 Thorazine?

3 THE APPLICANT: Yes, sir.

4 THE COURT: You were in jail and they medicated you?

5 THE APPLICANT: Yes, sir; that's what they did. They
6 kept upping the doses and it just wasn't really.

7 THE COURT: I thought you said when you appeared
8 before Judge Goodstein you said you were not on any
9 medication.

10 THE APPLICANT: That's before I did. I wasn't -- I
11 wasn't on medication, but I received it then while I was
12 in the county jail.

13 THE COURT: Okay.

14 THE APPLICANT: They started me out with 50 and they
15 went all the way up to 500.

16 THE COURT: And you were charged with -- they were
17 seeking the death penalty on this case?

18 THE APPLICANT: Yes, sir. I was informed --

19 THE COURT: And the sentence that you got was, what?
20 What was your sentence?

21 THE APPLICANT: Thirty-five years mandatory, sir.

22 THE COURT: Thirty-five. Okay.

23 THE APPLICANT: And my lawyer -- if you'll -- you'll
24 let -- it's not much more.

25 THE COURT: Uh-huh. No, go ahead.

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1 THE APPLICANT: Okay. I was told by the arresting
2 detective and the D. A., Walter Bailey, and Judge
3 Goodstein, they even brought up the fact that if I went to
4 trial that I would be facing the death penalty.

5 That's the D. A. telling me this and the arresting
6 officer and my lawyer. And then Ms. Goodstein brings it
7 up, too. I just knew that I was going to die. I mean, I
8 was actually seeing this. And I was hallucinating about
9 it. Laying there, I could see myself with the needles in
10 my arm.

11 BY MR. BROOKS:

12 Q. Now, Mr. Bates, let me ask you this: You do
13 understand that if I somehow convince the Judge to grant
14 you your PCR that you could go back and you could face
15 that death penalty?

16 A. I have -- I have a feeling with no doubt in my heart
17 that I could pass and convince --

18 THE COURT: Wait one second, Mr. Bates. I'm allowing
19 you to do some of this. We're going to have to move it
20 along. If you would answer the questions of your
21 attorney. Okay?

22 THE APPLICANT: Yes, sir.

23 THE COURT: Okay. Thank you.

24 BY MR. BROOKS:

25 Q. You do understand that you would open the door to

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1 going back and possibly facing the death penalty --

2 A. Yes, sir.

3 Q. -- if Judge Dickson grants you your PCR? Do you
4 understand that?

5 A. Yes, sir; I do. Yes, sir; I do. I see what a great
6 error I made by pleading guilty to start with to these
7 crimes.

8 Q. Okay. All right.

9 THE COURT: Okay.

10 THE APPLICANT: Can I please continue on?

11 THE COURT: Yes, sir.

12 THE APPLICANT: Got a little bit more.

13 THE COURT: Yes, sir.

14 THE APPLICANT: And as well as my lawyer if I went to
15 trial by jury I could and would receive the death
16 penalty.

17 Okay. None of them -- none of them informed me when
18 I pleaded guilty of the right to a jury -- to this, Your
19 Honor, that a jury could find me actually guilty of a
20 lesser charge. Instead of what -- nobody informed me of
21 that. They just kept telling me what the jury could do if
22 they wanted to take my life.

23 THE COURT: Yes, sir.

24 THE APPLICANT: And I'm a little nervous, Your Honor.

25 THE COURT: That's okay.

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1 THE APPLICANT: But I'm getting there. Okay. Being
2 that -- being that Mr. Walter Bailey served a notice on,
3 me there should have been two lawyers representing me from
4 that time on. And I'm pretty sure you know the law is
5 16-326.

6 THE COURT: Yes, sir.

7 THE APPLICANT: There should have been two lawyers at
8 my side representing me as well as expert witnesses for my
9 behalf and my own investigator. I never had no
10 investigators. To this day I do not have a Rule Five or
11 Rule Six.

