

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Jasper County

Carmen T. Mullen, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

MARCUS PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212550

APPENDIX

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF JASPER) IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,)
99-GS-27-192,193,518,519
-vs-)
September 25, 2000
MARCUS JERRELL PARKER,)
Ridgeland, S.C.
DEFENDANT.)

B E F O R E:

HONORABLE HENRY FLOYD, JUDGE.

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

RANDOLPH MURDAUGH, III, ESQUIRE
Solicitor
Fourteenth Judicial Circuit
Hampton, South Carolina
Attorney for the State

GLENN WALTERS, ESQUIRE
Attorney at Law
Attorney for the Defendant

ANNETTE T. MOLE
Court Reporter

1 SOLICITOR: Your Honor please, the State
2 is ready in indictment #99-519, State against Marcus
3 Parker, charged with armed robbery, #193, Marcus Parker
4 charged with possession of a firearm during the commission
5 of a crime of violence; #518, Marcus Parker charged
6 with assault and battery with intent to kill; and #192,
7 Marcus Parker charged with kidnapping.

8 He is represented by Mr. Glenn Walters of
9 the Orangeburg Bar ---no, the Columbia Bar.

10 MR. WALTERS: Right, and I have an office
11 here.

12 SOLICITOR: Okay, and in Jasper County. I
13 am informed that he wishes to enter a plea.

14 THE COURT: Mr. Parker, would you raise your
15 right hand, please, sir.

16 (WHEREUPON, Dependant was duly sworn.)

17 THE COURT: You can put your hand down. Your
18 correct name is Marcus Parker?

19 MR. PARKER: Yes, sir.

20 THE COURT: And are you represented by Mr.
21 Walters in this case?

22 MR. PARKER: Yes, sir.

23 THE COURT: Mr. Walters, have you explained
24 to your client the charges contained in the indictments,
25 the possible punishments, his constitutional rights,

1 including his right to a trial by jury?

2 MR. WALTERS: Yes, Your Honor, that's correct.

3 THE COURT: Do you believe he understands
4 his rights, the possible punishment, wants to waive
5 them and enter pleas of guilty to one count of kidnapping,
6 one count of assault and battery with intent to kill,
7 one count of possession of a firearm during the commission
8 of a violent offense and one count of armed robbery?

9 MR. WALTERS: That is correct.

10 THE COURT: And do you agree with his decision
11 to do that?

12 MR. WALTERS: Yes, sir.

13 THE COURT: Mr. Parker, how old re you?

14 MR. PARKER: I'm nineteen, sir.

15 THE COURT: And how far did you go in school?

16 MR. PARKER: I made it to the twelfth grade.

17 THE COURT: So you can read and write and
18 understand the English language?

19 MR. PARKER: Yes, sir.

20 THE COURT: Sir, within the last twenty-
21 four hours, have you taken any medication, drugs or
22 alcohol ?

23 MR. PARKER: No, sir.

24 THE COURT: Have you ever been treated for
25 the abuse of alcohol, drugs or mental illness?

1 MR. PARKER: No, sir.

2 THE COURT: Sir, do you understand that you
3 are offering to plead guilty to one count of armed
4 robbery and it carries a maximum penalty of thirty
5 years and minimum of ten, one count of assault and
6 battery with intent to kill that carries a maximum
7 penalty of twenty years, one count of possession of
8 a firearm during the commission of a violent offense
9 and it carries a maximum of five years, and one count
10 of kidnapping which carries a maximum of thirty years.

11 MR. PARKER: Yes, sir.

12 THE COURT: If I ran all of those sentences
13 consecutive, you could receive eighty-five years.

14 MR. PARKER: Yes, sir.

15 THE COURT: Sir, the kidnapping, the armed
16 robbery and the assault and battery with intent to
17 kill require service of eight-five percent of whatever
18 sentence I give you, do you understand that?

19 MR. PARKER: Yes, sir.

20 THE COURT: You also need to understand that
21 you earn a strike under the two strike/three strike
22 rule in that if you were to persist in this type of
23 conduct in the future, you could land in jail for a
24 life without parole sentence.

25 MR. PARKER: Yes, sir.

1 THE COURT: Are you on probation or parole
2 now?

3 MR. PARKER: No, sir.

4 THE COURT: Understanding what you are pleading
5 guilty to and how much time you could get and the two
6 strike/three strike rule, do you still wish to go forward
7 with your guilty please?

8 MR. PARKER: Yes, sir.

9 THE COURT: Sir, do you understand when you
10 come to this court you have a right to contest any
11 one of these charges by way of a jury trial? A jury
12 of twelve men and women have to listen to the evidence,
13 might find you guilty but on the other hand, they might
14 find you not guilty. Do you understand that you have
15 a right to a jury trial?

16 MR. PARKER: Yes, sir.

17 THE COURT: Do you wish to exercise your
18 right to a jury trial or do you want to waive your
19 right to a jury trial?

20 MR. PARKER: Uhm ---

21 THE COURT: Waiving it means you are pleading
22 guilty, exercising your right means you want a jury
23 trial.

24 MR. PARKER: I'll waive it.

25 THE COURT: You do not want a jury trial?

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MR. PARKER: No, sir.

THE COURT: Sir, do you understand when you make that choice now you're giving up your right to remain silent, your right against self-incrimination, your right to make the State have to prove you guilty beyond a reasonable doubt, your right to confront the people accusing you of this crime, these crimes, your right to present defenses on your own behalf, your right to subpoena witnesses to come here and testify in your behalf and you are also giving up your presumption of innocence. Do you understand that by pleading guilty that you are giving up those rights?

MR. PARKER: Yes, sir.

THE COURT: Is that what you want to do?

MR. PARKER: Yes, sir.

THE COURT: Sir, have you had an opportunity to go over the indictments with your attorney?

MR. PARKER: Yes, sir.

THE COURT: And do you know what the State alleges that you've done wrong?

MR. PARKER: Yes, sir.

THE COURT: Are you, in fact, guilty of committing the offense of kidnapping involving Nola Miles on September 10, 1999?

1 MR. PARKER: Yes, sir.

2 THE COURT: Are you, in fact, guilty of committing,
3 that while doing that you were armed with a firearm
4 or a knife?

5 MR. PARKER: Yes, sir.

6 THE COURT: Sir, are you, in fact, guilty
7 of committing assault and battery with intent to kill
8 Ms. Miles on this date?

9 MR. PARKER: Yes, sir.

10 THE COURT: And, sir, are you, in fact, guilty
11 of committing armed robbery on the same day by taking
12 United States currency from her?

13 MR. PARKER: Yes, sir.

14 THE COURT: Sir, did you know that it was
15 wrong and against the laws of the State of South Carolina
16 to commit these four offenses?

17 MR. PARKER: Yes, sir.

18 THE COURT: Has anybody promised you anything
19 or held out any hope of reward or threatened you or
20 coerced you or intimidated or pressured you in any
21 way to get you to plead guilty?

22 MR. PARKER: No, sir.

23 THE COURT: Have you had enough time to make
24 up your mind and know that this is what you want to
25 do?

1 MR. PARKER: Yes, sir.

2 THE COURT: Are you pleading guilty freely
3 and voluntarily?

4 MR. PARKER: Yes, sir.

5 THE COURT: Are there any plea negotiations
6 in these cases?

7 SOLICITOR: There are no plea negotiations,
8 Your Honor, please.

9 THE COURT: The Solicitor advises me that
10 there's no negotiations in connection with this case.
11 That means that the sentencing is entirely in my discretion.
12 In that connection has anybody suggest to you or promised
13 or recommended or told you you will get any certain
14 sentence other than the maximum?

15 MR. PARKER: No, sir.

16 THE COURT: Are you satisfied with the time,
17 effort, advice and representation of your attorney,
18 Mr. Walters, in this case?

19 MR. PARKER: Yes, sir.

20 THE COURT: Do you have any complaint to
21 make against your lawyer, such as, he didn't spend
22 enough time or he did something I didn't like or he
23 didn't do something that I wanted him to do, any kind
24 of complaint whatsoever?

25 MR. PARKER: No, sir.

1 THE COURT: Sir, have you understood each
2 of the questions that I've asked you?

3 MR. PARKER: Yes, sir.

4 THE COURT: Has anybody suggested to you
5 how to answer these questions?

6 MR. PARKER: No, sir.

7 THE COURT: In other words, the answers that
8 you have given me today have been your own answers?

9 MR. PARKER: Yes, sir.

10 THE COURT: And your answers have been truthful?

11 MR. PARKER: Yes, sir.

12 THE COURT: All right, I find that there's
13 a substantial factual basis for the plea, I find the
14 defendant's decision to plead guilty is freely, voluntarily,
15 knowingly and intelligently made with the advice and
16 counsel of a competent attorney in whom he indicates
17 he's satisfied and I would accept the pleas. Mr.
18 Solicitor.

19 SOLICITOR: Your Honor please, Mr. Mears
20 with SLED can give you the details of the offenses.

21 THE COURT: Yes, sir.

22 AGENT MEARS: Your Honor, on September the
23 10th at approximately 10:45 A.M. in the morning, I
24 was called to Jasper County to investigate an armed
25 robbery and a shooting at the Outpost in Ridgeland.

1 Upon arrival, the defendant, Ms. Miles, who
2 was apparently the victim, she was already transported
3 to the hospital when I got there. The investigation
4 began and suspects were derived from different ones
5 giving information. An officer went to the school and
6 found that two subjects were out of school fitting
7 the description of the vehicle that was allegedly used
8 in the armed robbery.

9 Later it was found out that the subjects,
10 one juvenile and Mr. Parker here, had gone to the store
11 earlier that morning and left and then came back to
12 the store. Ms. Miles knew the defendant here, Mr.
13 Parker.

14 Upon searching for the vehicle and Mr. Parker
15 and the juvenile, the co-defendant, the vehicle was
16 located in Jasper County and it was stopped by the
17 deputies. Upon stopping the vehicle, the two males
18 subjects were in it and items belonging to Ms. Parker
19 was in the vehicle. Both subjects were detained at
20 that time, given their Miranda Warnings and brought
21 up here and questioned. Later on the defendant give
22 a statement as to where the gun was and that he had
23 went into the store and that the gun was used to rob
24 the store. Ms. Parker was shot and held against her
25 will and carried to the restroom area of the store

1 and she was detained there for a while and then later
2 she was shot and left.

3 Upon talking with both defendants, they admitted
4 that they were involved in the armed robbery, kidnapping
5 and the abduction of Ms. Miles. Both were arrested
6 and charged with the above charges that they are charged
7 with currently.

8 SOLICITOR: Your Honor please, the kidnapping
9 results when the armed robbery was taking place, he
10 took Ms. Miles from the area where the cash register
11 was to a bathroom, opened the door, shoved her in the
12 bathroom and said, you know me, I'm going to have to
13 kill you, shot her --- tell the Judge where the shot
14 went.

15 MS. MILES: One in my nose and came out my
16 cheek and one in my ---

17 SOLICITOR: She's indicating just to the
18 righthand side of her nose and came out the cheek on
19 the lefthand side.

20 MS. MILES: And one went in my back and came
21 out my neck.

22 THE COURT: Any prior record?

23 SOLICITOR: No, sir.

24 THE COURT: Ma'am, would you like to be heard
25 at this time?

1 SOLICITOR: Yes, sir, she would like to make
2 a statement I think.

3 MS. MILES: Your Honor and others present,
4 I would just like to say a few words. I am alive here
5 today and very thankful to be. I am not alive because
6 of Marcus, only by the grace of God. I am wounded
7 in my heart, body and soul for the rest of my life.
8 (Witness is crying) I do not know what caused Marcus
9 to shoot me and leave me to die. People choose what
10 they want to do in life and Marcus chose to kill me.
11 He entered my place of business and I treated him very
12 kind and fairly when the whole time he was planning
13 to rob and murder me.

