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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

ORIGINAL

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

DEMARCUS KENTRAIL BUSSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN RATIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

County of GREENVILLE

IN THE COURT OF COMMON PLEAS

Demarcus Bussey # 316432

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2010-CP-23- 5349

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 Broad River Correctional Institution
4460 Broad River Road, Columbia, S.C. 29210
2. Name and location of Court which imposed sentence Greenville County Court of
General Sessions 305 East North Street, Greenville, S.C. 29601
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 05-GS-23-10190 Strong Armed Robbery

(b) 05-G-23-10187 Strong Armed Rbery

(c) 05-GS-23-10189 Car Jacking

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

(a) March 19, 2010 - Suspended Sentence revoked and 4 years 83 days

(b) March 19, 2010 - Suspended sentence revoked, 4 years 83 days

(c) March 19, 2010 - Suspended Sentence revoked, 9 years 83 days

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) Trial Attorney was suppose to file an appeal but did not.

- (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) Trial Attorney was ineffective at Probation Violation hearing
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) See Attachments
 (b) _____
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? Yes
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. Motion for reconsideration
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Greenville County Court of General Session, Greenville, S.C.
 ii. _____
 iii. _____

- iv. _____
- (c) the disposition thereof: _____
- i. No response
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition: _____
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: _____
- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Trial Attorney did not appeal to Court of Appeals
- (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? 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? No
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Michael Cullinan Esq.
305 East North Street, Suite 123, Greenville S.C. 29601
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment, Plea, and Sentencing - Michael Cullinan Esq.
Probation Violation Hearing - Michael Cullinan Esq.
- ii. _____
- iii. _____

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

Probation Reinstated and/or Right to Direct Appeal reinstated

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Demarcus Bussey # 316432, 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.

Demarcus Bussey # 316432

SWORN to and subscribed before me this 28
day of June, 2010

Eugene Bett (L.S.)
Notary Public

My Commission Expires: 2016

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

I, Demarcus Bussey # 316432, 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.

Demarcus Bussey # 316432
Applicant

SWORN or affirmed to and subscribed before me this
28 day of June, 2010.

Eugene Berry
Notary Public

My Commission Expires: 2016

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

- (A) Trial Attorney that represented the Applicant at his Parole Violation Hearing was ineffective as his performance was objectively unreasonable when he failed to consult with applicant about an Appeal, Furthermore Applicant was prejudiced by Attorney's deficient performance inasmuch as Attorney failed to file an appeal after the applicant explicitly requested that Counsel do so.

Applicant allege that during and after his Parole Violation hearing he explicitly requested that his Attorney put in a notice of Appeal within the 10 day deadline. Applicant alleges that his Attorney told him that he would do it, but never did. Applicant alleges that his Attorney was ineffective and he was prejudiced by Attorney's deficient performance.

To establish that he is entitled to Post-Conviction relief, applicant must first show that his attorney's performance was objectively unreasonable. *Id.* at Strickland v. Washington 466 U.S. 688-90. In the appellate context a applicant may demonstrate both deficient performance and prejudice by showing that Counsel failed to Consult with Petitioner and that a reasonable attorney would have done so under the Circumstances or that Counsel failed to file an appeal after the applicant explicitly requested that Counsel do so. Roe v. Flores-Ortega 528 U.S. 470, 477 (2000). For an attorney to "Consult" that attorney must advise the client about the advantage and disadvantages of an appeal and make reasonable efforts to ascertain the Client's wishes. *Id.* at 528 U.S. 478; United States v. Witherspoon 231 F.3d 923, 926 (4th Cir. 2000) An attorney must consult with a client about filing an appeal either where a reasonable defendant would have wanted to appeal, typically because there were non-frivolous grounds to pursue or because the particular defendant adequately demonstrated to Counsel an interest in appealing Flores-Ortega 528 U.S. at 480; Frazer v. South Carolina 430 F.3d 696, 707-08 (4th Cir. 2000).

Here Attorney had a duty to consult with applicant, because there were non-frivolous grounds to pursue, and most importantly applicant demonstrated his interest in an appeal. There are at least three non-frivolous grounds for appeal. First applicant could have challenged his Probation Violation sentence on the ground that "Probable Cause to believe applicant committed a Crime" is insufficient to revoke applicants probation and Suspended Sentence. The South Carolina and United States Constitution indisputably entitles a criminal defendant to a Jury determination that he is guilty of every element of the crime with which he is charged, beyond a reasonable doubt. United States v. Gaudin 515 U.S. 506, 510 115 S.Ct. 2310 (1995) This was thus required among other procedural protections in order to Provide Concrete substance for the presumption of innocence. In re Winship 397 U.S. at 363, 90 S.Ct. 1068 (1970). Next applicant could have challenged his Probation Violation Sentence on insufficiency of evidence. One of the Cause for Violating Applicants Probation was "Being in possession" of a gun, However there has been No Proof beyond a reasonable doubt that applicant was in possession of a gun, there was no gun produced. The Probation officer relied Solely on the

9
officers reports, which are not evidence. Another Cause for violating applicants Probation was allegedly "Changing address". There is absolutely no evidence or proof that applicant changed address, there was no Apartment lease or House title with applicant names and new address on it, applicant never admitted to changing address. The only information that the Probation officer relied upon again was a officer's Supplemental report. Such report never identifies how this officer can up with this erroneous conclusion, as the report would clearly reflect that no one informed him that applicant changed address. Thus the only piece of evidence the Probation officer relied on is wholly incredible in light of the circumstances. Next the applicant could have challenged his Parole Violation Sentence on the Ground that at the Probation Violation Hearing he was not allowed to speak to the Judge on his behalf, which is called the right to Allocution, a right which he was deprived of, which also has its roots in the United States Constitution as well as the States. Washington v. Texas 388 U.S. 14 (1964). None of these issues clearly lack an arguable basis either in law or in fact. McClean v. United States 566 F.3d 391 399 (4th Cir. 2009)

Applicant clearly demonstrated his interest in filing an appeal of these issues, which was sufficient in and of itself, to implicate his attorney's duty to consult. Attorney's failure to consult with applicant about an appeal was therefore objectively unreasonable and Constitutionally deficient. To show prejudice from attorney's failure to consult regarding an appeal, applicant must show that but for the fail he would have timely appealed. *Id.* at 484. This analysis overlaps with the deficient performance analysis to the extent that applicant may satisfy the Prejudice prong by showing that there were non-frivolous grounds for appeal or by showing that applicant was so determined to appeal that consultation would not have dissuaded that petitioner from doing so *Id.* at 485-86; Frazer 430 F.3d at 708. A applicants "unwavering and ongoing" interest in and pursuit of an appeal demonstrates the intent to pursue that appeal regardless of an attorney's advice. See Frazer. 430 F.3d. at 712.

As discussed above applicant had non-frivolous grounds to appeal his Probation Violation Sentence. Even if he did not, he was still prejudiced by Counsel's failure to Consult given that he wanted to appeal and would have done so notwithstanding Attorney's advice. Applicants "tenacity in pursuing those issues in a handwritten Motion for Consideration to the Administrative Judge for General Sessions, the Solicitors office and the South Carolina Department of Probation, Parole and Pardon Services, not to exclude this application for PCR, only bolsters the Conclusion that he would have appealed. Applicant has therefore satisfied the prejudice prong of his claim and is entitled to Post-Conviction Relief.

(B) Trial Attorney that represented the Applicant at his Probation Violation hearing was ineffective as his performance was objectively unreasonable when he Failed to do a thorough investigation, prepare a meaningful defense at the hearing. Applicant was prejudiced by Attorney's deficient Performance inasmuch as Attorney deprived applicant of a fair hearing, furthermore had Attorney

10. I did a thorough investigation and prepare a meaningful defense at the hearing there was a reasonable probability that applicants probation would not have been revoked.

Applicant alleges that during his Probation Violation hearing his attorney failed to put up a meaningful defense to his alleged violations, the only thing applicants attorney argued for was a Continuance. Applicant alleges that there were numerous of valid points and arguments his attorney could have presented at the hearing in his defense had he investigated the nature and Circumstance Surrounding each violation. The basis for applicants revocation of Probation are as follows:

Admission to Smoking Marijuana, which applicant did admit to, but had Attorney investigated further he would have learned that applicant was going to drug classes as instructed by his probation officer in order to avoid a Violation. Failure to Pay \$150.00 and not having a Job, which is and was true, but had Attorney investigated further he would have learned that the Court Order directed the Probation officer to sign applicant up for Vocational-Rehabilitation in order to receive Job training which takes 12 weeks to get approved. The Probation officer signed applicant up and was well aware that it was to train him to enable him to get a Job so he could be able to pay the \$150.00. Being in Possession of a Gun, this is not true and had Attorney investigated this he would have learned that this is merely a allegation, one which applicant has been yet to be Found Guilty of. Changing Address, This is not true, had Attorney investigated this matter, he would have learned that there is no evidence whatsoever that applicant changed addresses, the Probation officer merely relied on a officers assumption and nothing more, had Attorney interviewed Keisha Ellington she could have provided testimony proving this violation was unfounded. Not following Probation officers Instruction, Had attorney took reasonable effort in investigating this alleged violation, he would have learned that Ms. Miranda Ware was unaware to point to one incident where applicant disregarded her instructions, had he known this attorney could have demanded Probation officer detail with Spec exactly what instructions were given and not followed. Probable Cause to believe that applicant committed the Crimes, Had attorney been informed in the Procedural and Substantive law, he would have been able to refute this alleged violation due to the fact in the State of South Carolina, every person is presumed innocent until proven guilty. Applicant has not admitted to guilt nor was guilt establish on those charges by a impartial Jury as it now stands the Law of this State holds applicant innocent and thus he cannot be violat upon innocence. Being in a different County, Had attorney investigated this he would have learned that applicant made his Probation officer well aware that he would be making visits to Seneca, and Ms. Miranda Ware never on instructed applicant not to make those visits. As easily is concluded but for Attorneys deficient performance the outcome of the proceeding would have been different. Applicant is entitled to relief.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2010-CP-23-5349
COUNTY OF GREENVILLE	)	
	)	
Demarcus Kentrail Bussey,	)	
S.C.D.C. No. 316432,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed June 30, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. On July 11, 2006, the Applicant pled guilty to two (2) counts of strong arm robbery (2005-GS-23-10187, -10190) and one (1) count of carjacking (2005-GS-23-10189). He was represented by Thomas M. Creech, Jr., Esquire. The Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of ten (10) years suspended on service of five (5) years and four (4) years probation for one count of strong arm robbery,¹ five (5) years suspended during probation for the second count of strong arm robbery,² and ten (10) years suspended during probation for carjacking. The Applicant did not appeal.

On March 19, 2010, the Applicant appeared in court pursuant to a probation citation. He

¹ 2005-GS-23-10190.

² 2005-GS-23-10187.

was represented at the probation revocation hearing by Michael Cullinan, Esquire. The Honorable Charles B. Simmons, Jr. revoked the Applicant's probation and levied concurrent sentences of four (4) years and eighty-three (83) days for each count of strong arm robbery and nine (9) years and eighty-three (83) days for carjacking. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. A transcript of the probation revocation hearing is not available.

II.

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

- I. Ineffective assistance of probation revocation counsel:
 - a. Failed to advise about an appeal.
 - b. Failed to file an appeal after requested to do so.
 - c. Failed to investigate and prepare meaningful defense.