12 I have wrote the public defenders office
13 numerously (sic) -- numerously times and I have letters
14 from a lawyer where he had been subpoenaed. And to this
15 day nothing. Not one shred of evidence have I seen that
16 they had.

17 THE COURT: Okay.

18 THE APPLICANT: All right. And one of these is, sir,
19 you know that one of these lawyers should have been an
20 outside public defenders with 10 years or more behind them
21 in criminal law. Had I been informed of this law, I would
22 not have pleaded guilty.

23 So my plea of guilt was not rational choice of
24 intelligene.

25 Now prosecutors have failed to disclose evidence

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1 which is, my hair was taken. To match who or what? My
2 palm prints were taken. To compare to whom? My blood
3 test was taken. For what reason?

4 A female was arrested. I found this out after I had
5 done pleaded guilty. A female was arrested after she
6 confessed to her family and -- of the murder of one
7 Mr. Moore. She was a known prostitute and the body of
8 Mr. Moore was found with no clothes on.

9 This female was held in the Dorchester County Jail
10 for over a year whereupon her release she was murdered --
11 was murdered the week of her release. She was represented
12 by public defenders office where I was too. That's a
13 conflict of interest there, Your Honor, representing both
14 of us there.

15 THE COURT: What was the lady's name?

16 THE APPLICANT: I have no idea. I'm learning this.
17 I'm just learning about this female myself, Your Honor.

18 THE COURT: Okay.

19 MS. WILLIAMS: Can we ask where he's learning about
20 it from? I believe it might be hearsay at this point.

21 THE APPLICANT: Well, I'll tell the Court, Your
22 Honor. It came from -- it came from a sheriff -- a person
23 that works for the sheriff department at Dorchester
24 County. Lives very close to my father. He's a man of 82
25 years old. And this man told this man that, yes, this

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1 girl was released and a drug dealer told the D. A. --

2 THE COURT: Mr. Bates --

3 THE APPLICANT: Yes.

4 THE COURT: -- who was the person that worked at the
5 sheriff's office that's 82 years old?

6 THE APPLICANT: No, sir, Your Honor. My father is 82
7 years old and this man told my father that.

8 THE COURT: Who is the man that told your 82-year-old
9 father?

10 THE APPLICANT: I don't know the name of him, sir.

11 THE COURT: Is your father still alive?

12 THE APPLICANT: Yes, he is.

13 THE COURT: Did you bring him here today?

14 THE APPLICANT: He -- I had talked to him. He could
15 not make it, Your Honor. But he's very concerned about
16 this. He really is.

17 I even have a statement on him because, see, they
18 found my footprints at this place. And I have a statement
19 from him on the evening of 8/30.

20 THE COURT: Mr. Bates, all I'm going --

21 THE APPLICANT: I'm almost finished. Okay? I'm
22 almost finished, Your Honor. Okay. Like I said --

23 MS. WILLIAMS: Just note the objection to hearsay.
24 Thank you.

25 THE COURT: I'll note your objection.

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1 THE APPLICANT: Okay. I'm almost there, Your Honor.

2 THE COURT: Okay.

3 THE APPLICANT: If you please be just a little more
4 patience with me. Please.

5 THE COURT: Okay.

6 THE APPLICANT: Getting back to me pleading guilty at
7 the time of plea sentence, I was hearing voices because I
8 was not taking right medicine. The medication that I was
9 on left me incompetent and prone to make impulsive and
10 irrational decisions.

11 My lawyer told me if I mentioned that I was hearing
12 voices she, Judge, Mrs. Goodstein, would not accept my
13 plea at that time. And that I --

14 THE COURT: That's a true statement, I'm sure.

15 THE APPLICANT: And that I would then be facing the
16 death penalty again.

17 THE COURT: Uh-huh.

18 THE APPLICANT: At the time of sentencing,
19 Mrs. Goodstein kept asking me if I was all right. My
20 answer was the same. I was only saying okay. I never
21 said, all right, and I never said that I was feeling good.