14 Since my case I have found out that the criminal
15 has more rights than the victim. I wish someone would
16 tell me why. It is a disgrace to our United States
17 of America the way criminals do not pay for the crimes
18 they commit and until we make a stand and say you did
19 wrong, you must be punished for the crimes they are
20 going to continue.

21 And, Your Honor, I have a husband and I have
22 two beautiful daughters that I have brought pictures
23 of that almost lost me. Please give us hope in our
24 country that something will stop this crime.

25 THE COURT: Solicitor, anything else you

1 want to add?

2 SOLICITOR: No, sir.

3 THE COURT: Mr. Walters.

4 MR. WALTERS: May it please the Court. Your
5 Honor, my client, Marcus Parker, stands before you
6 today. He's 19 years old and at the time this crime
7 was committed he was 18. Your Honor, my client, as
8 it was previously stated, has no prior record.

9 Your Honor, the events of what occurred here
10 are out of character for Marcus Parker and making a
11 mistake in this manner, the made the greatest mistake
12 of all. In this particular case Marcus was in high
13 school, was a wide receiver and a quarterback, was
14 taking algebra and trigonometry, he was a student that
15 was an honor student that was supposed to go on to
16 college, had received a partial scholarship. Because
17 of his involvement with drugs, Marcus made a serious
18 mistake that day.

19 We're not here before the Court to trivialize
20 the offense, in no way can we do that. His mother
21 is here before the Court. I've counseled with Marcus
22 on four or five different occasions. It appears that
23 Marcus was involved with drugs and it was the first
24 time he had ever taken some acid and it appears in
25 this particular case, it got him into a serious problem.

1 We've discussed this matter and what occurred
2 and, of course, I advised him that taking acid is not
3 a viable defense. He is remorseful about what occurred.
4 He is willing to accept full responsibility for what
5 happened. And he would like to speak before the Court
6 and also to the victim in this case. We would ask
7 that the Court in considering this matter, I know Your
8 Honor must take into consideration the seriousness
9 of the offense. I ask that you also take into consider-
10 ation his youth, no prior record. It's just that when
11 he made a mistake, he made a terrible mistake. In this
12 particular case he is coming before you now and he's
13 going to go even further and say it's not a mistake,
14 I admit what I've done and I'm willing to assume full
15 responsibility for what has occurred.

16 If Your Honor can see any good and I believe
17 there's still some good in this young man, he's only
18 19 years of age and he's made a terrible error in
19 judgment and he will have to assume responsibility
20 for what has occurred. I would ask that the Court
21 please consider the words of Marcus and his mother
22 is also before the Court at this time and she would
23 like also to offer some words and again, we apologize
24 to the victim but we're here to accept responsibility
25 for what has occurred. I would ask that the Court

1 entertain Marcus at this time, Your Honor.

2 THE COURT: Sure, glad to hear form you.

3 MR. PARKER: To the Court, to the community
4 and town, Jasper County, I take full responsibility
5 for what I did. I know it was wrong. I was young,
6 immature, not looking at life in a direct way.

7 To Ms. Miles and her family, I know it's
8 hard, it's probably going to take a long time to ever
9 forgive me but I just ask that you will look deep in
10 your heart and forgive me for what I did. I have lost
11 so much in just coming through this, it has taught
12 me so much and I'm just asking to just forgive me today.

13 Judge, Your Honor, there's still some good
14 in me. I made a mistake, I know I was wrong. I'm
15 just asking that you would give me a second chance,
16 that you will just let me prove to my family, my
17 community and myself that I can do what's right and
18 I know I'm going to do what's right. Again, I apologize.

19 THE COURT: Yes, ma'am.

20 MOTHER: Well, you know, Marcus, he's a good ---
21 there is a good side of him, it's a real good side
22 of him. I love him and care about him and he loves
23 me and he cares for me, too. It's a good side of him
24 but what I'm saying, I take him to church and everything
25 but sometimes he go to church by hisself and I ask

1 him if he go to church so I didn't be there --- I don't
2 go that night, I just go some nights, I don't feel
3 well every time. So I ask him if he going to church
4 and he's a good side of a child, he was a real good
5 child. I ask him if he went to the church the night
6 I wasn't going, he was going to church, and I ask him
7 if he, Marcus, go to church where he will learn about
8 a teacher and everything.

9 It's a --- it's a good side of him. A real
10 good side of him. And I'm asking him I'm really sorry
11 for what he did to her. I am really sorry. I taught
12 my son everything I could in the book to bring him
13 up right and everything but I am really sorry, very
14 sorry.

15 THE COURT: Anything else?

16 MR. WALTERS: Thank you, Your Honor, nothing
17 else.

18 THE COURT: Mr. Walters, you know, if the
19 lady had died, you would be facing the death penalty.

20 On indictment #99-GS-27-519, the sentence
21 of the Court is that you, Marcus Parker, be confined
22 to the South Carolina Department of Corrections for
23 a period of twenty-five (25) years.

24 On #99-518, assault and battery with intent
25 to kill, the sentence is twenty (20) years, concurrent.

1 On #00-27-192, kidnapping, the sentence is
2 twenty-five (25) years, concurrent.

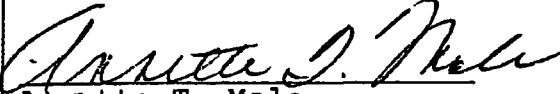
3 On #00-27-193, possession of a firearm during
4 the commission of certain crimes, five (5) years,
5 consecutive to the other sentences.

6 SOLICITOR: Thank you, sir.

7 MR. WALTERS: Thank you, your Honor.

8
9
10 END OF TRANSCRIPT.

11
12 A TRUE COPY

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14 
15 Annette T. Mole
16 official Court Reporter
17 Fourteenth Judicial Circuit
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STATE OF SOUTH CAROLINA

County of JasperMarcus Jerrell Parker # 269675
Full name and prison number (if any) of Applicant.

vs.

State of South Carolina
Name of Respondent.

In the Court of Common Pleas

01-CP-27-48

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — 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 applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to 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 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. Upon completion of the application, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Allendale Correctional Institution
2. Name and location of Court which imposed sentence Jasper County General Sess. or Court
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Armed Robbery - 99-GS27-0519
 - (b) ABWITK - 99-GS27-0518
 - (c) Kidnapping - 00-GS27-0192 ; Firearm Provision - 00-GS27
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Sept 25, 2000 Armed Robbery 25 years
 - (b) Sept 25, 2000 ABWITK 20 years
 - (c) Sept 25, 2000 Kidnapping 20 years
Sept 25, 2000 Firearm Provision 5 years

5. Check whether a finding of guilty was made

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

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

No

7. If you answered "yes" to (6), list

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

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

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

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

(c) the date of each such result:

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

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

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

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) Trial Counsel Advised Not to.
- (b) Trial Counsel Refused to Appeal, upon my Request for an Appeal
- (c) _____

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

- (a) Ineffective Assistance of Counsel
- (b) Guilty plea involuntarily induced, coerced, and unintelligently entered
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) See Attachment
- (b) See Attachment
- (c) _____

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A
- (d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) 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) NO
- (b) NO
- (c) NO

16. 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? N/A

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Mr. Glen Walters
P.O. BOX 1091, Orangeburg, S.C 29115
- ii. _____
- iii. _____

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

- i. Arraignment and Plea - Mr. Glen Walters
- ii. Sentencing - Mr. Glen Walters
- iii. _____

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

Vacated and Remanded for New Trial.

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

NO

STATE OF SOUTH CAROLINA

County of Jasper

VERIFICATION

I, Marcus Jerrell Parker, being duly sworn upon 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 the application; and that the matters and allegations therein set forth are true.

Marcus Jerrell Parker
Marcus J. Parker

SWORN to and subscribed before me this 31

day of January, ~~19~~ 2001

Helen P. Green (L.S.)
 Notary Public

My Commission Expires: 6/10/04

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

I, Marcus Jerrell Parker, 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 therefor.

Marcus Jerrell Parker
Marcus Parker
 Applicant

SWORN or affirmed to and subscribed before me this

31 day of Jan, ~~19~~ 2001

Helen P. Green
 Notary Public

My Commission Expires 6/10/04

AFFIDAVIT

To Proceed without Prepayment of Costs information in Support thereof:

I Marcus Terrell Parker, is currently incarcerated at the time of the Completion of my Post-Conviction Application and furthermore my mother who is my sole Support financially is currently without Employment under these dramatic. Circumstances I will be unable to pay the prepayment of this Application processing. I hope you can understand my very unfortunate Situation.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(A) Ineffective Assistance of Counsel:

A1) Ineffective Assistance of Counsel inasmuch as my trial counsel failed to file a Direct Appeal on my behalf. In absence of intelligence of Appeal Rights by defendant, Counsel must either appeal or comply with procedures for withdrawing from frivolous Appeal.

A2) I Received Ineffective Assistance of Counsel inasmuch as my counsel failed to properly investigate a firearm and prepare a defense by charges against me.

A3) I Received Ineffective Assistance of Counsel prior and during trial, inasmuch as my counsel failed to subpoena my witnesses and family members to introduce mitigating evidence at sentencing.

A4) My trial counsel refused to take actions to suppress my confession while he knew that my confession was taken while I was highly intoxicated (Denal Jackson Hearing). Furthermore, is in violation of S.C. Code of Law as Amendment; statute 19-1-90 and 8-15-50.

A5) I Received Ineffective Assistance of Counsel inasmuch as my counsel failed to advise me that statements and evidence seized unlawfully might be suppressed. Successfully, at trial by a jury.

(A6) I received Ineffective Assistance of Counsel inasmuch my attorney failed to arrange a Preliminary Hearing after my Request, to bring forth all substantial evidence that was being used against me.

(B) Guilty plea involuntarily induced, coerced, and unintelligently entered:

B1) My guilty plea was involuntarily induced, coerced, and unintelligently entered, inasmuch my counsel failed to present the defendant with all available defenses to the crime charged.

B2) My guilty plea was involuntarily induced, coerced, and unintelligently entered, inasmuch my trial counsel didn't advise me of two additional charges that I had to plea to, until at sentencing hearing.

Jan. 31, 2001

1341 pm

Dear Mrs. Bostick,

I pray this brief note finds you in the best of health. This letter is in reference to your ~~concern~~ ^{concern} in helping me complete my PCR application; with proper paperwork & documents which was needed. I can thank and appreciate you enough for everything you've done. Enclosed is my full complete Post Conviction Application. It has also been notarized by Attitude Counselor Inc. in the area. If possible, I would be grateful if you can send the name of my new court appointed attorney for business use. A response to my request would be highly appreciated. Again, thank you for your time, concern, and love.

May God Bless You +

U.S. Citizen
 Janarney J. Vester
 JP

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 01-CP-27-48
COUNTY OF JASPER	)	
	)	
Marcus Jerrell Parker, S.C.D.C.	)	
No. 269675,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed February 9, 2001, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Jasper County Clerk of Court's orders of commitment. The Jasper County Grand Jury indicted the Applicant at the March 2000 term of General Sessions for: Kidnapping (00-GS-27-0192), Possession of a Weapon during the Commission of a Violent Crime (0193), Assault and Battery with Intent to Kill (99-GS-27-0518), and Armed Robbery (0519). Glen Walters, Esq. represented the Applicant.

On September 25, 2000 the Applicant pled guilty to: Kidnapping, Possession of a Weapon during the Commission of a Violent Crime, Assault and Battery with Intent to Kill, and Armed Robbery. The Honorable Henry Floyd sentenced the Applicant to 25 years for Armed Robbery, 20 years concurrent for Assault and Battery with Intent to Kill, 25 years concurrent for Kidnapping, and 5 years consecutive for Possession of a Weapon during the Commission of a

Violent Crimes. The Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of trial counsel;
2. Involuntary guilty plea.