III.

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

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

442, 334 S.E.2d 813, 814 (1985).

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

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

IV.

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

V.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

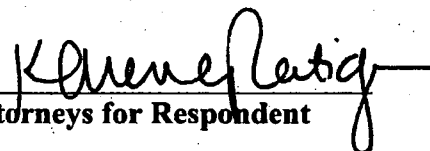
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

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

By:


Attorneys for Respondent

December 16, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2010-CP-23-5349

DEMARCUS KENTRAIL BUSSEY, 316432)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

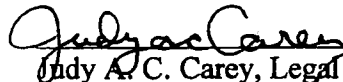
STATE OF SOUTH CAROLINA,)

Respondent.)

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

Demarcus Kentrail Bussey, 316432
Broad River Correctional Institution
4460 Broad River Road
Columbia SC 29210

DATED this 16th day of December, 2010.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

) COURT OF COMMON PLEAS
) 2010-CP-23-05349
)

DEMARCUS KENTRAIL BUSSEY)
APPLICANT)

vs.)

STATE OF SOUTH CAROLINA)
RESPONDENT)

ORIGINAL

TRANSCRIPT OF RECORD

May 11, 2011
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD WELMAKER, Judge.

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

RODNEY RICHEY, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

INDEX OF WITNESSES

DEMARCUS BUSSEY

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MICHAEL CULLINAN

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Redirect By Mr. Richey 30

» > ○ < «

Certificate of Reporter 31

PLAINTIFF EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Medical Records	10	10
2	Incident Report	11	11
3	Inventory	12	12
4	Warrant and Order	13	13
5	Letter dated 4/25/11	16	16
6	Documents	21	21

1 THE COURT: Ms. Ratigan, you may proceed.

2 MS. RATIGAN: Thank you, Your Honor, this is the
3 case of Demarcus Bussey vs. State of South Carolina,
4 docket number 2010-CP-23-5349. Mr. Bussey originally pled
5 guilty in July of 2006 to two counts of strong armed
6 robbery and one count of car jacking. At that point Judge
7 Hill sentenced him to concurrent terms of 10 years
8 suspended on the service of five years and four years
9 probation for one count of strong armed robbery. Five
10 years suspended during probation to second count of strong
11 armed and 10 years suspended during probation for car
12 jacking.

13 He was released to probation and appeared back
14 in court March the 19th of 2010 pursuant to a probation
15 citation. He was represented at that probation revocation
16 hearing by Mr. Cullinan. At that point Judge Simmons
17 revoked his probation and levied concurrent sentences of
18 four years and 83 days for each count of strong armed
19 robbery and nine years and 83 days for car jacking, he did
20 not appeal.

21 I would note, Your Honor, there is no transcript
22 of the probation revocation hearing. I contacted Judge
23 Simmons and inquired about that. His assistant informed
24 me there were no court reporters that day. So that is why
25 we do not have a transcript of the probation revocation

1 hearing.

2 THE COURT: Mr. Richey, you ready to proceed?

3 MR. RICHEY: Yes, sir, call Mr. Bussey.

4 THE COURT: Mr. Bussey, come around and be sworn
5 please, sir.

6 THE CLERK: Please step up here to the Bible.
7 Place your left hand on the Bible, raise your right hand,
8 please.

9 DEMARCUS BUSSEY, after being duly sworn,
10 testified as follows:

11 THE DEPUTY: Make sure you speak loud and clear
12 into the microphone.

13 THE CLERK: State your full name for the record,
14 please.

15 THE WITNESS: Demarcus Kentrail Bussey.

16 DIRECT EXAMINATION

17 BY MR. RICHEY:

18 Q Mr. Bussey, where are you currently at right now?

19 A I'm at Allendale Correctional Institution.

20 Q And why are you at Allendale?

21 A Because my probation was revoked.

22 Q Was that revoked in Greenville County?

23 A Yes, sir.

24 Q Who represented you on that?

25 A Mr. Michael Cullinan.

1 Q Okay. And you were revoked, as the Attorney General
2 said, some nine years on one of the cases?

3 A Yes, sir, I was -- I had a suspended sentence of 10
4 years suspended to four years probation and I was
5 revoked to the whole 10 years.

6 Q And you believe -- you filed an application for
7 Post-Conviction Relief, is that correct?

8 A Yes, sir.

9 Q And in that application you alleged that your
10 attorney did not effectively represent you, correct?

11 A Yes, sir.

12 Q And at this hearing there was not a transcript, is
13 that correct?

14 A Yes, sir.

15 Q Okay. And did you ever have a discussion about the
16 transcript or not having one?

17 A I had a discussion with Mr. Cullinan about the
18 transcript after the hearing. Several months after
19 the hearing. He advised me that he did not know
20 there was no Court Reporter and he was advised by one
21 of his colleagues after the hearing when he came
22 aware of the fact that there was no Court Reporter.
23 That the Judge called all the lawyers to the back of
24 the courtroom at the start of court and told all the
25 attorneys that there was no Court Reporter present

1 and that they could either proceed that day or they
2 could reschedule. Mr. Cullinan advised me that the
3 reason why he was not aware of the fact because he
4 was running late because he was at a bond hearing
5 that day.

6 Q Okay. And let's get to the substance of it. You
7 were violated for a couple of reasons, is that
8 correct?

9 A Yes, sir.

10 Q One of the reasons apparently that you were alleged
11 to have committed were additional crimes, is that
12 correct?

13 A Yes, sir.

14 Q And it is your position that you should not have been
15 violated?

16 A Yes, sir.

17 Q Can you tell me?

18 A The reason why I have should not been violated, as I
19 told Mr. Cullinan, on November 3rd a search warrant
20 was conducted in the Seneca residence on my
21 girlfriend, Ms. Keisha Ellison --

22 Q Okay during -- when you say November 3rd, this is the
23 time that you were on probation, correct?

24 A Yes, sir.

25 Q Okay, go ahead.

1 A This was the day I was arrested, November the 3rd,
2 2009.

3 Q Right.

4 A A search warrant was conducted on my girlfriend,
5 Ms. Ellison residence. Because a phone that was
6 taken from the robbery was tracked to this residence.

7 Q Okay, there was an alleged robbery from -- and a
8 phone from that robbery was tracked to the residence
9 of Ms. Ellison, that's this girlfriend, correct?

10 A Yes, sir.

11 Q Okay, go ahead.

12 A I advised Mr. Cullinan that I had not committed the
13 crimes. And that 28 days prior to the -- to when the
14 crime happened, I was shot in my knee. And the tapes
15 of crimes show that the suspects were on tape and
16 running. I advised Mr. Cullinan that I needed for
17 him to obtain my medical records to prove that I
18 could not been on tape running because I had just got
19 shot and I was on crutches. Mr. Cullinan failed to
20 obtain those, obtain my medical records and present
21 them to the Judge. Had he done so the Judge would
22 have been able to seen that was a possibility chance
23 that there's no way I could have been on tapes
24 running, committing those crimes. Therefore, he
25 probably would have gave me a continuance, at least.

1 If not reinstated my probation. I have at this
2 time--

3 Q Hold on, let's -- your position is you were actually
4 charged with these crimes, correct?

5 A Yes, sir.

6 Q Okay. But you believe if your lawyer had conducted
7 an investigation, he would have determined that you
8 were not a suspect?

9 A Yes, sir.

10 Q Who was representing you on those charges at the
11 time?

12 A Mr. Cullinan.

13 Q So he had the pending criminal charges and the
14 probation?

15 A Yes, sir.

16 Q Okay. All right, go ahead.

17 A I have a copy of the medical records at this time.

18 Q Let me see that.

19 A Labeled Exhibit G. That would show that I was shot
20 on September 29th, 28 days prior to the first crime
21 that happened on October 27.

22 Q While Ms. Ratigan is looking at that, the violation
23 that you were violated for, what were some of the
24 other violations?

25 A The other violations was for being in possession of a

1 firearm.

2 Q Okay. And that firearm in possession, was that as a
3 result of this alleged robbery that you were not
4 involved in?

5 A Yes, sir.

6 Q Okay.

7 A I --

8 MR. RICHEY: Your Honor, we offer this as
9 Applicant's No. 1.

10 MS. RATIGAN: No objection, Your Honor.

11 THE COURT: Without objection, Applicant's
12 Exhibit No. 1 is admitted into evidence.

13 (WHEREUPON, Applicant's Exhibit No. 1 was marked
14 for identification and received into evidence.)

15 BY MR. RICHEY:

16 Q You currently have some document in your possession,
17 is that correct?

18 A Yes, sir.

19 Q And those documents, they reflect your defense, your
20 probation violation, is that correct?

21 A Yes, sir.

22 Q What other documents do you have?

23 A I also have documents that -- documents of the search
24 warrant where it shows that no gun was recovered. So
25 otherwise the search warrant shows where I was never

1 in possession of a gun. The reason--

2 Q And this in on the sheet, is that correct?

3 A Yes, sir.

4 Q And this?

5 A The officers report where he also states all the
6 items that he found at the Seneca residence.

7 Q And so you believe that the central point of the
8 violation was this charge?

9 A Yes, sir. Which I also have a letter from the Clerk
10 of Court that advise I have never -- these charges
11 are 18 months old. I have never been plead guilty or
12 admitted guilty to those charges.

13 Q And those charges are still currently--

14 A These charges are still currently pending.

15 Q Who represented you on those charges?

16 A Mr. Scott Robinson.

17 Q And -- and as of now, given you're --

18 Your Honor, we offer this as Applicant's No. 2.

19 THE COURT: Applicant's 2 admitted.

20 MS. RATIGAN: No objection, Your Honor.

21 THE COURT: Without objection Exhibit 2 is
22 entered.

23 (WHEREUPON, Applicant's Exhibit No. 2 was marked
24 for identification and received into evidence.)

25 MR. RICHEY: We also offer this. I attached

1 what was found during the search warrant as Applicant's
2 No. 3.

3 MS. RATIGAN: I object to that one, Your Honor,
4 since there -- it's not been authenticated and is it a
5 generated document?

6 THE COURT: What's Exhibit 2?

7 MR. RICHEY: Exhibit 2 is the incident report.
8 I think this incident report and this is kind of the same
9 thing. That he denied it, no gun found, that type stuff.

10 THE COURT: I'll overrule the objection, they're
11 admitted into evidence.

12 That's Applicant's No.?

13 MR. RICHEY: Can we make this the same one? We
14 can make them --

15 That's the one you object to?

16 Can we make that Exhibit 3?

17 THE COURT: Yes, sir, that would be Applicant's
18 3.

19 (WHEREUPON, Applicant's Exhibit No. 3 was marked
20 for identification and received into evidence.)

21 BY MR. RICHEY:

22 Q Also you have a copy of your probation Order revoking
23 you, is that correct?

24 A Yes, sir.

25 Q And you believe that that also reflects or

1 strengthens your position that you did not violate
2 your probation, is that correct?