22 THE COURT: Okay.

23 THE APPLICANT: Now carrying on. I say again, she
24 asked me again, are you feeling good. My answer again was
25 not good, all right, just okay. During this time she

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1 became aware that there was something not right with me
2 when I say yes, sir, to her.

3 THE COURT: Okay.

4 THE APPLICANT: Okay. And carrying on. Again, she
5 asked me if I was all right. I tell her, Mrs. Goodstein,
6 that I was not feeling well --

7 THE COURT: Okay.

8 THE APPLICANT: -- at this time. She told the
9 bailiff to get me a chair so I could sit down and which I
10 was sat down. I could not even stand up.

11 It was all I could do to keep -- to -- I'm sorry,
12 Your Honor, I'm getting a little nervous.

13 THE COURT: That's okay.

14 THE APPLICANT: It was all I could do to keep from
15 losing it. I remember the voices telling me that I was
16 going to be strapped down and then injected with poison.
17 I began to see myself suffocating with a needle in my arm.

18 THE COURT: Mr. Bates, I don't need to get into your
19 visions of your death. Okay?

20 THE APPLICANT: Okay.

21 THE COURT: Okay. I think I get the point.

22 THE APPLICANT: Okay.

23 MR. BROOKS: I think we covered everything,
24 Mr. Bates.

25 THE APPLICANT: That did. There's just a little more

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1 but I think you just said that you just understood.

2 THE COURT: What I'm going to do, Mr. Bates, is I'll
3 read over the transcript of both the plea and your PCR
4 withdrawal.

5 THE APPLICANT: Can I make one short -- one -- I'd
6 just like for the record -- I did read -- I read a thing
7 from a Chief Justice Frankfurter and he emphasized the
8 importance of the defendant being able to speak for
9 himself.

10 THE COURT: Right.

11 THE APPLICANT: And at that time she asked me at the
12 end did I have anything to say and Your Honor, I could not
13 even talk for myself at that time.

14 THE COURT: Okay.

15 THE APPLICANT: And I've only got a fifth-grade
16 education. And, you know, you can see what I did right
17 here. It took me a long time to get to this point to
18 realize my error that I did by pleading guilty, Your
19 Honor.

20 And I feel if I was given a chance to go to a trial
21 of a jury of my peers, I can prove myself innocent of
22 these crimes.

23 THE COURT: Well, I appreciate it, Mr. Bates.

24 THE APPLICANT: Thank you, Your Honor, for your time
25 and patience.

1 THE COURT: One second. I want to see if
2 Ms. Williams -- Ms. Williams, do you have any questions of
3 this witness?

4 MS. WILLIAMS: No questions. I'd like to direct your
5 attention to some page numbers in the transcript if that
6 might help you, if that will be fine.

7 THE COURT: Okay. All right, Mr. Bates. You can
8 step down.

9 THE APPLICANT: Thank you, Your Honor.

10 THE COURT: Thank you, sir.

11 THE APPLICANT: Thank you for the Court's --

12 MS. WILLIAMS: If I could just direct you to the plea
13 transcript, I found some things at nine, 10, 11 and 21
14 that may be of interest to the Court. And then the
15 withdrawal, page four and five and then Judge Harwell's
16 conclusion at page seven.

17 THE COURT: What I'll do is I'll look over every
18 thing. And, Mr. Bates, I'll get back with your attorney
19 with my decision.