For the purpose of this Return, the Respondent incorporates the transcript, the Clerk of Court records, and the South Carolina Department of Corrections' records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. Respondent asserts that 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 Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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 v. State, 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 the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that 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. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

III.

In his second allegation the Applicant claims his guilty plea was involuntary. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced

by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

The State places the Applicant on notice that, should the Applicant make any false claims, commit perjury, or abuse the legal process during the course of these proceedings, the State reserves the right to seek punitive and remedial sanctions. These include but are not limited to: the forfeiture of all earned work, education, and good time credits earned by the Applicant through the date of the hearing or final disposition of this matter. See S.C. Code 24-27-200 (Supp. 1999); Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of

determining whether the Applicant's trial counsel was ineffective and whether the Applicant's guilty plea was made knowingly and voluntarily.

Respectfully submitted,

CHARLES M. CONDON
Attorney General

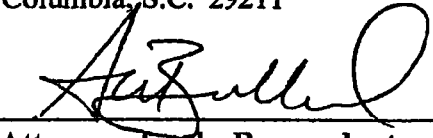
JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD ZELENKA
Deputy Attorney General

ALLEN BULLARD
Assistant Deputy Attorney General

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

By:


Attorneys for the Respondents

November 15, 2001

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Marcus Jerrell Parker

Applicant,

vs

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

01-CP-27-48

AFFIDAVIT OF SERVICE BY MAIL

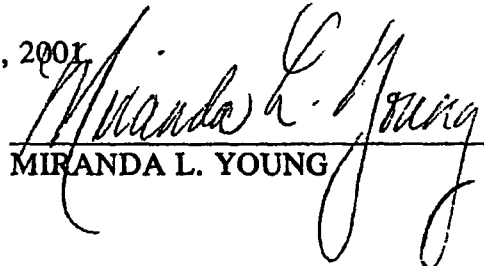
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Personally appeared before me, Miranda L. Young, who being first duly sworn, states:

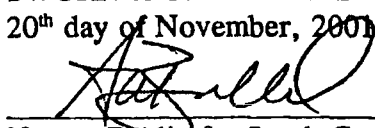
1. That I am an employee of the Office of the Attorney General.
2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.
3. That I have this day served a copy of the Return in the above-captioned matter on the following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

Larry S. Drayton, Esquire
Post Office Box 1553
Ridgeland, South Carolina 29936

DATED this 20th day of November, 2001.


MIRANDA L. YOUNG

SWORN to before me this
20th day of November, 2001.


Notary Public for South Carolina

My Commission Expires: 7-22-03.

(L.S.)

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

MARCUS J. PARKER

-vs-

THE STATE

)
)
)
)
)

TRANSCRIPT OF RECORD

DECEMBER 17, 2001
BEAUFORT, SOUTH CAROLINA

BEFORE:

THE HONORABLE JACKSON V. GREGORY, JUDGE

APPEARANCES:

LARRY DRAYTON, ESQ.
ATTORNEY FOR THE APPLICANT

ALLEN BULLARD, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE STATE

DONNA HARTLEY
CIRCUIT COURT REPORTER

WITNESSES

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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MARCUS JEREL PARKER, DIRECT EXAMINATION

1 MR. DRAYTON: Your Honor, we'd like to call Marcus Parker take the
2 stand, please.

3 THE COURT: Okay.

4 Come on around.

5 Place your hand on The Bible, please.

6 MARCUS JEREL PARKER,

7 first being duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. DRAYTON:

9 Q. Mr. Parker, please state your name. For the record.

10 A. For the record, my name is Marcus Jerel Parker.

11 Q. Now, Marcus, how old are you? Or what's your date of birth?

12 A. My date of birth is [REDACTED]

13 Q. And where you currently incarcerated?

14 A. I'm currently incarcerated in Allendale Correctional institution.

15 Q. Okay. How long you been incarcerated there?

16 A. Approximately two years and about four months.

17 Q. Do you recall the date of your conviction?

18 A. Yes, sir.

19 Q. Please tell us, for the record, please.

20 A. Excuse me, sir?

21 Q. State the date you were – the date you were convicted.

22 A. The date I was convicted was September 25, year 2000.

23 Q. And what you convicted of?

24 A. Convicted of armed robbery, kidnaping, assault and battery with intent to
25 kill and possession of a firearm during a certain crime.

1 Q. Okay, for the armed robbery charge, what your sentence for that charge?

2 A. I believe it was twenty-five years.

3 Q. And the assault and battery with intent to kill?

4 A. If I'm not mistaken, I believe it was thirty years.

5 Q. Kidnaping?

6 A. Twenty-five years.

7 Q. And the point — the firearm, violation of firearm?

8 A. Five years.

9 Q. Okay. Were these — Was this sentence to run concurrent to
10 consecutive?

11 A. All of these sentences run concurrent. Except one with the consecutive
12 five years possession of intent — possession of a firearm, I'm sorry.

13 Q. Okay. So to accurately reflect your current sentence, would it be the
14 twenty-five, twenty and twenty years, this to run concurrent, together, and the
15 five years is to run —

16 A. Consecutive, yes.

17 Q. So your total exposure time is thirty years, is that right?

18 A. Yes, sir.

19 Q. All right. At trial were you represented — Was this a guilty plea or a trial?

20 A. It was guilty plea.

21 Q. Okay, and you were represented by counsel at the time?

22 A. Yes, sir.

23 Q. Who was your counsel?

24 A. He name was Mr. Glenn Walters.

25 Q. Was he retained or appointed?

- 1 A. He was appointed to represent me.
- 2 Q. Okay. Do you recall when he was appointed to represent you?
- 3 A. No, I'm not sure. I believe it was around the beginning of the year. Of
- 4 2000.
- 5 Q. Would that be January of 2000?
- 6 A. Yes, sir.
- 7 Q. Okay, and your trial was in September of 2000?
- 8 A. Yes.
- 9 Q. Okay. Or your court appearance was in September. You didn't have a
- 10 trial.
- 11 A. Yes, sir.
- 12 Q. Prior to the trial, did you meet with your attorney?
- 13 A. I met with Mr. Walters on several occasions, like maybe two times.
- 14 Q. When was the first time, your first time meeting with Mr. Walters?
- 15 A. I can't remain.
- 16 Q. Okay. Was a month or so after the appointment? Was in Spring or
- 17 Summer or what?
- 18 A. Maybe, approximately maybe one or two months after he was appointed
- 19 to represent me. I'm not sure.
- 20 Q. Do you recall the total amount you met with your attorney to discuss the
- 21 case?
- 22 A. 'Bout two.
- 23 Q. Two?
- 24 A. That I could recall.
- 25 Q. How – Was it close to the trial or was it month before the court, court

1 hearing?

2 A. As far as I can remember, the first one was several months before my
3 actual trial date. The last one was maybe, maybe one, one month or – before
4 I actually pled guilty to the charges.

5 Q. Okay. Well, I know it's privilege, what you all talked about but did you
6 discuss your, your strategy for your trial?

7 A. Yes, I did.

8 Q. You recollect, were you planning to have a trial?

9 A. At first I wasn't sure but then as I continued to talk with Mr. Walters I told
10 him had he investigate my case and, yes; I would have proceeded on the trial.

11 Q. Well, let's just back up a bit.

12 Did you have a preliminary hearing?

13 A. No, not far as I remember. No, I don't – I didn't have preliminary hearing.

14 Q. Okay. You did give a statement in the case, did you not?

15 A. Yes, sir.

16 Q. Written one?

17 A. Yes, sir.

18 Q. Did you discuss that confession with your attorney?

19 A. Yes, I did.

20 Q. And?

21 A. I told him during the time that I wrote my confession that I was highly
22 intoxicated. He applied to me that it wasn't really a reasonable defense if
23 appear to that, being that it was a voluntarily confession in reference to the
24 case. I told him that my parents was there, at the investigator's office during
25 the time I gave it and they would have been ready to testify that I was highly

1 intoxicated when I gave it.

2 Q. Okay. Were -- To your recollection, were any motions filed in your case,
3 pretrial motions? For example, was a Brady motion filed to obtain
4 information?

5 A. To my knowledge, there was a Brady motion. Pursued in reference to
6 my case.

7 Q. Okay. What about to suppress that defense or anything like that that
8 he -- you requested?

9 A. No.

10 Q. Now, did you provide your attorney with a list of witnesses?

11 A. Yes, I did.

12 Q. To call on your behalf?

13 A. Yes, I did.

14 Q. Who were those witnesses?

15 A. There was one, my mom, my aunt, one of my teachers from school, a
16 close friend of the family. And that's about all I could remember.

17 Q. Okay. To your -- To your recollection?

18 A. Yes.

19 Q. Was any of those people contacted? By your attorney?

20 A. No, they weren't. They were not.

21 Q. What was gonna be the -- What was the propose of giving him those
22 names, anyway? Were they character witnesses or -- or were they --

23 A. They were --

24 Q. -- eye witnesses or what? What kind of witness were they?

25 A. The were character and alibis.

1 Q. You say alibi, so one of the witnesses were – could be prepared to testify
2 that you were not at the place at the time of thousand alleged incident or —

3 A. Well, not —

4 Q. — testify —

5 A. Not exactly that. On the particular issue of the alibi, the victim wrote a
6 statement saying that I came into her store and I was looking for some
7 tuxedos in reference to one of my aunts getting married and, in reality, there
8 isn't – my aunt, you know, aunt, you know, they already married exact maybe
9 two. And – I'm sorry, one. And I was gonna have that particular one to come
10 back to court to testify that she wasn't married and that she wasn't having any
11 kind of wedding, any type of things.

12 Q. What do you characterize that as an alibi? Unless it's – Well, okay, so
13 you had your mother, your aunt and two potential witnesses that were not
14 called?

15 A. Yes.

16 Q. Was not interviewed?

17 Okay. Now, you filed your application, you're listing ineffective
18 assistance of counsel.

19 A. Yes, sir.

20 Q. And at your guilty plea was involuntarily induce, coerced given or
21 intelligently given, is that correct?

22 A. Yes, sir.

23 Q. Okay, let's just start with the first one, ineffective assistance of counsel.

24 Will you please tell The Court how you feel your counsel was
25 ineffective. So we don't – We don't leave out anything.

1 A. Okay.

2 Q. That you —

3 A. For the — For the record, number 1, I feel that my lawyer was ineffective
4 because he didn't reasonably and adequately investigate my case. Before I
5 pled guilty to the charges. To explain that there was some statements given
6 in reference to probable cause and reasonable suspect to even believe that I
7 had anything to do with this.

8 After further — After further investigation, after I pled guilty to the
9 charges and I received the documents, it was observed by me that those
10 statements to come about probable cause to me in reference to this case had
11 not even given until twelve days after the alleged crime.

12 Second of all, Mr. Walters didn't go around and investigate the victim
13 inasmuch as where she wrote a statement giving precise details of what
14 happened.

15 Throughout my Brady documents I also observed that the victim lied.
16 She told a lot of untruth about me and some other important incident that was
17 alleged in the crime.

18 Another way —

19 Q. Would you like — Would you like to elaborate on that a bit? These,
20 these — one of statements made by the victim?

21 A. Yes. The statements — I mean the victim said that — One part of her
22 statement she said that I held her at gunpoint and I screamed for my
23 codefendant to open the cash register. SLED tested the cash register and
24 our fingerprint came back insufficient, therefore meaning that it wasn't — it
25 wasn't our fingerprints.

1 Second of all, the victim also wrote a statement twelve days after she
2 got out indicating that she had been shot once in the face and another in the
3 back. After I pled guilty to the charges, by the advice of Mr. Walters, I
4 observed that her medical records, it said that she was shot in the face and in
5 the neck. And I believe, my opinion, that that's a very important matter, you
6 know, to discuss. You know, that that should have been brought forth as far
7 as investigating my case.