3 A Probation Order?

4 Q Yeah.

5 A Yes, sir.

6 Q Okay. And this, I think, these are already part of
7 the record, the -- let me -- let counsel see this.

8 This is going to be Applicant's No. 4. It is
9 the arrest warrant and the Probation Revocation
10 Order.

11 MS. RATIGAN: I have no objection to that, Your
12 Honor.

13 MR. RICHEY: We're going to submit these as one
14 and that would be Applicant's No. 4.

15 THE COURT: All right, Exhibit 4 is admitted
16 without objection.

17 (WHEREUPON, Applicant's Exhibit No. 4 was marked
18 for identification and received into evidence.)

19 BY MR. RICHEY:

20 Q Sir, I'm going to pass back up to you Applicant's
21 number 4, which is the arrest warrant and which is
22 the Probation Order. And in looking at that
23 document, your probation according to the arrest was
24 violated for what?

25 A Due to the pending charges.

1 Q Okay. And on the back of the sentencing, does it
2 reflect that you violated the terms in that arrest
3 warrant?

4 A On the back on the sentencing sheet, Your Honor -- I
5 mean, Mr. Richey, it said that I violated conditions
6 one, two, three, four, five, seven, nine and ten.
7 But in the actual arrest warrant, it only said that I
8 violated conditions four, six and ten. So me by not
9 being knowing what those conditions was, I was
10 prejudiced because Mr. Cullinan failed to object to
11 my probation agent, bringing up those other
12 conditions of violations when we had no idea that we
13 was being violated for those.

14 Also, I was also prejudiced by Mr. Cullinan
15 failing to object to probation agent's statement that
16 she -- she told the Judge that the reasons that she
17 was bringing the violations before the Court before I
18 was found guilty for the charge because she was told
19 by the investigator that I had admitted guilty to a
20 crime. At no time have I ever admitted guilty to
21 those crimes. Mr. Cullinan was very aware of that.
22 He even had my file on record in his hand. During
23 the time he couldn't present it, my statement that I
24 wrote for the officers to refute the statement. He
25 could have also presented the officer, the

1 supplemental report that I present into evidence that
2 could have refuted it from the beginning. I have
3 denied any involvement of those crimes. I have told
4 Mr. Cullinan from the onset that I was just shot,
5 there was no way that I could be running into a store
6 robbing it and I did not commit the crimes.

7 Q Okay. And these other documents you have, other than
8 the speech...

9 A This here Exhibit from the Clerk of Court showing
10 that I have never been indicted for these crimes or
11 presented an indictment have been submitted to the
12 courts for those crimes.

13 Q Okay.

14 A And as of South Carolina Rules of Court Section
15 17-19-10 states Unless a person is indicted by a
16 Grand Jury, he's not to be answering for any
17 crimes --

18 Excuse me, Your Honor.

19 THE COURT: Yes, sir.

20 MR. BUSSEY: Kind of nervous.

21 MR. RICHEY: Hold on a second, sir.

22 We offer this letter from the Clerk of Court
23 says that he hasn't been indicted. And this original
24 sentence sheet is already part of the record with this
25 indictment but we offer both together at this time.

1 MS. RATIGAN: I have no objection to that, Your
2 Honor.

3 THE COURT: Without objection.

4 MR. RICHEY: These are going to be Applicant's
5 number 5.

6 THE COURT: Exhibit 5 without objection.

7 (WHEREUPON, Applicant's Exhibit No. 5 was marked
8 for identification and received into evidence.)

9 MR. BUSSEY: According to --

10 MR. RICHEY: Hold on, she's got to finish
11 marking...

12 BY MR. RICHEY:

13 Q Okay, go ahead, sir.

14 A The reason why I submitted the document from the
15 Clerk of Court was to show cause that I had not been
16 indicted. And according to South Carolina Rules of
17 Court Section 17-19-10, No person shall be here to
18 answer for any crime or offense unless upon
19 indictment by a Grand Jury. I have not been
20 indicted, I have stood on my innocence, I'm still
21 standing on my innocence. Therefore, I should not be
22 held to answer to those crimes at my probation
23 hearing before I was found guilty.

24 Q Okay. And what other documents are you going to
25 submit at this time to booster your case?

1 A You got my sentencing sheet?

2 Q Got all that in.

3 A That was the sentencing sheet for when I was
4 originally sentenced.

5 Q Yeah. And we got the probation Order sentence here
6 with the warrant.

7 A Okay, this is the sentencing sheet from when I was
8 originally sentenced on July 11, 2006 where it
9 states--

10 Q Yes, that's already in.

11 A Yes, sir. I was violated for not having a job. I
12 explained to Mr. Cullinan that when I was originally
13 sentenced, I was Court Ordered to go to Voc Rehab for
14 job training.

15 Q Uh-huh.

16 A I advised Mr. Cullinan that I was, in fact, going to
17 Voc Rehab reporting to Mr. Vanessa Dempsy for my job
18 training and that was the reason why I have not
19 obtained a job because I had not finished the job
20 training program. Had he explained those
21 circumstances to the Judge then there's a possibility
22 that the Judge would have seen that I had not
23 violated for a job because I had not committed -- I
24 mean, not finish the job training program.

25 Q Okay. And have you admitted all the documents you

1 want to admit to your case?

2 A This right here is to show -- I asked Mr. Cullinan to
3 file an appeal on my behalf since only arguments
4 Mr. Cullinan stated at the hearing is that he asked
5 for a continuance. Even though on January 8th, 2010
6 we had came before the Courts before, for the
7 violation, where the Judge granted us a 60 day
8 continuance because Mr. Cullinan was not prepared.
9 Mr. Cullinan came again on March 19th and asked for
10 another continuance when he know -- when he was well
11 aware of the fact that I was going to have answer to
12 a violation after that 60 day period.

13 Q Okay, this continuance that you got the first time,
14 who was the Judge?

15 A I really can't remember his name.

16 Q Okay. Okay. It wasn't Judge Welmaker, was it?

17 A I really can't remember. But I do have a Order to
18 the notice for when I went to this hearing on January
19 the 8th. This is the notice of this hearing.

20 Q Okay. So you don't recognize Judge Welmaker as being
21 the Judge?

22 A He look kind of familiar but I'm not sure.

23 Q Okay. But whoever that Judge was, they didn't hear
24 your case?

25 A No, sir.

1 Q They just continued it?

2 A The hearing was continued. A 60 day continuance to
3 prepare.

4 Q So he didn't make any rulings about were you in
5 violation or anything at all?

6 A No, sir.

7 Q Did he even listen to the case, any of it? He just
8 continued it?

9 A He listened to my argument. He listen to arguments.
10 After that Mr. Cullinan told him that I was, in fact,
11 standing on my innocence and we was going to prepare
12 for trial. For he say he only going to give me a 60
13 day continuance for us to get our case together.

14 Q So your argument was based on your continuance
15 motion, is that what you're saying? You asked for a
16 continuance, correct?

17 A Yeah, Mr. Cullinan asked for a continuance the first
18 time but the Judge specifically told him 60 days we
19 would have to come back and answer to these probation
20 hearing. I was prepared but Mr. Cullinan put up no
21 defense for when he came back.

22 Q So you actually didn't do the trial the first time,
23 you just got a continuance?

24 A Yes, sir.

25 Q Okay. All right. What are those documents you have?

1 A This is -- after I realized that Mr. Cullinan -- when
2 I asked Mr. Cullinan to file -- that's the notice of
3 the first hearing.

4 Q Okay.

5 A I asked Mr. Cullinan to file and since he put up
6 absolutely no argument on my behalf or object to the
7 wrongful statement that my probation agent made that
8 I admitted to the crimes, he told me that he would.
9 Once I realized that he had not did that, I wrote a
10 motion to reconsiderations and submitted it to the
11 Clerk of Court. The Clerk of Court told me that I
12 could not submit a motion on my own behalf but as a
13 courtesy to me he would -- he would forward it to the
14 Solicitor's Office and Administrative Judge.

15 I then, after I submitted that, I then sent a
16 copy to the probation parole headquarters. They told
17 me it was out of their hands. That I should argue
18 all arguments in front of the Judge. I was also
19 prejudiced because at the hearing, I have a right to
20 allocation. I have a right to put up a defense
21 myself. The Judge at no time asked me if I had
22 anything to say. Had he only done so, the defense
23 that Mr. Cullinan failed to put up, I could have put
24 up myself. I also had documents that could have
25 proved that -- to refute my violations.

1 MR. RICHEY: We're going to offer this as
2 Applicant's No. 6. This is a motion for reconsideration,
3 the letter that he got from the Clerk of Court. Also his
4 notice of his probation hearing acknowledgment and the
5 letter that he just referred to from the Department of
6 Probation and Parole about his motion for reconsideration.
7 We offer all these as one combined Exhibit as Applicant's
8 No. 6.

9 MS. RATIGAN: I have no objection.

10 THE COURT: Without objection Exhibit 6 is
11 admitted into evidence.

12 (WHEREUPON, Applicant's Exhibit No. 6 was marked
13 for identification and received into evidence.)

14 MR. BUSSEY: I was also prejudiced --

15 MR. RICHEY: Hold on, sir.

16 THE COURT: April, have you marked those?

17 THE COURT REPORTER: No, sir.

18 MR. RICHEY: Hold on, let her finish.

19 MR. BUSSEY: I'm sorry.

20 BY MR. RICHEY:

21 Q Okay, sir, so your position is had he brought this
22 evidence that you have submitted today to the Court,
23 that the Court would not have violated your
24 probation, is that correct?

25 A Yes, sir.

1 Q Okay. All right. And the charges you currently have
2 pending, you are contesting those charges and you
3 want a trial on those?

4 A Yes, sir.

5 MR. RICHEY: Thank you, answer any questions
6 Ms. Ratigan may have for you.

7 CROSS-EXAMINATION

8 BY MS. RATIGAN:

9 Q I only have one question. Explain to me what you
10 wanted to appeal from your probation revocation
11 hearing. What error did the Judge make that you
12 wanted to appeal?

13 A That the Judge made?

14 Q Yeah.

15 A The Judge denied my right for allocation. He did not
16 let me speak and put up a defense on my behalf. And
17 also he waived my right to have my hearing on record
18 which had me at a clear disadvantage today. Because
19 had my hearing been on record, I could have showed
20 the prejudice statement that Ms. Amanda Ware, my
21 probation agent made, I could have showed that
22 Mr. Cullinan failed to object to it.

23 MS. RATIGAN: I have nothing further, Your
24 Honor.

25 MR. RICHEY: No other questions.

1 THE COURT: All right, thank you, sir, you may
2 step down.

3 Mr. Richey, you may call your next witness.

4 MR. RICHEY: Call Mr. Cullinan.

5 THE CLERK: Place your left hand on the Bible,
6 raise your right.

7 MICHAEL CULLINAN, after being duly sworn,
8 testified as follows:

9 THE CLERK: Thank you, you may be seated. State
10 your full name for the record, please.

11 THE WITNESS: Michael Shawn Cullinan.

12 DIRECT EXAMINATION

13 BY MR. RICHEY:

14 Q Mr. Cullinan, do you recall representing Mr. Bussey?

15 A Yes, sir.

16 Q And that was a probation revocation hearing?

17 A Yes, sir.

18 Q And I'm going to go through, you heard his testimony
19 and I'm going to go through some of those issues.

20 One as to the transcript and all that, can you talk
21 to me about how that was waived or whatever? How
22 that was done.