20 THE APPLICANT: Thank you, Your Honor, for the
21 chance. Thank you very much.

22 THE COURT: Yes, sir. You're welcome. Thank you,
23 sir.

24 THE APPLICANT: Thank you, Mr -- thank you, sir.

25 MR. BROOKS: Okay.

1 END OF PROCEEDINGS: 2:55 P.M..

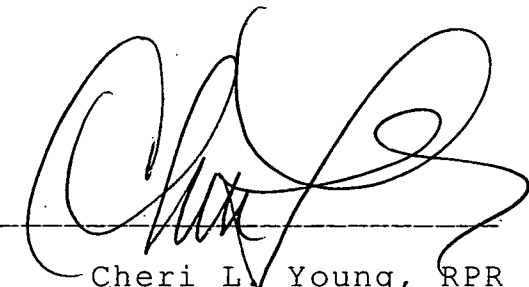
2 * * * *

3 CERTIFICATE OF REPORTER

4 I, Cheri L. Young, Registered Professional Reporter,
5 and Official Court Reporter for the State of South
6 Carolina, do hereby certify that the foregoing transcript
7 of proceedings heard on Wednesday, December 8, 2010, in
8 Orangeburg, South Carolina, was reported by me using
9 machine shorthand and realtime computer-aided translation
10 and is a true, accurate and complete transcript of the
11 proceedings had and evidence introduced in the hearing of
12 the matter.

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

15 I have hereunto set my hand this Tuesday, the 6th day
16 of December, 2011.

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19
20 

Cheri L. Young, RPR
Official Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

FILED - RECORD
2011 SEP 26 11 21 AM
IN THE COURT OF COMMON PLEAS

Jeffrey Bates, #235301,

CLERK OF COURT
DORCHESTER COUNTY

2008-CP-18-0673

2011 SEP 26 PM 3:14

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 1, 2008. An evidentiary hearing into the matter was convened on December 8, 2010, at the Orangeburg County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

In addition to testimony at hearing, this Court had before it the records of the Dorchester County Clerk of Court, the guilty plea transcript, the Applicant's records from the South Carolina Department of Corrections, and the prior PCR records.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Dorchester County Clerk of Court's orders of commitment. The Dorchester County Grand Jury indicted the Applicant at the February 2002 term of General Sessions for Murder (02-GS-18-0195), Armed Robbery (02-GS-18-0251), and Burglary in the First Degree (02-GS-18-0252). Gene W. Dukes, Esquire represented the Applicant. On July



25, 2003, the Applicant pled guilty as indicted. The Honorable Diane S. Goodstein sentenced the Applicant to two thirty-five (35) year terms for murder and burglary and thirty (30) years for armed robbery. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

The Applicant subsequently filed an application for post-conviction relief (PCR) on January 5, 2004 (2004-CP-18-0008). In his first application, Applicant set forth the following grounds for relief:

1. Ineffective assistance of counsel.
 - a. "My attorney broke the rule of attorney-client privilege."
 - b. "My attorney only visited me twice before my plea hearing."
 - c. "My attorney allowed me to plead guilty while I was heavily medicated and not able to understand the proceedings or the consequences of my actions."
 - d. "My attorney never informed me that I had a right to a direct appeal."
2. "An illegal sentence has been imposed upon me."
 - a. "I was sentenced to thirty-five years and the maximum penalty prescribed by the statute for murder with no aggravating circumstances is 30 years."
 - b. "I was sentenced to thirty years for grand larceny which exceeds the maximum."
3. "I was sentenced on the same day I plead guilty to murder."
 - a. "Judge should have waited twenty-four hours for my sentencing proceeding."

An evidentiary hearing was convened on November 7, 2005, at the Dorchester County Courthouse, at which the Applicant was present and represented by Christopher Lizzi, Esquire. At the hearing, Applicant withdrew his application with prejudice. The Honorable B. Hicks Harwell, Jr., denied and dismissed Applicant's application by written Order on November 18, 2005, finding Applicant's request to withdraw free and voluntary and made without threat or coercion. The Applicant did not appeal the denial of his PCR application.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in

custody unlawfully for the following reasons:

1. "The Applicant did not knowingly and voluntarily withdraw his PCR application.
2. "Counsel failed to file a notice of intent to appeal."
3. "The Court lacked subject matter jurisdiction of the murder conviction."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Applicant contends that his prior PCR attorney should have appealed his withdrawal because Applicant was not competent to withdraw his application. At PCR hearing, Applicant stated that he had not taken his medication for schizophrenia, thorazine, when he withdrew his application on November 7, 2005. Applicant further testified that thorazine had not been the right medication and that he now takes different medications for his condition. Applicant contends that he should therefore be allowed to proceed with his allegations in the present application.