8 To add to that, as I researched and looked at the incident report, it
9 never indicated anything we me nor my codefendent as being possible
10 suspects. Just as I said before, that came about from the voluntary
11 statements from – that the – that the investigators took from people twelve
12 days after alleged I had been rumored and, and put out in the streets.

13 Q. Okay, go ahead.

14 A. My lawyer – Furthermore, there was a gun involved in my case. The
15 SLED laboratory reports came back insufficient towards me and my
16 codefendent.

17 Furthermore, the investigator said that this alleged gun was found in
18 my car. However, in that Brady – in the – in my Brady motion, the
19 investigator searched my car and a firearm was never found. So, therefore,
20 that would be another matter to be brought from to the jury and the chief at
21 trial had I went to trial.

22 Last but not least, this alleged gun that was said to be found or me or
23 in my car was never tested. Which is very important in any case. So in – to
24 break that – to break that down, I'm here to say the investigator or the
25 prosecution couldn't even have alleged and say that this was the gun even

1 alleged in the crime. Furthermore, that they couldn't have link it to me to
2 even constitute the charges that I pled guilty.

3 Q. Okay. So to sum up what you're saying, in terms of – from an evidentiary
4 perspective, you're saying that the cash register – the fingerprints
5 weren't – the ones on the cash register did not match yours or the
6 codefendant?

7 A. Exactly.

8 Q. Okay, and you're saying that the gun that was allegedly used was never
9 analyzed

10 A. Yes.

11 Q. Correct?

12 A. Yes, sir.

13 Q. Okay, and you're saying also that - Want to make sure that we get all
14 these points. On this record.

15 Did you have – There's another matter that you brought to my
16 attention. Can you explain the flaws in the indictment?

17 A. Yes. Yes, after I pled guilty to the charges under Mr. Walters's advice, at
18 the institution at Allendale, I came and researched throughout my motion,
19 Brady, that my charge for indictment had failed to enlist an essential material
20 element to prove and constitute that charge. Under State versus Crowder
21 (phon.) —

22 Q. Which indictment we talking about?

23 A. Armed robbery.

24 Q. The armed robbery, okay.

25 A Under State versus Crowder the supreme court ruled that it's a mandate

1 that the intent to permanently deprive the victim of such money or whatever
2 goods has been taken is a necessarily – a necessary element to constitute
3 that charge. However, in my case, that particular material and essential
4 element was omitted; therefore The Court never had subject matter
5 jurisdiction to even accept my plea for that charge.

6 Q. You're saying this, this indictment that I'm looking at right here,
7 Indictment Number 99-GS-27-0519, this is for armed robbery. I'm gone show
8 you this one.

9 This the indictment?

10 A. Yes, sir.

11 Q. Okay. Now, you would have The Court believe that this indictment if
12 flawed, it should not have been taken into consideration, is that your, your
13 argument in this indictment?

14 A. Yes, the indictment is defective.

15 Q. What specifically did your research, is wrong with this indictment?

16 And I'll read it to you.

17 It says, As Court of general sessions convene on October 18, 1999,
18 the grand jury for Jasper County present upon their oath court armed robbery
19 16 11 330. That Marcus Parker did in Jasper County on or about September
20 10, 1999, while armed with a deadly weapon, to wit, a handgun, felonious
21 take from the person or presence of the victim Knola Miles by means of force
22 or intimidation goods or money of said victim, such goods or money being
23 described as follows: US currency. Against the peace and dignity of The
24 State and contrary to the statute as such case may arise.

25 And it's signed by the solicitor.

1 So what specific is wrong with that indictment?

2 A. Specifically, the indictment doesn't specific an essential element of that
3 charge, which is the intent to permanently deprive the victim of such money or
4 goods that which it was ever being alleged it was taken.

5 Q. So as a result you felt— what would be the relevance of a sentence like
6 that from your — from your research department?

7 A. In my —

8 Q. If this — If this indictment were in fact flawed?

9 A. In my opinion, and threatening my research, that indictment is defective
10 and that it has to be dismissed with prejudice.

11 Furthermore, my lawyer should have researched and investigated my
12 case and he would have known that and brought it to the judge or the
13 solicitor's attention. And maybe to — maybe correct that matter or even have
14 the indictment dismissed.

15 Q. But that would've been important had you had a trial?

16 A. Yes, sir. Had I had a trial.

17 Q. Okay. So, so, so your testimony's basically that things that were
18 overlooked had there been a trial?

19 A. Yes, sir.

20 Q. Could've — You've could've probable found not guilty, is that what you're
21 saying?

22 A. Yes, sir.

23 Q. But your guilty plea — You pled guilty to these offenses?

24 A. Yes, sir.

25 Q. Were these points brought to your attention prior to your guilty plea.

1 A. No, they weren't.

2 Q. Cash register, pocket gun, about the indictment?

3 A. No, they weren't.

4 Q. Okay, and if these points were brought out would you, in fact, pled guilty?

5 A. Yes, had my lawyer had reasonably and adequately investigate my case,
6 which is a mandate by the United States Constitution Sixth Amendment and
7 Strickland versus Washington (phon.); I would have yes, indeed, pursued on
8 a jury, jury trial.

9 Q. Okay. Now, the second point in your position, your application is -- it
10 mentions your guilty plea. Can you explain to us why you feel your plea was
11 not intelligently, knowingly and voluntary given?

12 A. Number 1, to say -- to speak about the voluntarily -- the voluntariness of
13 it, I feel that had my lawyer had of brought all of this out I would not have
14 voluntarily agreed with him to issue to a plea of guilty. Based on the fact that
15 I receive ineffective of him investigating my case, speaking to witnesses,
16 analyzing evidence, even suppressing the evidence that could have been
17 used had I went to trial, to speak about the unintelligently part of my guilty
18 plea, I feel that Mr. Walters didn't fulfil the reasonable knowing by Strickland
19 versus Washington to represent me to the best and full of his knowledge.

20 And understandably is that he didn't bring it to my attention; therefore; he
21 led me astray to pleading guilty to these charges and now I have to come,
22 here and fight real hard of proving my innocent and, far most, his ineffective
23 in representing me.

24 Q. Okay. So in your basic for your involvement for your guilty plea is that
25 had you had effective assistance of counsel, you wouldn't have pled guilty?

1 A. Yes, sir.

2 Q. 'Cause you would've known these things and could've possibly
3 exonerated your intend rule?

4 A. Yes, sir.

5 Q. Is that — That's your position?

6 A. Yes, sir.

7 Q. Okay. Anything else that you want?

8 A. Yes, I would like to also bring up about my statement under South
9 Carolina —

10 Q. Your statement, your —

11 A. My confession, yes.

12 Q. Okay.

13 A. That, that I said just a minute ago, that I indeed wrote this confession but
14 it was written while I was intoxicated. My Miranda warning can prove that I
15 was highly intoxicated being that the exact date that I wrote this statement is
16 — says [REDACTED], which is my birthday. I truly doubt that the investigators,
17 when I was writing this statement didn't overlook this and they continue in the
18 matter while me writing this statement and, not only that, but under a South
19 Carolina statute this statement couldn't have been used against me in any
20 trial-based on the fact that I had not signed saying that I received a copy of
21 that statement. And I believe that being that this statement was in my motion
22 and being used against me, I truly believe that it would have been reasonable
23 for Mr. Walters to have pursued some type of defense or theory to get this
24 suppression of this statement.

25 Q. Okay, I'm gone show you a copy of your Miranda rights that you just

1 talked about.

2 Is this your signature?

3 A. Yes.

4 Q. And is this the date you're talking about, [REDACTED], which is your birthday,
5 not the date of this statement?

6 A. Yes, sir.

7 Q. You're saying that's a flaw that should've been caught? As you – You're
8 saying that's why you were intoxicated and you put the wrong date?

9 A. Yes.

10 Q. That – That's what your testimony – Okay.

11 What was said – Very briefly, what were you saying the problem with
12 the – with – with your – with your statement, your voluntary statement?

13 This one is dated September 10, 1999 at 6:05 PM. Okay?

14 A. (No response.)

15 Q. This is the statement that you said it's – that should've been – counsel
16 should've been made to suppress, is that correct?

17 A. Yes.

18 Q. But you made another comment that this statement, you should've been
19 given a copy of this statement?

20 A. Yes.

21 Q. Could you – Would you repeat that for my . . .

22 A. For the record, under a South Carolina statute code, I'm not sure exactly
23 which section it's in but it says any individual defendant given a statement in
24 any investigation must, it's a mandate that the investigators who's taking that
25 statement give to that person a copy thereof. That prohibits for any changes

MARCUS JEREL PARKER, DIRECT EXAMINATION

1 being made thereon and the person will have a statement whenever the trial
2 come up.

3 Q. Okay, so you're saying you were not given a copy?

4 A. No, I was not. No, I was not.

5 Q. Okay.

6 Is there anything else that should be brought to The Court's attention,
7 Marcus Parker, that we have not talked about?

8 A. Yes, I'd like -- for the record I would like to also indicate that during my
9 plea that my prior attorney Mr. Walters had advised me that it would be best
10 in my interest to plead guilty to the charges based on the fact that one of my
11 charges carry mandatory life sentence which is kidnaping.

12 After I pled guilty to the charges under his advice, it was brought to my
13 attention and throughout my research that kidnaping does not carry a
14 mandatory life sentence; it carries a mandatory thirty years. And I think that
15 also was a big matter that should have been reassured.

16 I'd like to also bring out that Mr. Walters told me that it was probably
17 best in my interest to plead mercy into The Court, not only to The Court but to
18 the victim personally and formally for what was done in the crime and I said
19 some things during my guilty plea that I thought that probably had benefit me
20 as such as confessing to this, to the charges that I was pleading guilty to. But
21 the only reason why I did it because Mr. Walters said that it would -- it would
22 probably be best in my interest, that the judge would more than likely have a
23 little lenient on me, you know.

24 Other than that, I, I can't -- I just wish Mr. Walters had have, you know,
25 represented me to the best of their knowledge. I lost my scholarship. I lost a

1 lot of opportunities out in society.

2 However, since I been incarcerated I've been able to obtain my GED, I
3 been able to continue a positive work in the education department. I have,
4 have also been able to keep a positive mind without getting any write-ups or
5 any charges and I just hope that the judge would take all of this into
6 consideration.

7 MR. DRAYTON: All right.

8 That's all I have for . . .

9 THE COURT: Mr. Bullard.

10 CROSS EXAMINATION BY MR. BULLARD:

11 Q. Marcus Parker, are you saying that Mr. Walters told you to, to lie to
12 Judge Floyd during type guilty plea?

13 A. No, sir, I'm not saying that he told me to lie. He gave me an advice. That
14 it was -- it was reasonable for me to ask The Court for mercy and physically
15 apologize to the victim.

16 Q. So when you told Judge Floyd you had in fact committed each offense
17 that you were charged with you were not lying?

18 A. The only reason why I said based on my lawyer's advice.

19 Q. Did Mr. Walters tell you to lie to Judge Floyd?

20 A. No, sir.

21 Q. So your answers to Judge Floyd were true?

22 A. No, sir, they won't. They weren't.

23 Q. So you took it upon yourself to lie to Judge Floyd, is that correct?

24 A. No, I was basing it on my lawyer's, Mr. Walters's advice.

25 Q. All right, but he didn't tell you to lie; you did that yourself?

1 A. Yeah.

2 Q. Okay, and you understand that you were sworn at your guilty plea, right?

3 'You were put under oath?

4 A. Yes, sir.

5 Q. Just like you were put under oath today, right?

6 A. Yes, sir.

7 Q. Okay. How are we to know that you're not lying to us today?

8 A. To know that I'm not lying today is based on the facts and the documents
9 that we have here today for, for – in front of the judge and for the record.

10 Q. You didn't have any problem lying to Judge Floyd that day, did you?

11 A. It wasn't lying. Again, as I repeat, it was based on the advice of Mr.
12 Walters.

13 Q. Okay. So if you weren't lying then you did commit these offenses?

14 A. I did not commit this offenses.

15 Q. Okay.

16 What was – What your defense gonna be – Let's say you got your
17 confession suppressed. What was your defense gonna be?