23 A Yes, sir. At the time of the hearing, I was wasn't
24 aware that there wasn't a Court Reporter. Typically
25 when you have probation revocation hearings they're

1 on a Friday. We also have bond hearings at the same
2 time. That day I was actually in bond hearings in
3 the morning and I didn't receive the announcement
4 that Judge Simmons had made. When I came into the
5 court and our case was called, that was not one of
6 the reasons, the lack of a Court Reporter, that I
7 requested a continuance for.

8 Q Okay.

9 A So Mr. Bussey is correct on that. I failed to ask
10 for a continuance for that reason.

11 Q Okay. Looking at the issue of appeal, did you -- did
12 you discuss with him any rights, that he had
13 appellate rights in this case?

14 A After his revocation hearing I went downstairs and I
15 talked to him a little bit about what happened, what
16 that meant. I have no indication in my file that he
17 requested for me to appeal. He may very well have
18 but I don't remember that.

19 Q The process that you have for appeals, can you kind
20 of explain to me, that's not something that you would
21 do, the brief and all that; that's not something that
22 you would do; is that correct?

23 A I don't remember even discussing that with him. I
24 can't remember if I even got into that with
25 Mr. Bussey.

1 Q What I'm saying is you don't write the brief,
2 correct? When you appeal a case from the PD's Office
3 you don't -- the file is sent to Appellate Defense?

4 A That is correct. We simply file the paper work to
5 have the appeal.

6 Q So it's not something that you would actually do, you
7 actually file the notice to be sent down?

8 A Yes, sir.

9 Q So if the client asked you to appeal then that's a
10 process that would be shipped out, correct?

11 A That's correct.

12 Q Okay. As to this charge, do you recall his
13 violations at all?

14 A I do.

15 Q Okay.

16 A I don't have his violation report in front of me. I
17 sent all that to his new attorney.

18 Q Right.

19 A I do remember that the primary basis for his
20 violation were the new charges. He also had some
21 additional violations. There was some issue of
22 testing positive or admitting to some sort of
23 marijuana use. Also an allegation of a change of
24 address. And kind of the standard failing to follow
25 advice and instructions of his supervising agent.

1 But primarily the main concern that I had was that he
2 was being violated for charges that he hadn't been
3 convicted of.

4 Q And do you recall whether you expressed those
5 sentiments to the Judge?

6 A Yes, I do.

7 Q Okay. And what was your position in front of the
8 Judge? Was it he hadn't been convicted or?

9 A I explained to Judge Simmons that while we recognize
10 there may have been some other reasons for the
11 violation, those were primarily seem to be kind of
12 minor but that the meat of the issue here was really
13 these pending charges. That I asked the Judge to
14 consider his right to presumption of innocence. And
15 because we had not been able to resolve those charges
16 yet, if we could continue the probation violation
17 hearing until that time.

18 Q Okay. And at that time had you those charges -- I
19 mean, the additional charges pending?

20 A Yes, sir, I was waiting on all of those.

21 Q Okay. And so you're familiar that he said he was
22 innocent and that type of stuff?

23 A Yes, sir.

24 Q Okay. As to these medical records about him being
25 shot prior to this violation, do you recall anything

1 about these records?

2 A We had spoken about that.

3 Q You mean you and Mr. Bussey?

4 A Yes, sir, we had spoken about that. I had some
5 concerns about getting into the pending charges at
6 that time. We weren't on trial for those charges
7 now. It was more a generalized objection on my part
8 for him being violated for charges that he hadn't
9 actually been committed of yet. So I didn't get into
10 any real detail, I don't believe, with the Judge at
11 that time regarding his medical records.

12 Q Well referring to -- you realize he said he had been
13 shot, did you know anything about the shooting that
14 took place?

15 A He had mention that to me.

16 Q Okay.

17 A We had had a bond hearing, he also mentioned it
18 during the bond hearing.

19 Q Okay.

20 A That was an issue I had cautioned Mr. Bussey on. I
21 didn't know if that was going to, at that stage in
22 the game, the fact that he could be involved in
23 potential and shots and things like that. I didn't
24 know if that was going to actually help his case at
25 that stage.

1 Q So I guess your position was because you didn't know
2 all the details of the shooting, you kind of wanted
3 to stay away from it, is that correct?

4 A Yes, sir.

5 Q Do you remember at the probation hearing his officer
6 telling, probation officer, telling the Judge that he
7 admitted to doing the crime, do you recall that at
8 all?

9 A No, sir.

10 Q You do not?

11 A I do not.

12 Q Okay.

13 MR. RICHEY: Thank you, answer any questions
14 Ms. Ratigan may have for you.

15 CROSS-EXAMINATION

16 BY MS. RATIGAN:

17 Q Did you receive the violation report, the warrant
18 citation, all that from probation?

19 A Yes, ma'am.

20 Q Did you review those documents with your client?

21 A Yes, ma'am.

22 Q And your testimony is that there were actually
23 several different conditions of probation that had
24 been violated according to the report?

25 A Yes, ma'am.

1 Q And you reviewed all of those with your client?

2 A I did.

3 Q But it appeared to you that the main thrust of their
4 argument was the arrest of these pending charges?

5 A Correct.

6 Q And your testimony today is that you argued to Judge
7 Simmons that this should not be used to violate your
8 client, is that correct?

9 A That is correct.

10 Q Was there anything else that you argued in mitigation
11 after the revocation hearing, do you recall?

12 A No.

13 Q Was there anything else that you could have argued in
14 mitigation that you think would have been successful?

15 A It was a very quick hearing. I was surprised at how
16 quickly Judge Simmons revoked his probation. I'd
17 hoped that that wouldn't have happened that day. And
18 so that was surprising.

19 Q In your opinion did Judge Simmons make any legal or
20 appealable errors during the revocation hearing?

21 A I don't believe so.

22 Q If Mr. Bussey had asked you to file an appeal would
23 you have filed that notice for him?

24 A Yes, ma'am.

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

1 MR. RICHEY: One additional question, Your
2 Honor.

3 THE COURT: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. RICHEY:

6 Q Do you recall if Mr. Bussey had an opportunity to
7 speak at that hearing?

8 A I don't recall.

9 Q Okay.

10 A Mr. Richey, he may not have. It was such a quick
11 hearing, I just don't recall. I'm not saying that he
12 did speak, I just don't remember.

13 MR. RICHEY: Thank you, just a moment.

14 That's all, Your Honor.

15 THE COURT: Thank you, Mr. Cullinan, you may
16 step down.

17 MR. CULLINAN: Thank you, Judge.

18 MR. RICHEY: That's all from us, Your Honor.

19 THE COURT: Anything from the State?

20 MS. RATIGAN: No, Your Honor, we would rely on
21 Mr. Cullinan's testimony.

22 THE COURT: All right. Okay, I'll review the
23 transcript and try to issue an Order in the next couple of
24 weeks.

25 MR. RICHEY: Thank you, Your Honor.

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MS. RATIGAN: Thank you, Your Honor.

THE COURT: And review the Exhibits.

(WHEREUPON, the proceedings were concluded.)

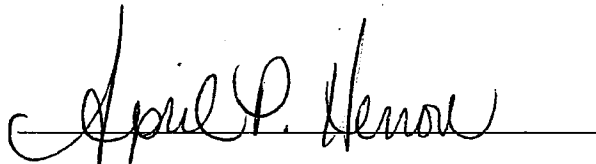
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 11th day of May, 2011.

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

September 22, 2011



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2010-CP-23-5349
COUNTY OF GREENVILLE	)	
	)	
Demarcus Kentrail Bussey,	)	
S.C.D.C. No. 316432,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

2011 JUL - 6 PM 3:44
FILED-CLERK OF COURT
GREENVILLE CO., S.C.
PAUL H. WYKENS

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 30, 2010. The Respondent made its return on December 16, 2010. An evidentiary hearing into the matter was convened on May 13, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's probation revocation counsel, Michael S. Cullinan, Esquire. The Court had before it the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return. There is no transcript of the probation revocation hearing.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. On July 11, 2006, the Applicant pled guilty to two (2) counts of strong arm robbery (2005-GS-23-10187, -10190)

and one (1) count of carjacking (2005-GS-23-10189). He was represented by Thomas M. Creech, Jr., Esquire. The Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of ten (10) years suspended on service of five (5) years and four (4) years probation for one count of strong arm robbery,¹ five (5) years suspended during probation for the second count of strong arm robbery,² and ten (10) years suspended during probation for carjacking. The Applicant did not appeal.

On March 19, 2010, the Applicant appeared in court pursuant to a probation citation. He was represented at the probation revocation hearing by Michael S. Cullinan, Esquire. The Honorable Charles B. Simmons, Jr. revoked the Applicant's probation and levied concurrent sentences of four (4) years and eighty-three (83) days for each count of strong arm robbery and nine (9) years and eighty-three (83) days for carjacking. The Applicant did not appeal.

ALLEGATIONS

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

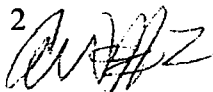
1. Ineffective assistance of probation revocation counsel:
 - a. Failed to advise about an appeal.
 - b. Failed to file an appeal after requested to do so.
 - c. Failed to investigate and prepare meaningful defense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

¹ 2005-GS-23-10190.

² 2005-GS-23-10187.

² 

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

Ineffective Assistance of Counsel

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

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). Allegations of ineffective assistance of probation revocation counsel are evaluated under the Strickland standard. See, e.g., United States v. Wren, 682 F. Supp. 1237 (S.D. Ga. 1988). However, since a probation hearing is not a formal adversarial proceeding, "the Court must review counsel's performance in light of the particular type of proceeding involved." Id. at 1241-42.

The Applicant stated he was alleged to have committed additional crimes while he was on probation. The Applicant stated he told counsel he was not guilty of these charges and that he could not have been involved in the armed robbery because he was on crutches at the time (and a videotape of the crime showed the suspects running away). The Applicant stated counsel did not obtain either this videotape or his medical records. The Applicant stated counsel failed to object to the probation agent's statement that he admitted he was guilty of the pending charges. The Applicant stated counsel failed to object to several conditions noted on the revocation order that were not included in the probation warrant. The Applicant stated counsel said he would file an

3 

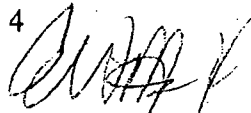
appeal but did not do so.

Counsel testified he represented the Applicant at the probation revocation hearing and on his pending charges. Counsel testified he and the Applicant reviewed the probation violations. Counsel testified that, aside from the pending charges, there were numerous other violations (admitted drug use, failure to inform of change of address, failure to follow instructions of agent). Counsel testified he had spoken to the Applicant about his medical records but was concerned about further exploring the pending charges at the revocation hearing. Further, counsel stated the Applicant had a gunshot injury and that he told the Applicant this might not help his case. Counsel testified he was late to the revocation hearing (as he was in bond court) and missed the judge's announcement that there would not be a court reporter that day. Counsel testified he argued to the court that the Applicant's probation should not be revoked based on pending charges. Counsel testified he did not recall the agent saying the Applicant had admitted he was guilty of the pending charges. Counsel testified he did not believe the probation revocation judge committed any legal errors, but that he would have filed an appeal if he had been asked to do so.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding counsel's testimony is credible.

This Court finds the Applicant failed to meet his burden of proving probation revocation counsel was ineffective. The Applicant asserts counsel should have introduced his medical records³ at the revocation hearing and argued his injury precluded his involvement in the pending

³ This Court notes the Applicant introduced these records at the PCR hearing and they were admitted as Exhibit 1.