The withdrawal transcript reflects that the court thoroughly informed Applicant that he would not have a second PCR application if he chose to withdraw his case, and Applicant indicated that he understood. (Nov. 7, 2005, Tr. p. 3, line 8 – p. 4, line 10.) Applicant denied any history of emotional problems. (Nov. 7, 2005, Tr. p. 4, lines 23-25.) Applicant affirmed that he had met with his PCR counsel both the morning of the withdrawal and on a prior occasion. (Nov. 7, 2005, Tr. p. 5, lines 12-17.) Applicant denied taking any medication which would interfere with his understanding and

assured the court that he knew what he was doing. (Nov. 7, 2005, Tr. p. 5, lines 1-5.) PCR Counsel and Applicant volunteered information on Applicant's medication, thorazine, and that Applicant had been found competent while on the medication. (Nov. 7, 2005, Tr. p. 5, lines 18-24.) In granting Applicant's motion to withdraw, Judge Harwell noted,

...I feel that he's competent and that he understands the colloquy that I've had with him. He impresses me as a person with the ability to understand and knows what he's doing. And it is free and voluntary and he's had competent counsel who is experienced, I know personally, in criminal defense as well as PCR's. ...

(Nov. 7, 2005, Tr. p.7, lines 6-12.) Applicant was also found competent at the time of his guilty plea. (July 25, 2003, Tr. p. 4, line 15 – p. 11, line 21.)

After due deliberation, consideration of the testimony presented, and review of the transcripts and other supporting materials, I find that Applicant has failed to carry his burden of demonstrating that the procedural bars of successiveness and statute of limitations should not be applied in his case. Incompetence, if found, may toll the statute of limitations. Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009). In the present case, Applicant has failed to demonstrate that he was incompetent when he withdrew his application or in the years that elapsed between the withdrawal of 2004-CP-18-0008 and the filing of the present application. Applicant bears the burden of showing that he was incompetent at the time of his withdrawal by a preponderance of the evidence. Given the transcript of the prior proceedings and findings of competence contained therein, I do not find Applicant's PCR hearing testimony, without more, satisfies this burden. Applicant's PCR testimony stands in contrast to his statements in prior proceedings and lacks credibility. Further, no expert testimony has been offered to support Applicant's claim of incompetence. I therefore find that Applicant has failed to

demonstrate that the procedural bars of successiveness and the statute of limitations should not be applied to his case.

Further, where the PCR court granted Applicant's motion to withdraw his application, Applicant was not entitled to appellate review. Rush v. State, 368 S.C. 144, 628 S.E.2d 42 (2006). I therefore find that Applicant is not entitled to a belated appeal of his first PCR application.

Even if Applicant's claims were not barred by the statute of limitations and as successive, the application would be without merit. Applicant claims that two lawyers should have been appointed to represent him. However, there is no evidence that this case was a capital case; therefore appointment of two attorneys was not required. Applicant further states that he was told that he could face the death penalty. In the plea transcript, the plea judge reviewed with him the potential sentence he faces. (July 25, 2003, Tr. p. 11, line 22 – p. 12, line 13.) The plea court specifically told him that he faced from thirty years to life and that the death penalty was not applicable in Applicant's case. Therefore, any misapprehension Applicant may have had was cured during the plea colloquy. See Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997). Based on the facts recited at plea, which Applicant agreed to, there is no evidence to support a lesser offense. Finally, Applicant's claims regarding subject matter jurisdiction are without merit. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (defects in indictment do not affect subject matter jurisdiction).

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

FILED - RECORD
 CONCLUSION

2011 SEP 26 PM 2:11
 CHERRY
 CLERK OF COURT

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

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 12th day of Sept., 2011.



EDGAR W. DICKSON
 Presiding Judge
 First Judicial Circuit

Orangeburg, South Carolina.