18 A. Can you repeat that question, sir?

19 Q. If your confession was suppressed what was your defense going to be at
20 trial?

21 A. My defense – My defense was, was gonna continue to be that I did not
22 commit the alleged charges.

23 Q. But you understand that the victim was gonna say, Marcus Parker, who I
24 knew, came into my store and shot me three times while I begged for my life.
25 You understands that, didn't you?

1 A I did understand that and to correct you, she was shot twice. Not three
2 times.

3 Q. Does it matter? How many times she was shot really?

4 A. For the record, it does. It does matter.

5 Q. Is it less of an assault and battery with intent to kill if you're only shot
6 twice in the head instead of three times?

7 A. Yeah, I believe that that's a very impartial thing to bring out, the exact
8 time that she was shot.

9 Q. All right. So you take that matters? Was that gonna be your defense?
10 That the -- That she was only shot three -- two times instead of three?

11 A. No, sir, that was -- that's not gonna be my defense. My defense is,
12 again, that I did not commit the alleged charges.

13 Q. Okay, but you understood she was gonna say that, right?

14 A. Yes, sir.

15 Q. And you understood your codefendant had also said that you did it?

16 A. To correct that, my codefendant never said or implicated that I did
17 commit to shot this victim.

18 Q. He said that you both went in there and you both did it, right?

19 A. No, sir. That's not true. He did not say that.

20 Q. Okay. He did not say that?

21 A. No, sir.

22 Q. Okay. So I was your understanding that your codefendant was not
23 gonna testify against you?

24 A. Not reasonably saying that he was or was not going to testify against me.
25 That would have been based on the strategy of Mr. Walters, whatever best

1 he felt that was in my interest. Had I went to trial.

2 Q. Okay. Do you understand that Mr. Walters doesn't get to pick The
3 State's witnesses? You understand that?

4 A. Yes, sir.

5 Q. Okay, and it's your information that your codefendent did not make a
6 statement against you?

7 A. It is brought to my knowledge that my codefendent did write a statement;
8 however, I won't, in my opinion, say that it was -- it's against me. He wrote a
9 statement giving details of what happened on the alleged date.

10 Q. Okay. Giving details of what the victim had said had happened?

11 A. No, not what the victim said had happened.

12 Q. Okay. All right, and you have that statement with you?

13 A. Yes, sir.

14 Q. Okay. Where is it at?

15 A. Over in my files. My lawyer have.

16 MR. BULLARD: Okay.

17 Right here?

18 A. It's in the other folder.

19 MR. BULLARD: This right here?

20 A. It's on the desk, I believe.

21 MR. BULLARD: Right here?

22 A. The bottom one.

23 It's the folder, the last bottom one.

24 Q. All right, I'm gone hand you that. That's your codefendent's statement,
25 right?

1 A. Yes, sir.

2 Q. Okay, and in his statement he says that someone gave you the gun and
3 that you went in the store and you heard two shots and you came running out.

4 A. Yes, sir.

5 Q. Right? And you say that that, that doesn't you in this robbery?

6 A. That's to say that I did not shot the victim. To specify exactly.

7 Q. I just wanted to understand what, what you were saying.

8 MR. BULLARD: All right, that's all the question I have, Your Honor.

9 THE COURT: Anything further?

10 I have some questions.

11 EXAMINATION BY THE COURT:

12 Q. They asked where the gun was?

13 A. No, sir.

14 Q. Oh, you told them where the gun was?

15 A. In the statement, yes, I did indicate it, while highly intoxicated, where the
16 gun was. However, the investigator searched the vehicle and there was no
17 gun that were found in there.

18 Q. And, of course, they also found -- and you -- They also found that some of
19 the items that were taken from the victim or from that business was in your
20 car, wasn't it?

21 A. Yes, it was, yes, sir.

22 Q. And, of course, you knew that the victim knew you, didn't you? And that
23 she recognized -- That's the reason you had to shoot her, isn't it? 'Cause she
24 knew -- she knew who you were?

25 A. No, sir, correctly, I did not shoot her. And the items was found in my car

1 but I did not know that they were in there.

2 Sir, Judge, Your Honor.

3 Q. So today you're denying that you -- that you committed the offense of
4 kidnaping, armed robbery, assault and battery with intent to kill?

5 A. Yes, sir.

6 Q. Well, who did it? If you didn't do it?

7 A. Sir, I believe, Judge, Your Honor, that --

8 Q. You said you were there. Didn't you?

9 A. Before the crime happened, yes, sir.

10 Q. And I think the judge rightfully said that if she had died you would
11 probably be sitting on death row right now, you realize that?

12 A. Sir, I don't recall him saying that.

13 Q. Well, I'm looking at the transcript.

14 A. Okay.

15 THE COURT: Anything else after my questions?

16 MR. DRAYTON: I don't have anything further.

17 MR. BULLARD: No, sir.

18 A. I have something to say.

19 THE COURT: Go ahead.

20 A. Two things. A allegation that my lawyer forgot to bring up was a direct
21 verdict. I mean a direct appeal, I'm sorry. Mr. Walters didn't tell me that I
22 was entitled to a direct appeal after the judgement was given to me. I didn't
23 find out until after the ten days. Was -- Was already over.

24 Second of all, I'm just here today just to be truthful and honest about
25 this whole situation. And just to try to get my life started back in society as a

1 young man.

2 THE COURT: Okay.

3 Q. Do you recall that you told -- The judge asked you - I'm looking at page 9
4 of the transcript.

5 A. Yes, sir.

6 Q. He said, Sir, have you -- This is a question by the judge.

7 Have you understood each of the questions that I've asked you?

8 It says -- You've read the transcript, haven't you?

9 A. No, sir, I have not had any time to read my transcript since I've been
10 here. I've tried to contacted the court reporter; however, she has been --

11 THE COURT: Well, I'm gone read it to you and then I'm gone give
12 you this, my copy of it for you to keep.

13 A. Okay.

14 THE COURT: Have you understands the questions that I have asked
15 you?

16 The transcript said you answer; yes, sir.

17 The judge says, Has anybody suggested to you how to answer these
18 question? And your answer was no, sir.

19 The judge. In other words, the answers that you have given today
20 have been your own answers?

21 Mr. Parker. Yes, sir.

22 The Court. And your answers have been truthful?

23 Mr. Parker. Yes, sir.

24 The Court -- Okay, well, that's just where he makes the finding.

25 Anyway, you can come down.

1 A. Okay.

2 THE COURT: I'll give you this to take with you.

3 MR. DRAYTON: I'd like to call briefly Mr. Walters.

4 THE COURT: Come around, Mr. Walters.

5 Place your left hand on The Bible, sir, and raise your right hand.

6 GLENN WALTERS,

7 first being duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. DRAYTON:

9 Q. Hello, Mr. Walters. Just for the record, state your name and your
10 address for the record.

11 A. My name is Glenn Walters. My office is located at 348 Saint Paul Street
12 in Orangeburg, South Carolina.

13 Q. All right, Mr. Walters, you're a licensed attorney in the state of South
14 Carolina, that's correct?

15 A. Yes, sir.

16 Q. How long you been practicing law in the state?

17 A. Ten or eleven years. About eleven years.

18 Q. Okay. What about criminal work? How long you been doing criminal
19 work?

20 A. Probably ten or eleven years.

21 Q. Ten or eleven years?

22 You are acquainted – You did represent a Marcus Parker back in
23 September of 19 – Was it 1999?

24 No, excuse me. 2000.

25 Okay, you represented Mr. Marcus Parker back in September of 19 –

1 last year, 2000? That correct?

2 A. Yes, sir.

3 Q. Okay. Were you retained or appointed to represent him?

4 A. Appointed.

5 Q. Appointed. By the clerk for Jasper County?

6 A. Yes, sir.

7 THE COURT: Just for the record, the indictment alleged an incident
8 of September 10, 1999.

9 MR. DRAYTON: That's the incident. And the trial was September 25,
10 2000.

11 Q. And you represented him at the trial. When were you appointed to
12 represent him?

13 A. I don't remember the exact date.

14 Q. Was it four, five, six months prior to trial?

15 A. I can't remember the exact date.

16 Q. Well, what I'm getting at is I just want to know how long you had to
17 prepare prior to actually coming in court and representing on these charges.

18 A. As Mr. Parker said, on several occasions we met at the jail, discussed his
19 case. Rule 5 was served. We through the Rule 5 material. After going
20 through the material we came to the conclusion that we would seek a viable
21 plea.

22 Q. Okay, buy your pretrial work, which I guess is somewhat important, did
23 you request preliminary hearing?

24 A. I don't believe we requested a preliminary hearing. In this particular case,
25 after reviewing the Rule 5 material there were a couple of problems that Mr.

1 Parker had.

2 Number 1, the victim was shot and she recognized Mr. Parker. 'Cause
3 was a kid in the neighborhood that grew up around her business. It was
4 called The Outpost. She could definitively state that Mr. Parker was one of
5 the individuals that had robbed her and, of course, her testimony would be
6 that Mr. Parker also told her, I have to kill you because you know who I am,
7 and she was shot, I believe, two times.

8 In addition to that, there was a codefendent that implicated Mr. Parker
9 also. I twas circumstantial evidence that implicated Mr. Parker. There were
10 items that were found that belonged to the, I believe the store was called The
11 Outpost, that were found inside the car, the vehicle that Mr. Parker was
12 traveling in.

13 In addition to that, Mr. Parker confessed also to being there at the
14 crime and he changed the story over and over again but he stated he'd shot, I
15 believe the lady's name was Knola Miles, I think is what her name was.

16 So in determining whether you request a preliminary hearing,
17 strategically you can either waive it or you can have a preliminary hearing but,
18 of course, the standard for a preliminary hearing is, is that you must meet a
19 probable cause threshold. And, of course, in this particular case there was
20 more than probable cause to proceed forward with this charge.

21 Q. Okay, well, I was just going to – Well, why – why don't we just do it this
22 way? Why don't you just tell, state for the record your – the things you did
23 pretrial. Now, normally you'd file a Rule 5 request for the Brady motions.
24 So rather than just have you – Why don't you just tell us the things you did
25 prior, your pretrial work in preparation to adequately represent Mr. Parker.

1 A. Well, once my office receives the appointment, we automatically send out
2 a letter, a series of letters; one to the client, one requesting a preliminary
3 hearing; also a letter requesting a rule, Rule 5 materials. Also letter detailing
4 United States versus Brady. Brady. We want any exculpatory evidence that
5 may be available.

6 Once we receive that packet, I then sit down and read it. I contact the
7 client; tell the client I'm coming to the jail, we gonna sit down and go through
8 the Rule 5 material to review it. Once I sit down with the client and review the
9 material, at that time the client will then inform me as to his position in regards
10 to the case.

11 Mr. Parker in this case just made it clear that he made a terrible
12 mistake and, of course, his mother contacted me on the phone, his family
13 members contacted me on the phone.

14 The biggest problem we had was that, again, Mr. Parker confessed to
15 the crime; the codefendant implicated him. The victim also could testify as to
16 who shot here and of course she knew Mr. Parker as a little boy in the
17 community and, in addition to that, the police stopped the vehicle.

18 First of all, I think Knola Miles said who did it. They went out to the
19 school, found out that Marcus wasn't in school and they stopped the car.
20 Marcus was in the car and they also found the, the circumstantial evidence of
21 items from Knola Miles's store inside of the vehicle.

22 Q. After I'd sat down with Marcus and discussed that issue with him then it
23 turned to what type of viable plea can we work out in this particular case.

24 Marcus is — The irony of the situation is he's a very intelligent kid. I
25 think he — At that time he was taking either Physics or Calculus or Chemistry.