⁴ 

armed robbery charges. Counsel, however, provided valid reasons for not introducing evidence of the Applicant's gunshot wound, given that he was not made aware of all the details and felt it could have actually done more harm than good for his client. Given the certain stigma attached to gunshot wounds, this Court finds counsel made a reasonable strategic decision. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel).

This Court finds the Applicant failed to meet his burden of proving he is entitled to a belated appeal from his probation revocation hearing. This Court notes there was conflicting testimony as to whether the Applicant requested an appeal and as to whether there were any non-frivolous grounds on which to file an appeal. Finding no extraordinary circumstances in the Applicant's probation revocation proceeding, counsel was not required to inform the Applicant of the right to appeal. See Turner v. State, 384 S.C. 451, 682 S.E.2d 792 (2009). This Court also notes there were various violations of probation in this case and finds that the absence of a transcript from the revocation hearing would not change the outcome in the case at bar.

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

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

5


All Other Allegations

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

CONCLUSION

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

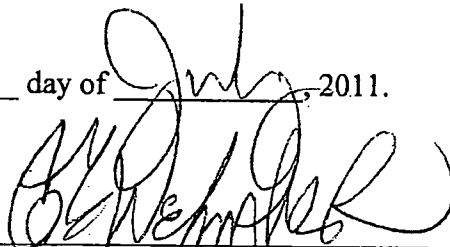
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate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

A handwritten signature in black ink, appearing to be "C. H. H. 6", is written over the page number 6.

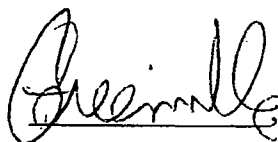
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 1 day of July, 2011.



G. Edward Welmaker
Resident Judge
Thirteenth Judicial Circuit

 Greenville South Carolina.

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	ARMED ROBBERY and POSSESSION OF A WEAPON DURING
COUNTY OF GREENVILLE	)	THE COMMISSION OR ATTEMPTED COMMISSION OF A CRIME

At a Court of General Sessions, convened on DECEMBER 13 2005 the Grand Jurors of Greenville County present upon their oath:

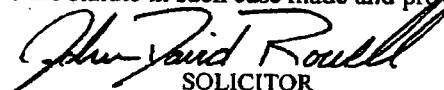
COUNT I – ARMED ROBBERY

That DEMARCUS KENTRAIL BUSSEY did in Greenville County, on or about the 30th day of September, 2005, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon, that Adrian A. Dilley reasonably believed to be a deadly weapon, attempted to and/or did take by means of force or intimidation, goods or monies described as: ladies' handbag, U.S. Currency and cell phone from the person or presence of Adrian A. Dilley. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

**COUNT II – POSSESSION OF A WEAPON DURING THE COMMISSION
OR ATTEMPTED COMMISSION OF A CRIME**

That DEMARCUS KENTRAIL BUSSEY did in Greenville County, on or about the 30th day of September, 2005, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

D Fuller

Greenville Police Department

10/2/2005

DOCKET NO. 2005-GS-23-

JDR

010187

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

DECEMBER TERM 2005

THE STATE

vs.

DEMARCUS KENTRAIL BUSSEY

PLEAD GUILTY

ARREST WARRANT NUMBER

1815652 and I-815655

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0139 and 0549

137

ARMED ROBBERY and POSSESSION OF A
WEAPON DURING THE COMMISSION OR
ATTEMPTED COMMISSION OF A CRIME

VIOLATION §16-11-0330 and §16-23-490

Foreperson of Petit Jury

Date:

261

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CARJACKING

At a Court of General Sessions, convened on **DECEMBER 13, 2005** the Grand Jurors of Greenville
County present upon their oath:

That DEMARCUS KENTRAIL BUSSEY did in Greenville County, on or about the 30th day of September
2005, take or attempt to take a motor vehicle, to wit: 2000 Land Rover from DWAIN WALLER by force, and
violence or by intimidation while DWAIN WALLER, was operating and/or was in the said vehicle. This is in
violation of §16-3-1075 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

D Fuller

Greenville Police Department

10/2/2005

DOCKET NO. 2005-GS-23-
JDR

010189

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

DECEMBER TERM 2005

PLEAD GUILTY

THE STATE

vs.

DEMARCUS KENTRAIL BUSSEY

ARREST WARRANT NUMBER

1815654

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

2599

Indictment for

CARJACKING

VIOLATION § 16-03-1075

Foreperson of Petit Jury

Date:

263

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on **DECEMBER 13, 2005** the Grand Jurors of Greenville County present upon their oath:

That DEMARCUS KENTRAIL BUSSEY did in Greenville County, on or about the 30th day of September 2005, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon, that DWAIN WALLER reasonably believed to be a deadly weapon, attempted to and/or did take by means of force or intimidation, goods or monies described as: U.S. Currency, SC driver's license, and debit and credit cards from the person or presence of DWAIN WALLER. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

D Fuller

Greenville Police Department

10/2/2005

DOCKET NO. 2005-GS-23-
JDR

010190

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

DECEMBER TERM 2005

THE STATE

vs.

PLEAD GUILTY

DEMARCUS KENTRAIL BUSSEY

ARREST WARRANT NUMBER

1815653

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

ARMED ROBBERY

VIOLATION § 16-11-0330

Foreperson of Petit Jury

Date:

264

RECEIVED

MAY -7 2012

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

ORIGINAL

DEMARCUS KENTRAIL BUSSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

SUPPLEMENTAL APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN RATIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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GREENVILLE HOSPITAL SYSTEM UNIVERSITY MEDICAL CENTER
GREENVILLE MEMORIAL HOSPITAL
MEDICAL RECORD



NAME: BUSSEY, DEMARCUS KENTRAI
PATIENT MR#: 000-

Patient Location: 082D2412AM
Billing NO: 080010729382

DATE OF OPERATION (09/29/2009)

PREOPERATIVE DIAGNOSIS: Status post gunshot wound, left knee.

POSTOPERATIVE DIAGNOSIS: Status post gunshot wound, left knee.

PROCEDURE: Arthrotomy with removal of foreign body, left knee.

SURGEON: Dr. Scott Broderick
ASSISTANT: Dr. Adam Smitherman
ESTIMATED BLOOD LOSS: 50 cc.
SPECIMENS: Copper-jacketed bullet.
COMPLICATIONS: None.
DRAINS: None.

INDICATIONS FOR SURGERY: Demarcus is a young gentleman who was shot late last night, sustaining the above injury. He was seen and evaluated in the emergency room and noted to have no other injury. He was neurovascularly intact. The bullet was resting in the center of his joint. Risks and benefits were explained. He was placed on the schedule for the above procedure.

INTRAOPERATIVE FINDINGS: The entrance wound was too far medial for us to really incorporate it into our incision. However, did make a central incision with a medial parapatellar approach and were able to identify the bullet with not much problem.

PROCEDURE IN DETAIL: Patient was brought to the operating room and placed in supine position. General endotracheal anesthesia was administered. Once an adequate level of anesthesia was obtained, tourniquet was placed on the upper left thigh. However, it was not inflated during the case. Bump was placed underneath the buttock, and the left leg was prepped and draped in the usual sterile fashion. It was noted that appropriate antibiotics had been given. A time-out was performed in a typical manner. It was noted that the surgical site had been signed.

We then made a typical midline incision and carried it down in a medial parapatellar fashion. We carefully went through the fat pad to be straight in line with the bullet. Eventually, we were able to visualize the bullet, remove it without difficulty, irrigate the wound out copiously, and close it in the usual layered fashion. We did use C-arm image assistance and noted no evidence

OPERATIVE REPORT
Page 1 of 2

CHART COPY

Exhibit G

**GREENVILLE HOSPITAL SYSTEM UNIVERSITY MEDICAL CENTER
MEDICAL RECORD**

NAME: BUSSEY, DEMARCUS KENTRAI
PATIENT MR#: 000-

Patient Location: 082D2412AM
Billing NO: 080010729382

of any fractures. Sterile dressings were then placed over the wound. The patient was extubated and taken to the recovery room in adequate condition.

DISPOSITION: He will be admitted to the recovery room. Once he is stabilized, he can be discharged to home. We will allow weightbearing as tolerated. He will need a followup in seven to ten days for a wound check.

ELECTRONIC...
SIGNED BY
Broderick, J.
Scott - 14647
11/17/2009
06:43:39

John Scott Broderick, MD

cc: John Scott Broderick, MD

D: 09/29/2009 12:40 P T: 09/30/2009 03:32 P jmt DVI: 538279 C/S#: 2883336

AGENCY I.D.
SC0230000

Greenville County Sheriff's Office
SUPPLEMENTAL REPORT

CASE NUMBER

09000172689

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	ARMED ROBBERY
☒ SUPPLEMENTAL REPORT	☐ OTHER	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	05
SUSPECT: BUSSEY, DEMARCUS KENTRAIL B/M 21				PAGE	1 OF 1
				511/160	BLK/BRN

SENECA, SC

ON 11-03-09, I ASSISTED INVESTIGATOR WEINER WITH THIS CASE WHICH IS ASSIGNED TO HIM. HIS VICTIM HAD HIS CELL PHONE, A SANYO KENTANA (BLUE), STOLEN DURING THE COURSE OF AN ARMED ROBBERY. THIS VICTIM ACTIVATED A GPS FUNCTION OF HIS CELL PHONE THROUGH HIS CELL PHONE PROVIDER. AS A RESULT, THE GPS INDICATED THAT THE CELL PHONE WAS AT THE ADDRESS OF 112 KING DR IN SENECA, SC.

INVESTIGATOR WEINER AND I TRAVELED TO AND LOCATED THE RESIDENCE. WE GOT A DESCRIPTION OF THE RESIDENCE AND THEN CALLED THE OCONEE COUNTY SHERIFF'S OFFICE AND REQUESTED THEIR ASSISTANCE IN OBTAINING A SEARCH WARRANT. OCONEE COUNTY INVESTIGATORS OBTAINED THE SEARCH WARRANT FOR US AND WE THEN WENT TO TO EXECUTE THE SEARCH WARRANT. OCONEE COUNTY INVESTIGATORS KNOCKED ON THE FRONT DOOR OF THE RESIDENCE AND NO ONE ANSWERED THE DOOR. AFTER SEVERAL MINUTES OF KNOCKING ON THE DOOR AND VERBALLY ANNOUNCING OUR PRESENCE, OCONEE COUNTY INVESTIGATORS FORCED OPEN THE FRONT DOOR BY KICKING IT ONCE. AS SOON AS THE DOOR CAME OPEN, THE OCONEE COUNTY INVESTIGATORS WERE GIVING VERBAL COMMANDS TO SOMEONE TO GET ON THE GROUND. I FOLLOWED IN AFTER THE OCONEE COUNTY INVESTIGATORS AND OBSERVED A B/M SUBJECT WITH A CELL PHONE IN HIS HANDS IN THE PROCESS OF LAYING DOWN ON THE FLOOR. THIS SUBJECT WAS IDENTIFIED AS THE SUSPECT. IT WAS LEARNED SHORTLY THEREAFTER THAT THE CELL PHONE THAT THE SUSPECT HAD IN HIS HAND WAS NOT THE CELL PHONE WITH THE GPS DEVICE BUT A CELL PHONE STOLEN FROM ANOTHER ARMED ROBBERY WHICH ALSO WAS ASSIGNED TO INVESTIGATOR WEINER.