COUNTY OF DorchesterSTATE VS. 2002

INDICTMENT/CASE#

Jeffrey Wayne BatesGS 18 0195

AKA: _____

AW#: 6362819Race: White Sex: Male Age: 40Date of Offense: July 14, 2001DOB: 1/5/63 SS#: 2S.C. Code §: 16-3-10

Address: _____

CDR Code #: 01161

City, State, Zip _____

☐ CASE RESTORED

DL# _____ SID# _____

☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Murderin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 01161☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Walt
SolicitorJeffrey Bates
DefendantGene W. Dubis
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 3 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 _____ 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: 7-25-03
☐ 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Surcharge) \$ _____

§14-1-211(A)(2) (Surcharge) \$ 100.00

§56-5-2995 (DUI Assessment) \$ _____

3% to County (if paid in installments) \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$ 25.00

§33.7, 1B TP (Drug Court Surcharge) \$ _____

§50-21-114(BUI Breath Test Fee) \$ _____

§56-5-2942(J) (Vehicle Assessment) \$ _____

TOTAL \$ 125.00390 128.75Cheryl Graham
Clerk of Court/ Deputy Clerk

Court _____

Reporter: Darrin

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: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE Deane J. HarteJudge Code: 111121Sentence Date: 7-25-03

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

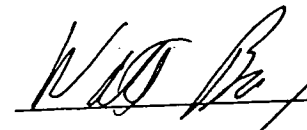
INDICTMENT
2002GS18-0195

At a Court of General Sessions, convened on February 25, 2002 the Grand Jurors of Dorchester County present upon their oath:

MURDER

That Jeffrey Wayne Bates, did in Dorchester County, on or about July 14, 2001, with malice aforethought, kill one George C. Moore by means of stabbing the victim multiple times, and the said victim did die as a proximate result thereof. This offense in violation of Section 16-3-10 of the South Carolina Code of Laws, as amended, and the Common Law of South Carolina.

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


Walter Bailey SOLICITOR

COUNTY OF Dorchester
 STATE VS
Jeffrey Wayne Bates
 AKA
 Race: White Sex: Male Age: 40
 DOB: 11/5/63 SS#: _____
 Address: _____
 City, State, Zip _____
 DL# _____ SID# _____

2002 INDICTMENT/CASE#
 GS- 18 0251
 AWW# _____
 Date of Offense: JULY 14, 2001
 S.C. Code §: 16-11-330
 CDR Code #: 01391
☐ CASE RESTORED
☒ SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Armed Robbery

in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 01391
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
 The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

W. H. H.
 Solicitor

Jeffrey Bates
 Defendant

Gene W. Duke
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a term of 30 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 _____
 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: 7-25-03
☐ 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Surcharge) \$ 100.00

§14-1-211(A)(2) (Surcharge) \$ _____

§56-5-2995 (DUI Assessment) \$ _____

§% to County (if paid in installments) \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$ 25.00

§33.7, 1B TP (Drug Court Surcharge) \$ _____

§50-21-114(BUI Breath Test Fee) \$ _____

§56-5-2942(J) (Vehicle Assessment) \$ _____

TOTAL \$ 125.00

3% 128.75

Henry Graham
 Clerk of Court/ Deputy Clerk

Court _____

Reporter: Garrison

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: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE Diane L. Hostetler

Judge Code: 111121

Sentence Date: 7-25-03

WITNESSES

DET. MARSHALL, DCSD

ARREST WARRANT NUMBER

2002DOR03

Arrested: Jan 16, 2002

ACTION OF GRAND JURY

True Bill

Date 2-21-02
Patry W. Richard

oreperson of Grand Jury
ate: February 21, 2002

VERDICT

oreperson of Petit Jury
ate:

DOCKET N. 002GS18-0251

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

February 25, 2002 TERM

**THE STATE
vs.**

Jeffrey Wayne Bates

**Indictment for
ARMED ROBBERY**

SC Code: 16-11-330
CDR Code: 0139
Class: FEL-A(V)