1 Or Algebra I or Algebra II. In other words, he was on college preparatory
2 course level. Which was very strange. And I think he played ball or
3 something. There was a possibility he could get a scholarship and that's what
4 was most disappointing about the event and he indicated he's been
5 experimenting with different types of drugs. Excuse me.

6 I don't think -- Marcus indicated that he'd never taken acid before and
7 he's been experimenting with acid and other psychedelic and things of that
8 nature and I'm not sure if he was -- And it was strange for a kid in Jasper
9 County to talk about acid and --

10 THE COURT: That's LSD you're talking about

11 Q. LSD, things of that nature.

12 And it was strange for a kid at the local high school in Jasper to talk
13 about the experimentation with those drugs. He said it was his first or second
14 time he'd experimented with those drugs but in our conversations he was
15 cognitive and was well aware of what he -- what he was doing and at that time
16 he instructed me what type of viable can we look into and then I approached
17 the solicitor's office.

18 They of course contacted the victim and she was pretty hot and her
19 husband was very hot and we were there in the courtroom. And that, that's
20 expected, you know. His wife had been shot and, you know, of course her
21 testimony was that, you know, Marcus said that he had to kill her because
22 she knew who he was and under the circumstances I think we got the best
23 viable plea we could, considering what could've happened.

24 Q. Did you go over the range of sentencing for each of these offenses,
25 these charges for the four different --

1 A. We sat down and discussed each one of them and of course he was
2 questioning how could he be charged with kidnaping because he thought he
3 had to actually take someone away and I think in this particular case they
4 pulled weapon and then they took her into the back of the store, I think, and I
5 think they put her inside of a bathroom if I -- memory serves me correct.

6 And he also talked about the assault and battery with intent to kill, the
7 possession of a weapon during the commission of a violent crime and I
8 believe he also had -- I think that was all the charges.

9 An armed robbery charge which was the twenty-five years.

10 Q. Okay. Did you interview and investigate any of the witnesses that he
11 provided you witness?

12 A. The codefendant I believe was appointed consult and at that time I told
13 Marcus, I don't know who may cut a deal here but he, he may cut a deal to
14 testify against you and I can't talk to him if he's represented by a lawyer
15 without that lawyer's permission.

16 The victim in this particular case, I advised Marcus let's stay away from
17 her because she's pretty angry, she's been shot and her husband was, was
18 very upset and the only communication I had with the victim was through the
19 solicitor's office.

20 And of course I'd talked to the - I forgot the police officer's name that
21 stopped the vehicle and stated that they had found the items from Knola
22 Miles' store inside the vehicle.

23 He also indicated, I heard him testify that his momma or somebody
24 could provide some type of alibi defense and that never materialized in
25 anything.

1 And of course I advised, advised him and I said, Now, you talking to
2 your family about, you know, the fact that you claim that you were elsewhere;
3 you know, perjury can get you in trouble and we've got a problem here
4 because Knola Miles can identify you, your codefendent had implicated you
5 and you signed a statement so before we head down that road and somebody
6 gets in trouble let's, let's carefully consider our options.

7 Q. Did you have any psychiatric tests done on -- you know, competent to
8 testify?

9 A. No.

10 Q. His drug involvement.

11 A. No. When Marcus stated to me that he had tried out these drugs before,
12 he was cognitive, understood what he was saying, no confusion. No need for
13 any type of test. Could articulate his ideas well. Very remorseful about what
14 happened. He was just frightened but knew what he was doing. Could
15 argue. Same way he was talking to you back there in that room when I as
16 well through the window, same way he engaged with me. He would -- He
17 would argue different points of the case back and forth.

18 Marcus is a -- is a bright kid. But during this process when he was in
19 jail and represented by me, could answer all the questions, could read all the
20 materials. Looked like he could have a promising career if he would've gone
21 to college and certainly if he had the cognitive ability to stay in Chemistry and
22 Calculus or Physics he could understand the material that was in front of him

23 Q. Okay, so did you decide from a, I guess, a professional opinion that the
24 best approach to work out a plea? With the solicitor's office?

25 A. I discussed the option of a plea with Marcus --

1 Q. A trial?

2 A. I discussed the option of a plea as opposed to trial and Marcus agreed
3 with me. He said, Let's try to work something out and then I approached the
4 solicitor's office.

5 Q. Okay. The plea that you subsequently -- that you finally obtained, that
6 was without any recommendation in terms of sentence, is that correct?

7 A. Sure.

8 Q. That's strictly in the discretion of the judge?

9 A. That's correct. The -- I think Solicitor made it clear they couldn't go on
10 record recommending anything. Of course they had an obligation make sure
11 they protect the victim. And I think the only thing that, that allowed Marcus to
12 receive the great plea that he received is because he's young. Other than
13 that, maybe all of it should -- probably should've been run, you know,
14 consecutive as opposed to the concurrent charges. There's only one that
15 had to be run consecutive.

16 But I think that's the only thing that saved Marcus, is the fact that he's
17 young and he made a mistake. But other than that, if he'd gone to trial I think
18 he'd got popped. For some serious, serious --

19 Q. So in your plea negotiations you, you didn't attempt to get -- to tie the
20 solicitor's office down to a term definite to each of these charges as opposed
21 to twenty-five, twenty-five, thirty-five?

22 A. Well, the terminology you used, tie the solicitor's office down --

23 Q. Get them -- Get them to commit to something.

24 A. Well, the solicitor's office, they were in position where they didn't have to
25 commit to anything. This was a -- This was a trial that I, I feel they would've

1 been successful if they'd prosecuted the case. Certainly under the
2 circumstances they had the circumstantial evidence, the direct testimony of
3 the victim. I don't see where Marcus Jerel Parker had any other option than
4 to do exactly what the solicitor's office dictated under the circumstances.

5 And of course if -- in this -- in this particular case they made no
6 recommendation and it was a -- it was a straight-up plea in front of Judge
7 Floyd and I think because of his youth he, he ended up with what he got.

8 Q. After the judge imposed sentence did you discuss his appeal rights with
9 him?

10 A. The only thing I ever tell defendants is you got ten days to appeal this
11 decision if you don't agree with it and certainly you got a right to so.

12 Marcus, in this particular case, when we talked about it, he just made it
13 clear to me and he said, Well, what could happen? I said, Well, you start
14 from ground 0 if I did something wrong and certainly if I did something wrong
15 you'll be back in the same position again but you may not end up with a
16 sentence like what Judge Floyd imposed on you; you may end up with
17 something worse. And under the circumstances it looks like you've got, you
18 know, some events that you gone have to live with, some time that you gone
19 have to live with. And of course is you feel I did anything wrong you can file
20 an appeal within ten days and of course you could also PCR me.

21 Q. This is a question that have. Prior to your guilty plea do you -- would it be
22 your -- Well, do you believe that any of his constitutional rights were violated?

23 A. None, none at all.

24 When Marcus was questioned at the jail his parents were present and
25 he didn't have a lawyer at that time and he freely and voluntarily waived his

1 rights. Marcus is a bright kid. We served a Rule 5, went through the Brady
2 material.

3 What Marcus did was he, he evaluated what was on his plate, he
4 made a decision. He took the path of least resistance.

5 And, and it worked out successfully for him.

6 Q. Okay, but it is your testimony that you didn't investigate or interview any
7 of the witnesses that Mr. Parker gave you, character witnesses that could've
8 been helpful in mitigation specifically at the trial or the plea, whatever?

9 A. The witnesses that he referred to would be his mother. His mother at that
10 time was there for the plea and was told about the plea. He tried to somehow
11 say that his mother could say he was somewhere else and I said, We're going
12 down a path. We're gone get in trouble here if you're gone get on the stand
13 and try to say that Marcus was with you or somewhere else. And that did not
14 develop in anything after I told them, you know, penalties for perjury and
15 things of that nature.

16 But as far as the other witnesses, that would've been the codefendant,
17 Knola Miles and the police officer.

18 And as far as at the sentencing, I believe his mother was also present
19 and we presented the case before the jury and of course I think it's a strategic
20 decision. With his mother, I just told her, I said, Now, don't come in the
21 courtroom and say something inappropriate that may hurt your son.

22 Q. I'm curious. Was a lineup done or shown? You know, an identification
23 process done?

24 A. I can remember if a lineup was done or —

25 Q. A lineup or —

1 Q. I can't remember if a lineup was done. I just remember that Knola Miles
2 called him by his name. She said, Marcus Parker robbed me. And she knew
3 Marcus since he was a little boy and she stated Marcus came in there
4 because he wanted to look at the tuxedos because somebody in the family
5 was getting married. She felt very comfortable with him, she trusted and she
6 knew him from the neighborhood. So when you've got a victim that can
7 definitively state, This is the person that robbed me, photo ID lineups are
8 normally done when describe a person and you know maybe the particulars
9 of their identity but if you said, Larry Drayton committed this crime, I don't
10 think we need to a photo ID lineup; we just . . .

11 Q. Okay. Now, about the confession, which is probably the first -- his
12 voluntary statement he gave: Did he say he was under the influence of drugs
13 or alcohol, something at that time? Is that what he told you initially?

14 A. No. What Marcus told me was, is that he'd been cutting school, getting
15 out of school; running with some guys. They were doing drugs and he stated
16 in this particular case they wanted some money or they needed some money.
17 And that's how they ended up robbing the store.

18 Q. How do you feel you represented Mr. Parker?

19 A. I believe under the circumstances, considering that if he'd gone to trial
20 they'd probably run his time consecutive, Marcus Jerel Parker received a
21 sentence probably that was appropriate for the event that occurred. And it's a
22 lesser of all evils.

23 More likely if he'd gone to trial they'd ran his time consecutive, over
24 and over again on each one of the charges and he never would've gotten out
25 of jail. He'll probably get out of jail, probably near his forties. Maybe.

1 I think he's got to do 85 percent.

2 Q. Eighty-five?

3 A. Eighty-five percent of the time. But he never denied what he did.

4 It was always how can we get out of it.

5 THE COURT: While he's doing that, I want to ask you something, Mr.
6 Walters.

7 EXAMINATION BY THE COURT:

8 Q. My, my reading of the transcript is apparently they were already looking
9 for him after it happened as soon as it was reported. They were looking for
10 him, weren't they?

11 A. Well —

12 Q. To the school?

13 A. Knola Miles survived so —

14 Q. Okay.

15 A. — she let the — she told the police, you know —

16 Q. That's what I mean.

17 A. — it's Marcus and —

18 Q. And so —

19 A. — then they went to the school, Marcus wasn't in school.

20 Q. And so they were looking for the car?

21 A. Right, and they stopped the car and Marcus was in the car with Knola's
22 materials in the car.

23 Q. Yeah, so even before they got a statement or anything he was the
24 suspect they were looking for?

25 A. There was enough circumstantial evidence and the direct testimony of

1 Knola Miles to, to implicate.

2 THE COURT: Sorry to interrupt you. Go ahead. Anything else?

3 MR. DRAYTON: Okay. I have, really, nothing further from Mr.
4 Walters. But if The Court, The Court – I would like to clarify two things
5 afterwards.

6 THE COURT: Well, if you got something else go ahead with the
7 cross examination and then we'll.

8 MR. DRAYTON: You go ahead. I'm finished.

9 MR. BULLARD: I don't have any questions of this witness.

10 THE COURT: Got anything else?

11 MR. DRAYTON: No.

12 THE COURT: You can come down. Thank you, Mr. Walters.

13 MR. DRAYTON: Thank you.

14 THE COURT: You got some argument or other witnesses?

15 MR. DRAYTON: I, I can send – I could call the witnesses he wanted
16 to call but, Your Honor, I really don't see any – any —

17 THE COURT: Well, if he wants to call, please call them.

18 MR. DRAYTON: All right, he does so we'll call – we'll call his mother
19 first.

20 I'd like for The Court – I want to clarify a few things by —

21 THE COURT: Well, let's go ahead and get all the testimony and then
22 you can clarify that.

23 MR. DRAYTON: Okay.

24 Miss Parker.

25 THE COURT: Miss Parker, will you please come around.

1 And if you well; ma'am., please come forward; place your left hand on
2 The Bible, raise your right hand.

3 (The oath was administered by The Court. The witness answered by
4 nodding.)