INVESTIGATOR WEINER ALONG WITH TWO OCONEE COUNTY INVESTIGATORS WENT TO A BACK BEDROOM WHERE A B/F SUBJECT WAS SITTING ON A BED. THIS SUBJECT WAS IDENTIFIED AS KEISHA ELLINGTON WHO IS THE GIRLFRIEND TO THE SUSPECT. ONCE THE SCENE WAS SECURED AND CLEARED OF ANY OTHER OCCUPANTS, INVESTIGATOR WEINER SPOKE WITH BOTH THE SUSPECT AND MS. ELLINGTON AND EXPLAINED TO THEM THAT WE WERE THERE IN REFERENCE TO A SEARCH WARRANT. BUSSEY THEN DENIED ANY INVOLVEMENT IN ANY ROBBERIES AND SAID THAT HE WAS JUST RECENTLY RELEASED FROM PRISON AND WAS SERVING 10 YEARS ON PROBATION. I THEN CALLED PROBATION IN GREENVILLE AND LEARNED THAT MIRANDA WARE WAS HIS PROBATION AGENT. I ASKED HER IF SHE WAS AWARE THAT THE SUSPECT HAD MOVED TO SENECA AND IF THAT WAS A VIOLATION OF HIS PROBATION. SHE SAID THAT SHE DID NOT KNOW THAT HE HAD MOVED AND THAT IT WAS A VIOLATION, SO SHE SIGNED A WARRANT ON THE SUSPECT FOR A PROBATION VIOLATION.

IT WAS APPARENT FROM BOXES OF ITEMS STACKED IN THE LIVING ROOM THAT THE SUSPECT AND MS. ELLINGTON HAD RECENTLY MOVED IN. WE EXPLAINED TO THE SUSPECT WHAT WE WERE LOOKING FOR AND HE DENIED HAVING ANY KNOWLEDGE OF THE CELL FOR WHICH WE WERE SEARCHING. BECAUSE OF THIS WE HAD TO GO THROUGH EACH BOX OF ITEMS STACKED IN THE LIVING ROOM IN AN ATTEMPT TO LOCATE THE PHONE. WHILE I AND SOME OF THE OCONEE COUNTY INVESTIGATORS WERE DOING THIS, INVESTIGATOR WEINER AND ANOTHER OCONEE COUNTY INVESTIGATOR WERE SEARCHING MS. ELLINGTON'S CAR, A WHITE MITSUBISHI GALLANT.

I LOCATED SOME ROLLS OF PENNIES THAT LOOKED AS THOUGH THEY WERE ROLLED AT A BANK BY MACHINE. THEY WERE IN A BLACK GYM BAG THAT WAS IN ONE OF THE BOXES IN THE LIVING ROOM. I ASKED INVESTIGATOR WEINER IF HE HAD ROLLS OF PENNIES STOLEN AND HE SAID THAT HE DID. OCONNE COUNTY INVESTIGATORS SAID THAT HAD A ROBBERY AS WELL BY SUSPECTS MATCHING THE DESCRIPTION IN OURS AND THEY TOO HAD ROLLS OF PENNIES STOLEN IN THEIR ROBBERY.

AFTER THOROUGHLY GOING THROUGH THE BOXES IN THE LIVING ROOM, I ALSO SEARCHED A BEDROOM OFF TO THE RIGHT OF THE LIVING ROOM. I DID NOT LOCATE ANYTHING THAT APPEARED TO BE CONNECTED TO ANY ROBBERIES.

ADMIN	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADMIN. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEARED UNDER 18	
	☒ YES ☐ NO		☒ YES ☐ NO		☐ UNFOUNDED		☒ ARRESTED 18 AND OVER		☐ EX-CLEARED 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE: ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM/DECLINES COOPERATION ☐ EXTRADITION DENIED ☐ JUVENILE-NO ARREST									
	REPORTING OFFICER(S)		DATE		UNIT NO. / STAR #		APPROVING OFFICER		DATE	
FORTNER, MICHAEL E.		11-19-09		623/129		SGT. JONES		11-19-09		
						FOLLOW-UP INVESTIGATION ☐ YES ☒ NO		(OFFICER)		

Exhibit D

OF AGENCY I.D.
SC0230000

Greenville County Sheriff's Office
SUPPLEMENTAL REPORT

CASE NUMBER

09000172689

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	ARMED ROBBERY
☒ SUPPLEMENTAL REPORT	☐ OTHER	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	05
				PAGE	2 OF 2

I THEN WENT OUTSIDE AND SEARCHED ON THE BACK DECK AS WELL AS WALKED AROUND THE BACK YARD TO SEE IF THE PHONE WAS LAYING IN THE GRASS. I WAS LATER ADVISED BY INVESTIGATOR WEINER THAT ONE OF THE OCONEE COUNTY INVESTIGATOR HAD LOCATED THE BACK COVER TO A KATANA PHONE. BECAUSE OF THIS INVESTIGATOR WEINER STARTED LOOKING ALONG A WOOD LINE IN THE BACK YARD AND HE FOUND A CELL PHONE BATTERY. HE CALLED AND CHECKED ON THE BATTERY AND LEARNED THAT THE TYPE OF BATTERY HE FOUND WOULD BE USED BY A SANYO KATANA PHONE. AT THIS POINT, WE STARTED LOOKING MORE OUT IN THE WOODS AND EVENTUALLY I LOCATED THE TOP PART (EAR PHONE OF FLIP PHONE) OF A SANYO KATANA PHONE UNDERNEATH SOME BUSHES ALONG THIS WOOD LINE.

WE CONTINUED SEARCHING AND INVESTIGATOR WEINER WENT BACK INSIDE THE RESIDENCE TO COMPLETE THE PAPERWORK FOR THE SEARCH WARRANT. AS I WAS WAITING, I CONTINUE WALKING FURTHER OUT INTO THE WOODED AREA BEHIND THE RESIDENCE. AT THE BASE OF A PINE TREE PARTIALLY COVERED BY PINE NEEDLES I LOCATED THE LOWER HALF (PART YOU SPEAK INTO WITH THE BUTTONS) OF THE SANYO KATANA CELL PHONE. I NOTIFIED INVESTIGATOR WEINER OF THIS.

AFTER COMPLETING THE INVENTORY FOR THE ITEMS SEIZED, INVESTIGATOR WEINER AND I TRANSPORTED THE SUSPECT BACK TO THE LEC SINCE HE HAD BEEN PLACE UNDER ARREST FOR THE PROBATION VIOLATION BY OCONEE COUNTY AND HAD ARMED ROBBERY CHARGES IN GREENVILLE COUNTY.

THIS IS THE EXTENT OF MY INVOLVEMENT IN THIS CASE AT THIS TIME.

Oconee County Investigator, Sgt. Smith was the one who was supposed to be doing the search warrant. So I was just along for the ride. I saw the warrant being signed off on by Sgt. Smith which he is the only one signed off on.

ADMIN	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADMIN. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEARED UNDER 18		
	☒ YES ☐ NO		☒ YES ☐ NO		☐ UNFOUNDED		☒ ARRESTED 18 AND OVER		☐ EX-CLEARED 18 AND OVER		
	REASON FOR EXCEPTIONAL CLEARANCE: ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM/DECLINES COOPERATION ☐ EXTRADITION DENIED ☐ JUVENILE-NO A										
	REPORTING OFFICER(S)		DATE		UNIT NO. / STAB #		APPROVING OFFICER		DATE		
FORTNER, MICHAEL E.		11-19-09		623/129		SGT. JONES		11-19-09			
						FOLLOW-UP INVESTIGATION		☐ YES ☒ NO		(OFFICER)	

PENGAD-Bayonne
Applicants (A)
3
5.11.11

RETURN

I received the attached Search Warrant November 3, 2009 and have executed it as follows:
On November 3, 2009 at 12:15 o'clock pm, I searched
(the person) described in the warrant and (premises)

I left a copy of the warrant Premises or Residence
Named of person searched or "at the place of search"
Together with a receipt for the items

The following is an inventory of property taken pursuant to the warrant:

- ①- SANYO Black Cell phone, IME# 268435456501694335
- ②- T-Mobile black Cell phone
- ③- NOKIA black Cell phone, IME# 011886/00/032751/8
- ④- SAMSUNG black/grey Cell phone. (Alltel)
- ⑤- NOKIA black Cell phone
- ⑥- LG blue Cell phone (AT&T)
- ⑦- Samsung Red Cell phone, (Sprint)
- ⑧- Samsung grey Cell phone, IME# 010479/00/259948/2
- ⑨- BlackBerry brandy Cell phone, (Alltel)
- ⑩- NOKIA black Cell phone, (T-Mobile)
- ⑪- Samsung grey Cell phone, (T-Mobile)
- ⑫- Samsung blue/grey Cell phone, (Alltel)

This inventory was made in the presence Sgt. Arnold, Sgt. Smith
AND GREEN COUNTY INVESTIGATORS

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this
day of

(Signature of Officer Executing Warrant)

(L.S.)

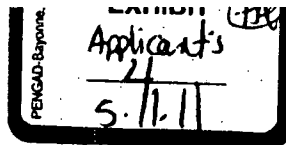
Signature of Judge

Never Signed By no 1 which
violates the search warrant

(EXHIBIT - 1)
F

Seal
Court
for Time

Form 18.1- Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-180
March 15, 1978



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Probation

ARREST WARRANT

Indictment Number 05-GS-23-10190, 05-GS-23-10187, 05-GS-23-10189

Warrant Number W-23-09-1136

State Identification No. (SID) 01656455

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF GREENVILLE, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that DEMARCUS BUSSEY, did on the 9 day of November, 2009 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

By violating conditions 4, 6, and 10 of probation as ordered in cause 05-GS-23-10190, 05-GS-23-10187spd, and 05-GS-23-10189spd by Greenville County Court of General Sessions dated 07/11/06.

Now, therefore, you are empowered and directed to arrest the said defendant and bring DEMARCUS BUSSEY before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at GREENVILLE, S. C. this 9 day of November, 2009.

County of GREENVILLE


Signature of Probation and Parole Agent (L.S.)

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Miranda B. Ware, who, first being duly sworn, deposes and says that DEMARCUS BUSSEY did within this County and State on the 9 day of November, 2009, violate the criminal laws of the State of South Carolina in the following particulars:

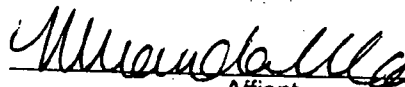
DESCRIPTION OF OFFENSE:

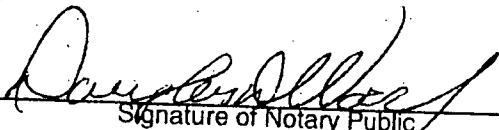
By violating conditions 4, 6, and 10 of probation as ordered in cause 05-GS-23-10190, 05-GS-23-10187spd, and 05-GS-23-10189spd by Greenville County Court of General Sessions dated 07/11/06.