After being fully advised as to n gal 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-RECORDED
2002 NOV -7 AM 8:53
CHERYL DOWMAN
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

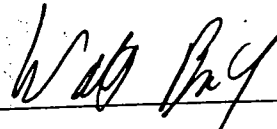
INDICTMENT
2002GS18-0251

At a Court of General Sessions, convened on February 25, 2002 the Grand Jurors of Dorchester County present upon their oath:

ARMED ROBBERY

That Jeffrey Wayne Bates, did in Dorchester County, on or about July 14, 2001, feloniously take from the person or presence of the victim, George Moore, by means of force or intimidation and while armed with a deadly weapon being a knife, goods or monies of the said victim, being described as the victim's wallet. This offense being a violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

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


Walter Bailey SOLICITOR

COUNTY OF Dorchester
 STATE VS.
Jeffrey Wayne Bates
 AKA:
 Race: White Sex: Male Age: 41
 DOB: 11/5/63 SS#: _____
 Address: _____
 City, State, Zip _____
 DL# _____ SID# _____

INDICTMENT/CASE#: 2002 -GS- 18 - 0252
 A/W#: _____
 Date of Offense: JULY 14, 2001
 S.C. Code §: 16-11-311
 CDR Code #: 0079 1 1 1
☐ CASE RESTORED
☒ SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Burglary - First Degree

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079 1 1 1

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

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

ATTEST:

W. J. [Signature]
Solicitor

Jeffrey Bates
Defendant

Gene W. Duke
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 35 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 _____ 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: 7-25-03

☐ 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Surcharge)	\$ <u>100.00</u>
§14-1-211(A)(2) (Surcharge)	\$
§56-5-2995 (DUI Assessment)	\$
3% to County (if paid in installments)	\$
§73.3, 1B TP (Law Enforce. Funding)	\$ <u>25.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$
§50-21-114(BUI Breath Test Fee)	\$
§56-5-2942(J) (Vehicle Assessment)	\$
TOTAL	\$ <u>125.00</u>

3% 128.75

Cheryl [Signature]
Clerk of Court/ Deputy Clerk

Court

Reporter: [Signature]

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: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE Diane [Signature]

Judge Code: 1 1 1 2 1

Sentence Date: 7-25-03

WITNESSES

DET. MARSHALL, DCSD

ARREST WARRANT NUMBER

2002DOR04

Arrested: Jan 16, 2002

ACTION OF GRAND JURY

True Bill

Date: 2-21-02
Patsy W. Richard

Foreperson of Grand Jury

Date: February 21, 2002

VERDICT

Foreperson of Petit Jury

Date:

DOCKET N. 002GS18-0252

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

February 25, 2002 TERM

THE STATE

vs.

Jeffrey Wayne Bates

Indictment for

**BURGLARY - 1ST DEGREE
(DWELLING)**

SC Code: 16-11-0311 (Violent)

CDR Code: 0079

Class: FEL-EXM(V)

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.

**CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY**

2002 NOV - 7 AM 8:53

FILED - RECORDED

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

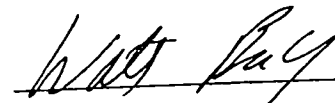
INDICTMENT
2002GS18-0252

At a Court of General Sessions, convened on February 25, 2002 the Grand Jurors of Dorchester County present upon their oath:

BURGLARY - 1ST DEGREE (DWELLING)

That Jeffrey Wayne Bates, did in Dorchester County, on or about July 14, 2001, willfully and unlawfully enter the dwelling of George C. Moore without consent and with the intent to commit a crime therein and that the defendant did have two or more prior burglary convictions, and/or that during the commission of the crime, or while in immediate flight therefrom, the defendant was armed or became armed with a deadly weapon, and/or the defendant did enter the dwelling at nighttime. This offense being a violation of Section §16-11-311 of the South Carolina Code of Laws, as amended.

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



Walter Bailey SOLICITOR