5 THE COURT: Say yes.

6 A. Yes.

7 THE COURT: Oh, okay. Court reporter can't take down a nod.
8 That's the reason you have to make a verbal response.

9 **ETHELEE PARKER,**
10 first being duly sworn, testified as follows:

11 THE COURT: Okay, Ms. Parker, please have a seat and speak
12 directly into the microphone which is provided.

13 DIRECT EXAMINATION BY MR. DRAYTON:

14 Q. I didn't get your first name, Miss Parker. What is it?

15 A. Ethelee Parker.

16 Q. Parker, Ethelee Parker.

17 Miss Parker, you recall the date of this incident when your son was
18 arrested?

19 A. No, I wasn't home.

20 Q. You weren't home?

21 A. No, my, my mother.

22 Q. You weren't home on, on the tenth of September, 1999? Did you see
23 Marcus at all that day?

24 A. No. I left him home.

25 Q. What time did you leave him home?

- 1 A. See, I had gone. Six thirty is was on the road going through the program.
- 2 Q. Six thirty in the morning?
- 3 A. Uh-huh.
- 4 Q. Okay. Did you normally give Marcus money?
- 5 A. Yes.
- 6 Q. On this particular day did – was Marcus given any money?
- 7 A. To me, yeah.
- 8 Q. Well, what'd you give him money for? How much money?
- 9 A. I give him money for – to get clothes or whatever he need to get for while
- 10 I was to the program.
- 11 Q. Who pays the car note?
- 12 A. I do.
- 13 Q. Did you give him money on this particular day to pay car note?
- 14 A. Uh-huh.
- 15 Q. So he had money
- 16 A. Uh-huh.
- 17 Q. On this day. How much money did you give him?
- 18 A. Limits. I gave him, I mean I give some money for car note is, limits, a
- 19 hundred fifty.
- 20 Q. So he had a hundred fifty dollars that day. Was – in your opinion was
- 21 there any reason for him to have to rob a store to get money on that particular
- 22 day?
- 23 A. No.
- 24 Q. And that's because you gave him money?
- 25 A. Yes.

1 Q. Prior to leaving home that day?

2 A. Right.

3 Q. Okay. Did, did you ever get in touch with Mr. Walters about testifying
4 about that fact? If, if a trial was gonna be called?

5 Did you talk to Mr. Walters? Would you talk with Mr. Walters about
6 the incident that day and your giving him money?

7 A. No.

8 Q. You never did?

9 A. Huh-uh.

10 Q. Did you ever have any conversation with Mr. Walters?

11 A. No.

12 Q. About the trial? Or the case?

13 A. No.

14 Q. You didn't? Okay.

15 MR. DRAYTON: That's all I have for her, Your Honor.

16 CROSS EXAMINATION BY MR. BULLARD:

17 Q. Miss Parker, did you ever – did you ever talk to your son about what he
18 was charged with?

19 A. Yes.

20 Q. Did he ever admit to you that he had done it?

21 A. He say no.

22 Q. He never did?

23 A. Huh-uh.

24 MR. BULLARD: That's all the questions I have, Your Honor.

25 THE COURT: You may come down.

OLLIE MAE PARKER JONES, DIRECT EXAMINATION

1 Any other witnesses?

2 MR. DRAYTON: We'd like to call Miss Ollie Mae Parker Jones.

3 THE COURT: Come around, Miss Jones.

4 Please place your left hand on The Bible and raise your right hand.

5 OLLIE MAE PARKER JONES,

6 first being duly sworn, testified as follows:

7 DIRECT EXAMINATION MR. DRAYTON:

8 Q. Ms. Jones, you related to Marcus Parker?

9 A. Yes, sir.

10 Q. This is your sister's child and your —

11 A. Well, well, he's my nephew.

12 Q. Nephew?

13 A. Yes, sir.

14 Q. Okay, and the codefendent in this case is your son?

15 A. Yes, sir.

16 Q. Okay. Where is he currently?

17 A. Juvenile Justice in Columbia.

18 Q. In Columbia?

19 A. Yes, sir.

20 Q. Okay. Prior to his trial, prior to September 10 when he entered that guilty
21 plea, were you ever contacted by his attorney to discuss any aspect of the
22 case?

23 A. No, sir.

24 Q. You weren't?

25 A. When I called him he was not there.

1 Q. You called – You called who?

2 A. My son's attorney.

3 Q. Okay, but I'm talking about Mr. Walters.

4 A. Oh.

5 Q. Did you ever speak to Mr. Walters —

6 A. No, sir.

7 Q. Okay.

8 THE COURT: Who was your son's attorney?

9 Q. Yeah, who was your son's —

10 A. He was – It was African-American.

11 Q. Was it public defender?

12 A. Yes, sir.

13 THE COURT: Say it was an African-American?

14 A. It was a young lady, too. I believe —

15 THE COURT: Oh, I bet Miss Smart.

16 A. Yes, sir.

17 Q. Stephanie Smart? All right.

18 So prior to the trial you had no – you didn't talk to Marcus either prior
19 to trial, did you?

20 A. Marcus?

21 Q. Yes, sir.

22 A. No, sir.

23 Q. Okay. Did – Your – Since Marcus is your nephew, you've known him all
24 his life, basically, haven't you?

25 A. Pardon me?

1 Q. You've known Marcus all of his life, haven't you? Haven't you?

2 A. Yes, sir.

3 Q. Okay. Did he ever get in any trouble?

4 A. Well, getting in any trouble, no, sir, not that I know to my knowledge.

5 Q. Okay, so basically your testimony as a witness and talking character
6 witness, you were basically gonna testify, if there were a trial, just about his
7 good character, right?

8 A. Yes, sir.

9 Q. That he was a good kid, never got in problems.

10 A. He wasn't perfect.

11 Q. Well, I don't see none -- No kids perfect.

12 A. No.

13 Q. Okay. And would basically have been the gist of what you would've
14 testified in court? Had you been called as a witness back a year or so ago?

15 A. Yes, sir.

16 Q. Okay.

17 THE COURT: In other words, you weren't that day this terrible thing
18 happened? You don't know a thing about that, do you?

19 A. No, sir.

20 Q. So you weren't an alibi? Couldn't have -- You couldn't have said he was
21 at my house when this happened? You weren't one of those type of
22 witnesses?

23 A. I was at work.

24 MR. DRAYTON: Okay. Very good.

25 That's all I have. Thank you.

1 THE COURT: Mr. Bullard, any questions?

2 MR. BULLARD: No, sir.

3 THE COURT: Thank you.

4 Any other witnesses?

5 MR. DRAYTON: No, Your Honor, but I would just respectfully request
6 to ask Mr. Parker just a few questions to clear up a few things. I think that'll
7 be our -- We'd be --

8 THE COURT: You want to recall him?

9 MR. DRAYTON: I'd like to recall and I'd appreciate it.

10 THE COURT: Come around.

11 Remind you that you're still under oath.

12 A. Yes, sir.

13 THE COURT: Just come around and take the stand, please.

14 DIRECT EXAMINATION BY MR. DRAYTON:

15 Q. Mr. Parker, just a few, few questions to clear. I think The State has
16 testified that Miss Knola said that she knew you, that you lived in the
17 neighborhood. That's not an accurate statement is it?

18 A. No, sir.

19 Q. Because you actually live in Tarboro section, live in Tarboro section of
20 town?

21 A. Yes, sir

22 Q. Which is about thirteen -- about thirteen miles from Ridgeland, isn't it?

23 A. Yes, sir.

24 Q. Okay, and the, the place that this incident happened, that's downtown
25 Ridgeland, is that correct?

1 A. Yes, sir.

2 Q. Okay, so in terms of — I heard mentioned she's known you since you
3 were a little boy —

4 THE COURT: Well, let me ask you this. Do you know where she
5 lives?

6 A. No, sir.

7 THE COURT: Oh, okay.

8 Q. And how long did you — Did you know this lady prior to this incident?

9 A. I met Miss Miles maybe a year and a half before, prior to —

10 Q. The incident.

11 A. — this incident. I went in — I rented my junior prom tuxedo from her but
12 our relationship wasn't as close as why she would remember me from that
13 point then on.

14 Q. Okay, so how often had you been in The Outpost? How often did you go
15 in there?

16 A. I never really went in there, only once when I rented my tuxedo. And the
17 day of the alleged incident.

18 Q. That's only two times?

19 A. Only two times.

20 Q. Did she know you on a first name basis?

21 A. No, sir.

22 Q. Okay, about — Back to the — Back to the evaluation.

23 A. Yes, sir.

24 Q. Now, has there ever been an evaluation done of you during the course of
25 this, after the — after you were arrested to prior to trial?

1 A. Yes, sir. There were two mental evaluation that I can recall, sir.

2 Q. And do you remember what the — what their conclusions were?

3 MR. BULLARD: Your Honor, I object at this point unless he has them.

4 Has them available for The State to view. I'm gone object to him testifying

5 what was contained in those documents.

6 A. Yes, I do, sir.

7 Q. Well, let me show you this document. And ask you if— Tell us what is.

8 A. This is an address to Mr. Glenn Walters and reason it's to Mr. Marcus

9 Parker, Report of Finding of Mental Capacity.

10 Q. Okay. So this is dated July 3, 2000. And you have seen a copy of this?

11 A. Yes, sir.

12 Q. What's the conclusions of this?

13 A. The one that you have —

14 Q. You can just tell us what it is.

15 A. For the record, this is a dating of my mental evaluation for May 23. From

16 Columbia. The results is my competency to stand trial is yes; my criminal

17 responsibility is yes and my capacity to conform is yes.

18 However, I do have another one that was — that was reported back to

19 Mr. Glenn Walters' office that concludes that I, at one point —

20 MR. BULLARD: Your Honor, again I'm gonna interpose an objection.

21 To a document —

22 MR. DRAYTON: Okay, give me that one, also.

23 A. It's in my — It's in my file.

24 Yeah.

25 Can you bring both folders, please?

1 I don't have it.

2 I don't have it.

3 Judge, Your Honor, and for the record, I rephrase from the argument
4 that I'm about to present but, however, I do have her recommendations from
5 one of those —

6 MR. BULLARD: Your Honor, again I'm gonna object.

7 THE COURT: Okay.

8 Well, if you, please, is that's a document you're gone testify about,
9 please show it to opposing counsel before we —

10 A. That one right there, recommendations.

11 Q. Where's the first page of this?

12 Okay, this is a written recommendation, Mr. Parker, back in May when
13 you were admitted and the recommendation, this one, you can read that to
14 The Court for their —

15 A. For the record, the finding of the mental evaluation from headquarters in
16 Columbia, the recommendation is that Mr. Parker should receive out-patient
17 treatment for his cannabis abuse - In other words, marijuana or any other
18 drugs substances - He will benefit from the out-patient counseling.