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

Probable cause to believe subject did commit the crimes of Armed Robbery x2, Conspiracy x2, Unlawful Wearing of Mask x2, and Unlawful Poss of Weapon x2 as evidenced by incident reports from GCSO dated 10/27/09 and 11/01/09 when subject did enter the Hot Spot on 10/27/2009 wearing a bandana over his face and pointed handgun at victim and stole money, cigarettes, and cell phone, then on 11/01/09 entered the Stop N Go with a bandana over his face and pointed a handgun at the victims and took money, debit cards and cell phones, Failure to not possess or purchase any firearm having been in possess of a firearm on 10/27/09 and 11/01/09 during robberies, Failure to follow the advice and instruction of the supervising agent.

Sworn to and Subscribed before me
this 9 day of November, 2009.


Affiant


Signature of Notary Public (L.S.)

Address: SUITE 6500
301 UNIVERSITY RIDGE
GREENVILLE, SC 29601
GREENVILLE
USA
(864) 282-4540

102619
My Commission Expires

Exhibit C

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Greenville
STATE VS.

AKA: Demarcus Bussey
Race: B Sex: M
DOB: _____
SSN: _____
SID#: _____

INDICTMENT#: 05-GS-23-10190
Probation C/W#: W-23-09-1098
W-23-09-1136
Name of Original Offense: Strong Arm Robbery
Original AWW#: 185053
Date of Original Offense: 9-30-05
Conviction S.C. Code §: 16-11-0325
Conviction CDR Code #: 0111317
Original Sentence: 10 yrs upon 5 yrs susp
ORDER 4 yrs prob.

The above named defendant has been charged with violating the conditions of probation ordered on 7/11/06 in the Court of General Sessions of Greenville County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 11-09-09 as set forth in the attached warrant(s) or citation(s) dated 11/2/09. After hearing the evidence and being duly advised, in the (presence) (absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)
1, 2, 3, 4, 5, 7, 9 + 10

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 4 yrs 83 days months/years of the original sentence, and/or pay \$ _____ the remainder
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

☒ Additional Conditions ordered by the Court: time satisfy all monetary obligations
wave right to have on record - no court reporter

☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections. (11-05-09)

☒ The defendant has previously served 5 months/years on this sentence.
(split sentence time and/or prior partial revocation time)

☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540

This 19 day of March 2009
Greenville SC

Presiding Judge
Charles S. [Signature]
Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____

Witnessed by _____

Signed this _____ day of _____, _____ at _____ SC
Day Month Year City

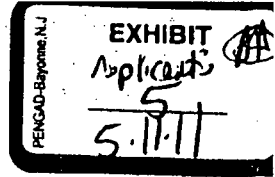
Exhibit AF



Office of the Clerk of Court

Paul B. Wickensimer
Clerk of Court for Greenville County
Greenville, South Carolina

www.greenvillecounty.org



April 25, 2011

Demarcus Bussey #316432
A.C.I.
SMU 118A
P.O. Box 1151
Fairfax, SC 29827

Re: Request for General Sessions Case Numbers and Copies of Indictments and/or
True Bills: I343522, I343526, M177221, M177220, M177219

Dear Mr. Bussey:

We are in receipt of your letter postmarked 4/15/2011 regarding the above referenced issues. As of today's date, no bill of indictment or true bill indictment has been filed with the Clerk of Court for the above referenced cases, therefore the General Sessions numbers would be the warrant numbers listed above.

Sincerely,
Paul B. Wickensimer
Clerk of Court

Exhibit B

Circuit Court • 305 East North Street • Greenville, SC 29601 • (864) 467-8551
Family Court • 301 University Ridge, Post Office Box 757 • Greenville, SC 29602 • (864) 467-5800

B STATE OF SOUTH CAROLINA
COUNTY OF Greenville
STATE VS.

AKA:

Race: B

DOB:

Address:

Greenville, SC

DL#: 999999999

SID#:

Demarcus Bussey

Sex: M

SSN:

Age: 17

13TH CIRCUIT SOLICITOR Fax: 864-487-8843

Jun 2 2008 11:06am P002/003

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2005GS2310190

A/W#: 1815653

Date of Offense: 09-30-2007

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

☐ CASE RESTORED
SENTENCE

☒ PLEA ☐ TRIAL

☐ CONVICTED OF or ☒ PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: ROBBERY. STRONG ARM ROBBERY (GS)

In violation of § 16-11-0325

☒ NON-VIOLENT

☐ VIOLENT

of the S.C. Code of Laws, bearing CDR Code # 0137

☐ 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:

[Signature]
Solicitor.

[Signature]
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 282 days/months/years or ☐ Under the Youthful Offender Act not to exceed 4 years
and/or to pay a fine of \$ 100; provided that upon the service of 282 days/months/years and/or payment
of \$ 100; plus costs and assessments as applicable*; the balance is suspended with probation for 4
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived,

Total: \$ 100 plus 20% fee: \$ 20

Payment Terms:

☐ not by SCDPPPS

☐ Ordered

PTUP

611 days/hours Public Service Employment

611 06 for GED
May serve W/E Rehab. or Job Corp. vic. Rehab.

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

parts. of \$ 100 beginning

\$ 100 paid to Public Defender Fund

Other:

Recipient:

*Fees:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv Surchage) \$100

§ 14-1-211(A)(2) (DUI Surchage) \$100

§ 14-5-2995 (DUI Assessment) \$12

§ 14-13 (Public Def/Prob) \$500

§ 14-13, 1B TP (Law Enforcement Funding) \$25

§ 14-13, 1B TP (Drug Court Surchage) \$100

§ 14-21-114(BUI Breath Test Fee) \$50

§ 14-5-2942(f) (Vehicle Assessment) \$40/ea

3% to County (if paid in installments)

TOTAL

[Signature]
Clerk of Court Deputy Clerk

Court Reporter:

PRESIDING JUDGE *[Signature]*

Judge Code: 2411318

Sentence Date: 7/11/06

SCCA/217 (2/2006)

prob. begins upon completion of any
early rel. program

F v. h. 11

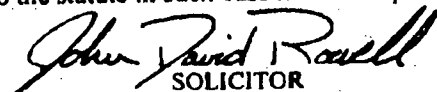
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

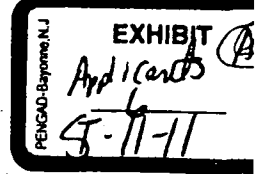
At a Court of General Sessions, convened on **DECEMBER 13, 2005** the Grand Jurors of Greenville County present upon their oath:

That DEMARCUS KENTRAIL BUSSEY did in Greenville County, on or about the 30th day of September 2005, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon, that DWAIN WALLER reasonably believed to be a deadly weapon, attempted to and/or did take by means of force or intimidation, goods or monies described as: U.S. Currency, SC driver's license, and debit and credit cards from the person or presence of DWAIN WALLER. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

State of South Carolina,
District of Greenville -



State of South Carolina } Motion for
VS. } Reconsideration
Demarcus K Bussey } of Probation violation
DEFENDANT. }

Date: _____

"A" FACTS

See Attached Police Supplement Report

1. Defendant Demarcus Bussey was arrested on 11-3-09 And charged with several Armed Robbery's, Assaults, And deadly weapon(s) charges... Evidence Related to The crime(s) were found At _____ In Seneca South Carolina... Defendant Bussey Denied Any Involvement to any of The Robberies And Told officer(s) That He was Recently Released From Prison And serving 10 years on Probation (See Attached Supplement Report By Investigator Micheal Fortner)
2. The Investigator Micheal Fortner called Demarcus Bussey Probation officer MS. MRANDA Ware and Had Defendant(s) Probation Violated Due To His own Belief That Demarcus Bussey Had changed His Address And was Living At The _____, Seneca SC. Address without Notification of His Probation officer. ~~am~~

Exhibit J

Probable Cause To Believe Defendant Committed The Crimes of Armed Robbery, Conspiracy, Unlawful Wearing of Mask, Unlawful Possession of A Weapon, Incident Reports State That on 10-27-09 And 11-01-09 Defendant Entered A HOT SPOT on 10-27-2009 wearing A bandana over His Face And Pointed Handguns AT victim And Took Money, Cigarettes, And Cell Phone, Then on 11-1-09 Entered A Stop-N-Go with A bandana over His Face And Pointed A Handgun AT The victims And Took Money, debit Cards, And Cell Phones, (Failure To Not Possess or Purchase? Any Firearms Having Been In Possession of Firearm on 10-27-09 And 11-1-09 During Robberies, Failure To follow The Advice and Instruction of The Supervising Probation Agent Being Reason For His Probation Violation...

Heard to
a Review
AND

3.

"B" Issue(s)

Defendant(s) 14TH Rights To The United States Constitution Have Been Violated Where It States A Criminal Defendant Who Enters A Plea of Not Guilty Shall Enjoy The Rights Until Proven Guilty Beyond A Reasonable Doubt By Jurors, And Shall Not Be Unlawfully Punished For Any Crime or Violations Without First Being Found Guilty of The Crimes, or Admitting Guilt...

"C" Arguments

4. Defendant DeMarcus Bussey STANDS UPON HIS RIGHTS AND CLAIMS OF NOT GUILTY - Defendants PROBATION HAVE BEEN VIOLATED AND Defendant HAVE COME TO PRISON FOR THOSE VIOLATIONS, BEING THOSE CRIME(S), IN WHICH Defendant PLEAD NOT GUILTY THAT HAPPENED ON 10-27-09 AND 11-1-09 - Defendants PROBATION CAN NOT BE VIOLATED FOR CRIMES HE HAVE NO KNOWLEDGE OF AND ENTERED A PLEA OF NOT GUILTY ON -

5. PROBATION Agent MIRANDA WARE, FURTHERMORE, VIOLATED Defendant(S) PROBATION BASED UPON THE PERSONAL OPINION OF THE INVESTIGATOR(S) OF THE ARMED ROBBERY CASE(S), WHO CALLED Defendant(S) PROBATION Agent AND STATED THAT Defendant DeMarcus Bussey HAD MOVED TO 112 KING DRIVE IN Seneca SOUTH CAROLINA WITHOUT NOTIFICATION OF HIS PROBATION Agent, THIS BEING THE PROBABLE CAUSE FOR Defendant(S) PROBATION BEING VIOLATED SEE: (SUPPLEMENTAL REPORT DATED 11-17-09 CASE# 09000172689) "Attached"

6. Defendant DeMarcus Bussey DENIE THE CLAIM THAT HE WAS LIVING AT - IN Seneca S.C. AND STATES THAT HE WAS LIVING AT HIS LAST STATED ADDRESS KNOWN TO HIS PROBATION Agent. Defendant STATES THE FACT(S) THAT HE NEVER "Failed"

To follow the Advice And Instructions of His Probation Agent. Defendant states the fact(s) that He was at the Related Address of _____ Due to the fact He was Helping His Girlfriend "KEISHA ELLINGTON" Move to a different location, It's Apparent that the Police indicated Defendant And Ms. Ellington Had Just Moved into _____ Truth Be Told Defendant was helping Ms Ellington ^{who} was at that time Moving to Her current location which is _____ street in Seneca South Carolina.

7. Furthermore, Defendant's Probation could not be violated because of His failure to pay the 150⁰⁰\$. Because He had not yet found a job due to Employer(s) failure to Hire Him due to His lack of Experience in the workforce and field - Probation Agent was aware that Defendant was signed up for Voc-Rehab in order to obtain a job and pay His Probation fees - Defendant Did Admit to Smoking Marijuana And Prior to His Arrest was taking 8 Drug classes Assigned by Probation Agent of (3) in which Defendant completed -

8. Defendant contends that even if He was

Being Arrested And charged with Armed Robbery on November 3rd 2009, His Incarceration would still be unlawful due to the fact that the Probable Cause Warrant was not signed until November 4th 2009, And the Probation of Violation Warrant was not signed by His Probation Agent until November 9 2009 -

9. Overall, Defendant Claims In No way Did He violate His Probation, The Probation violation was Based on Investigator's Personal Belief And not Based on Actual Facts And Evidence - Because Defendant Is A suspect who Allegedly Robbed 2 Stores In no way Violates The Defendants Probation Due to Defendant Pleas of not Guilty, Therefore The Probation violation Should Have Been Post-Poned As A pending charge until it was Established Defendant Actually committed the crimes of Armed Robbery.

10. "D" Relief Requested
Defendant Request His Probation Violation Be Reconsidered, The Probation Violation Be Reversed And Post-Poned until Defendant Proves His Innocence, or is found Guilty of the crime(s).

If not Defendant SHALL Do A Post-Conviction Application Alledging VIOLATIONS Set forth In THIS Motion, ALSO A 1983 CIVIL Law Suit Complaint CLAIMING Constitutional Amendment violations of RETALIATION By The Investigators by Having His Probation Intentionally Violated Because of There Personal Beliefs of His Involvement In A Armed Robbery—

II.

Defendant Request His Probation Be Reconcidered, Re-instated, And Post-Poned until further notice on The STATUS of His CHARGES or Reversal And DISMISSAL of Probation Due To unlawful CLAIMS STATED In THIS Motion.

Respectfully Submitted,
Signature X Demarcus K. Bussey

Demarcus K. Bussey
Address: BACE Saluda 227
Broad River Rd
Columbia, SC. 29210

Notary Public

Signature X D. Wexler III

My Commission Expires

on Date x 10/18/2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Greenville)

IN THE COURT OF GENERAL SESSIONS

Indictment No. 05052310910, 10187, 10189

Probation Violation
 Warrant/Citation #

W-23-09-1098

State of South Carolina,

v.

Ammons

Bussery

Defendant.

**NOTICE OF PROBATION VIOLATION
 HEARING AND ACKNOWLEDGMENT
 OF NOTICE**

You are hereby directed to appear at a Probation Violation Hearing in General Sessions Court on 1-8-2010 at 830 am / pm in the Greenville County Courthouse, 305 E. North St. Greenville, SC 29601, South Carolina.

You may have an attorney represent you at this hearing. If you cannot afford an attorney and you desire the representation of the Greenville County Public Defender, you must apply for an appointed attorney with that office. If you choose to appear at the hearing without an attorney, you may be required to represent yourself. You are hereby advised that there are dangers and disadvantages to self representation. An attorney may better understand courtroom procedure and may be better able to think of and present defenses to your probation violations. By appearing without an attorney you are acknowledging these dangers but are knowingly and voluntarily choosing to proceed without counsel.

At the violation hearing you will have an opportunity to speak, and you may present witnesses or documentary evidence on your behalf. If requested, you will also have an opportunity to confront and cross-examine any witnesses called to testify against you. It is your responsibility to have your witnesses and attorney present. If you are released on bond prior to your hearing date, you must report to the Probation Office immediately upon your release.

You are required to be present at your hearing as scheduled above. If you do not appear, a bench warrant or a failure to appear warrant will be issued for your arrest. Furthermore, the Court may choose to proceed with the hearing in your absence. This directive remains in effect until you are granted leave by the Court.

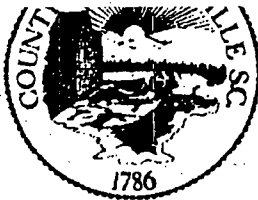
This directive has been read to me and I have been provided with a copy. I was also given an opportunity to ask questions about this directive before it was signed.

Date

Exhibit A

Probationer's Signature

Probation Agent's Signature



Office of the Clerk of Court

Paul B. Wickensimer

Clerk of Court

Circuit Court Division

Greenville County Courthouse
305 East North Street
Greenville, SC 29601
(864) 467-8551 FAX 467-8540

Family Court Division

301 University Ridge
Post Office Box 757
Greenville, SC 29602
(864) 467-5800 FAX 467-5856

June 2, 2010

Demarcus Bussey #316432
D-Dorm Room 41
Kirkland Correctional Inst.
4344 Broad River Rd.
Columbia, SC 29210

Dear Mr. Bussey:

Enclosed please find a copy of your clocked motion. The cost for your copy is \$4.50 (\$.25 per page x 10 pages plus \$2 mailing costs). Please send your payment via money order or cashiers check made payable to: Greenville County Clerk of Court. Please reference "I815653" on your payment.

When filing motions/paperwork in the future, please provide the copy you wish to have returned to you in addition to the original motion to be filed. Please include a self-addressed, stamped envelope as well. The Clerk of Court's Office for General Sessions does not provide free copies/mailling, regardless of your status.

As a courtesy to you a copy of your motion has been forwarded to the Solicitor's Office and to the Administrative Judge for General Sessions. Please note that any action taken on these matters will come from the Solicitor's Office. The Clerk of Court's Office does not forward motions to any other offices or agencies unless copies are requested by that agency.

Sincerely,
Paul B. Wickensimer

Enclosures

As far as appeals

to sent a motion to the S.C. Dept. of
Probation and Parole in Columbia
No Response

Exhibit K

No Response

Department of Probation, Parole and Pardon Services

MARK SANFORD
Governor



SAMUEL B. GLOVER
Interim Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

June 28, 2010

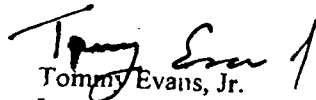
Demarcus Bussey, #316432
Broad River Correctional Institution-Saluda Unit Rm 227
4460 Broad River Road
Columbia, South Carolina 29210

Dear Mr. Bussey:

I am responding to your letter and "Motion for Reconsideration of Probation Violation" dated May 26, 2010, in which you are requesting that your probation be re-instated. If you believe that an error was made when your probation was revoked, this issue could have and should have been raised at the revocation hearing. If the issues had been raised, the probation judge would have had an opportunity to address them and you could have appealed the Judge's order. The Department does not have the authority to change or alter a sentence imposed by a judge and therefore, is unable to assist you per your request.

I apologize that I cannot offer you more assistance, and I wish you the best in the future.

Sincerely,


Tommy Evans, Jr.
Legal Counsel

TE:dn

cc: Agent Miranda Ware, Greenville County

Exhibit L

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

DEMARCUS KENTRAIL BUSSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR ORDER
TO RECONSTRUCT THE RECORD OF
PETITIONER'S PROBATION REVOCATION HEARING

Pursuant to Rule 224 of the South Carolina Appellate Court Rules, the undersigned counsel would request an order requiring the parties to reconstruct the record of petitioner's probation revocation hearing that was held on March 19, 2010, at the Greenville County General Sessions Court before Judge Charles B. Simmons. In support of this petition, counsel would submit the following information.

1.) Petitioner was convicted of carjacking and two counts of robbery during the July 2006 term of the Greenville County General Sessions Court and sentenced to ten years, suspended on the service of five years and four years probation on one robbery conviction, five years suspended during probation on his second robbery conviction, and

ten years suspended during probation on his carjacking conviction. Petitioner did not enjoy the benefit of a direct appeal in the case.

2.) On March 19, 2010, petitioner's probation sentences were revoked pursuant to a hearing held before Judge Simmons at the Greenville County General Sessions Court. Petitioner was sentenced to four years and eighty-three days for each of his robbery convictions, and nine years and eighty-three days for his carjacking conviction.

3.) On June 30, 2010, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court alleging that his probation revocation attorney was ineffective in his representation on his probation revocation case. On May 11, 2011, a PCR hearing was held at the Greenville County Courthouse before Judge Edward Welmaker. During that hearing, petitioner testified that his probation revocation attorney was ineffective as he failed to appeal the probation revocation¹ and because he failed to argue against the revocation on the ground that the charges presented in support of the revocation were only pending charges for which he had not been convicted.²

4.) On July 1, 2011, Judge Welmaker issued an order of dismissal denying petitioner's allegations of ineffective assistance of his probation revocation counsel. Petitioner appealed Judge Welmaker's order.

5.) The undersigned counsel represents petitioner on his PCR appeal. Therefore, inasmuch as it was stated on the PCR record that the probation revocation transcript was not transcribed and/or unavailable (App. 18, l. 13 – p. 19, l. 1), and because the entire subject of petitioner's PCR action contained allegations of ineffective assistance from his probation revocation counsel, then a transcript of his probation revocation proceeding is

¹ App. 32, ll. 2-3; App. 36, ll. 9-22.

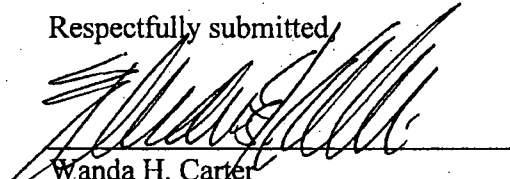
² App. 21, l. 6 – p. 24, l. 6; App. 40, ll. 7-23; App. 43, ll. 2-5.

relevant to the PCR appeal and must be included as part of the lower court record per Rule 227(f), SCACR, in order to perfect the PCR appeal. As a result, counsel would request that a reconstruction hearing of the probation revocation proceeding be ordered in the case.

6.) When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. See Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002), and China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968). See also Deaton v. Leath, 279 S.C. 82, 302 S.E.2d 335 (1983), where the Court granted the appellant's motion to set aside their convictions and remand for a new trial where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal.

WHEREFORE, the undersigned counsel would request that an order for the reconstruction of the record of petitioner's probation revocation proceeding be issued in the case and that the appeal be held in abeyance pending a resolution of this matter.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

January 27, 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
G. Edward Welmaker, Circuit Court Judge

DEMARCUS KENTRAIL BUSSEY,

PETITIONER,

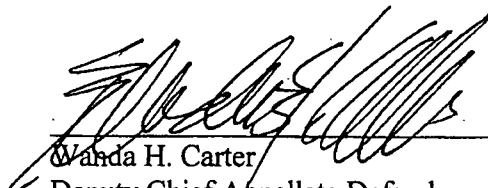
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the petition for order to reconstruct the record of petitioner's probation revocation hearing in the above referenced case has been served upon Karen Ratigan, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 27th day of January, 2012.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 27th day of January, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 9, 2012

Deputy Chief Appellate Defender Wanda H. Carter
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: Bussey, Demarcus Kentrail v. The State

Dear Counsel:

The following Order has been endorsed on your Petition for Order to Reconstruct the Record of Petitioner's Probation Revocation Hearing in the above entitled case on appeal.

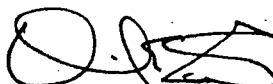
"Petition denied.

s/ Jean H. Toal C.J.
For the Court

March 9, 2012."

Please be advised the Petition for Writ of Certiorari and Appendix should be served and filed within thirty (30) days of the date of this letter.

Very truly yours,


CLERK

RECEIVED

DES/jj

cc: Assistant Attorney General Karen Ratigan

SC OFFICE OF
APPELLATE DEFENSE