19 That is the —

20 MR. BULLARD: Your Honor, I'm gonna object. He doesn't need to
21 clarify it. It says what it says. And we're not — I'm gonna object to him
22 interpreting —

23 THE COURT: Okay. The objection sustained.

24 You want to offer that into evidence you can but, I mean, the document
25 speaks for itself.

1 A. I would just like to say that, that I do have the document, that I was
2 mentally evaluated, Judge, Your Honor, and Mr. —

3 MR. BULLARD: I'm fine with the document. I don't — I haven't seen it
4 and he can't testify to something —

5 THE COURT: Well, do you want to offer that document into evidence
6 or something? Or what you want to do?

7 MR. DRAYTON: Well, sir, Your Honor, I think what he's trying to do is
8 show that — I think it was a statement made by Mr. Walters that there weren't
9 any psychiatric or evaluations done on Mr. Parker. And he's interested in this
10 information to refute that, to show that in fact —

11 THE COURT: Oh, okay, well, I understand that.

12 MR. DRAYTON: That's what — That's what he basically —

13 THE COURT: Okay. Well, I understand that, that's he's go a
14 document says he was in fact —

15 MR. DRAYTON: That he was in fact . . .

16 THE COURT: — sent up for a competency evaluation.

17 MR. DRAYTON: Exactly.

18 A. Secondly, I'd like to move on to the next argument. Mr. Walters just
19 stated under oath that the victim Miss Knola Miles called my name out, in
20 other words, to let the law enforcement official know who actually commit this
21 crime. Well, I have a statement here by one of the victims who actually
22 talked to — excuse me, a witness who actually spoke to the victim right after
23 the crime allegedly happened and I would like to read it. Upon the
24 opportunity.

25 MR. BULLARD: Again, I don't mind naming it. I got to see it before I

1 know if I have an objection.

2 I don't have any objection to it being admitted but I don't want him to
3 read it.

4 THE COURT: Okay.

5 Do you want to offer that into evidence?

6 A. Yes, sir.

7 THE COURT: Okay. If it is, if you want to publish it your lawyer can
8 read it or whatever but I think — in the record.

9 You gone — He says he wants to offer that in evidence. You want to
10 give it to the court reporter and mark it in evidence?

11 (Voluntary statement of Miriam P. Haymans marked and entered into
12 evidence as Applicant's Exhibit 1 without objection.)

13 Q. Mr. Parker, so it's your testimony that your name was never called?

14 A. Yes, sir.

15 Q. And you're saying the statement that you've provided into evidence right
16 now is that of a witness who was interviewed immediately after this lady was
17 shot. And she doesn't call any names?

18 A. To clarify that, the statement wasn't immediately given. It was written
19 twelve days after alleged —

20 Q. Excuse me, you're right. This was on —

21 A. Twelve days after alleged crime but that's also was gonna be used
22 against me had I went to trial so I'd like to also bring that could have benefit
23 me being that the victim did say that I was the one that shot her right after the
24 crime happened.

25 Q. This is — And in this statement she doesn't say you shot her?

1 A. In that statement it just precisely says that the victim did get shot by two
2 unknown black males and they took off in a blue vehicle; however, that
3 doesn't specify nor implicates me nor my codefendant.

4 THE COURT: All right, well, just tell me this. Who is the person who
5 made that statement?

6 MR. DRAYTON: Miriam . . .

7 A. Her name is Mimin Haymans. I can't really understand the handwriting.

8 THE COURT: Now, well, that was her statement.

9 MR. DRAYTON: That was her statement. She just happened to run
10 a seafood place next door.

11 A. This is the place where the victim ran to after the crime happened.

12 And, therefore, she would have been very credible had I went to trial.
13 Far as her testimony.

14 THE COURT: Okay. Anything else?

15 A. Other things that I would like, Judge, Your Honor, to admit in evidence is
16 the Memorial, Memorial Medical Center lab medical reports about the victim
17 whereas earlier I stated that her allegation in her statement was totally
18 different from the proof that I have her today of exactly where she had been
19 shot.

20 THE COURT: Okay.

21 Any objection to that?

22 MR. BULLARD: I don't think it's relevant exactly where she got shot
23 but, no, I'm don't.

24 THE COURT: If you want to put it in the record hand it to the court
25 reporter.

1 (Medical records of Knola Miles marked and entered into evidence as
2 Applicant's Exhibit 2 without objection. Attorney's notes marked and entered
3 into evidence as Applicant's Exhibit 3 without objection.)

4 A. Judge, Your Honor, there's nothing far as in my file that I can see that
5 implicates that where the victim actually said that I did this; however, she did
6 say that there were two young black males.

7 THE COURT: Well, let me ask you this.

8 EXAMINATION BY THE COURT:

9 A. Yes, sir.

10 Q. I gave you my copy of the transcript.

11 You were standing right there at the plea; she was standing right there.
12 She spoke; you spoke. You admitted you did it. You were under oath. You
13 said you were telling the truth. Isn't that right?

14 A. Yes, sir.

15 Q. When you were pleading guilty were you under the influence of any
16 medication or alcohol or drugs?

17 A. No, Judge, I wasn't.

18 The influence of my guilty plea was based on Mr. Walters' advice.
19 Inasmuch that he told me to go in there and plead to the mercy of The Court
20 and the victim.

21 Q. Well, obviously if you're standing there before a judge and they got the
22 kind of evidence they had on you, when they got somebody who's identified
23 you, they caught you with some of the things that were stolen and what the
24 victim says and it looked it's basically she was shot two times because she
25 would recognize the assailant. All the good choices are gone, aren't they? I

1 mean you didn't have a good choice. Either you had to go to trial and take a
2 chance on being sent away for the rest of your life or you had to, to plead
3 guilty and hope you got out, you'd be able to get out sometime in the future,
4 isn't that the two choices that you basically had?

5 A. No, Judge, not only that. I had —

6 Q. Well, tell me what other choice you had.

7 A. I had a choice of my lawyer's advice in representing me and I could have
8 gotten evidence suppressed. The prosecution is accusing me of a gun, a
9 gun, a firearm that they said I allegedly used against the victim that can't even
10 be linked to me.

11 Next of all, the victim precisely and exactly said that it was me;
12 however, there was no photo lineup; there — there were no — any other
13 evidence in my documents that even says this.

14 Q. So you felt like that if you went before a jury in Jasper County they would
15 very likely, most likely they were going to find you not guilty?

16 A. Yes, sir.

17 Q. Okay.

18 But you went ahead and pled guilty anyway?

19 A. Based on the reasons of my — Mr. Walters' advice, sir.

20 THE COURT: Okay.

21 DIRECT EXAMINATION BY MR. DRAYTON:

22 Q. Anything further?

23 A. Mr. Walters stated earlier that I didn't make him fully aware that I was
24 under intoxication of some drugs. I have here, you could say a document of
25 where Mr. Walters came and questioned me about certain things in reference

1 to my case. I did notify him that on the alleged date that I had take, taken
2 some drug, LSD acid, but that not the result of the alleged crime. That was
3 the result of me giving the statement, which my parents was here, was there
4 and also can prove that furthermore the evidence from the mental evaluation,
5 they can prove that I did have a drug problem, Judge, Your Honor.

6 I lost a lot and it's based on investigation and representation of Mr.
7 Walters.

8 THE COURT: Any questions?

9 MR. BULLARD: No, sir.

10 THE COURT: Okay, you can come down.

11 Any other arguments? Any other evidence; any more arguments?

12 Mr. Drayton.

13 MR. DRAYTON: I think that —

14 (Mr. Drayton and the applicant confer off the record.)

15 MR. WALTERS: May it please The Court. Be all right —

16 THE COURT: Any objection to Mr. Walters being —

17 MR. DRAYTON: None, none.

18 THE COURT: — excused?

19 You are excused.

20 MR. WALTERS: Thank you, sir.

21 THE COURT: Mr. Drayton, I don't mean to cut you off. You know
22 we've been waiting around for you all day and so please expedite it —

23 MR. DRAYTON: Okay. Your Honor, okay. What I told him — What
24 I — Won't take but a couple of minutes.

25 Basically Mr. Parker came in today basically saying he was victim of

1 ineffective assistance of counsel and his plea was not voluntarily given. He's
2 testified on the record as to what his state of mind was at the time of the guilty
3 plea and the statement that was voluntarily given.

4 Mr. Walters also testified what he did or did not go to assist Mr. Parker
5 during this representation.

6 Mr. Parker would like for The Court's consideration just to documents
7 that he's used. References are that had he gone to trial any competent
8 attorney would have been able to have this stuff suppressed, that a gun would not
9 have been admissible, that the testimony – that the fingerprints on the – on
10 the cash register would not have been admissible.

11 In essence, his argument's very simple. If he had gone to – The
12 indictment was flawed. It's an accumulation of things. His argument is very
13 basic, that had he gone to trial one or two of these choices, if they were
14 proven, would have been sufficient enough for The State not to make their case
15 against him, that a jury would've had to find him guilty, they couldn't have
16 convicted him if he didn't have the gun or fingerprints didn't match or the
17 statement was thrown out. Which is true.

18 Those other constitutional arguments that he's making saying that his
19 rights were violated and that his lawyer was ineffective and didn't get the stuff
20 suppressed, statement, the confession suppressed; didn't get the analysis of
21 the gun.

22 I guess it is a Strickland argument. US versus Strickland based on
23 that given the totality of the circumstances that he's the victim of an
24 ineffective attorney and as a result he pled guilty and he would not have pled
25 guilty because if he had an effective attorney he would have basically told him

1 these are the holes in The State's case. And as a result if we can prove
2 these things then you cannot be convicted, based on the law. That wasn't
3 done in this case and which is why the pled guilty.

4 So of course his position is that he should be granted a new trial so
5 that he can present all of the evidence through a competent attorney, one
6 who will go ahead and get the analysis of the gun now that -- show that the
7 fact that the gun as -- as of this date has never been analyzed; that the
8 statement wasn't voluntarily given; that him Miranda rights were not
9 protected; that the fingerprints were not -- well, the did not match up with him
10 and the codefendant; that the incident report, he's not been identified and that
11 the indictment was flawed and should've been thrown out. So you got six or
12 seven different points here alleged he felt that should've been addressed
13 at -- that would've been addressed at the trial and that a competent and
14 effective attorney would've brought out and as a result he could've had a jury
15 found him not guilty if he had a jury trial.

16 But we're dealing with a guilty plea here and his position's rather
17 simple. Because of the bad lawyering on the part of his attorney that he pled
18 guilty and that that was not an intelligent guilty plea. All right.

19 THE COURT: Mr. Bullard.

20 MR. BULLARD: Your Honor, basically our position is that it is not
21 sufficient. Even the things that Mr. Parker points to never excludes him as a
22 potential suspect. Don't identify him by name specifically but they never
23 excluded him and they would not have been of real value to him at trial. And
24 he can't show any prejudice.

25 THE COURT: And he can't, doesn't even meet any of the very strong

1 both direct evidence that she identified him and the circumstantial evidence
2 that the goods were found with him.

3 MR. BULLARD: Right.

4 THE COURT: And all these other things but I agree.

5 MR. BULLARD: I would ask, also, just for – Yeah, for the record I'd
6 like to make a motion. Pursuant to South Carolina Code Annotated 24 dash
7 27 dash 200 I would request that The Court, if it decides to deny this
8 application make a finding that Mr. Parker has made false statements,
9 committed perjury and has abused the legal process in this particular
10 application and recommend that the department of corrections remove all of
11 his good time and credit for EEC, which is the education credits. As a
12 sanction for instituting a frivolous action.

13 THE COURT: You want to be heard on that? Mr. Drayton?

14 MR. DRAYTON: Well, Your Honor, in terms of the section, the code
15 section about the frivolous application, Mr. Parker filed this application
16 because he felt that he had bad lawyering and, as you know, when a person
17 has a chance to sit around in a jail cell and analyze their case they come up
18 with all kinds of ideas about what should or should not have been done.

19 But I think that when you look at the totality of the circumstances and
20 the fact that – the things that do not – because he didn't have a trial in the
21 case that I can't see where any sanctions should be imposed to punish Mr.
22 Parker for filing this application post-conviction relief. He did that in good faith
23 not to basically waste The Court's time. He wouldn't be here.

24 He wouldn't have done all this research if it weren't in good faith.

25 THE COURT: Well, I do deny his application. I find that the, the

1 ineffective assistance of counsel and the voluntariness of his plea have not
2 been in any sense shown. I find that his attorney did meet the Strickland test
3 for effective assistance of counsel. And this was based upon his coming in
4 here and absolutely disavowing, saying that he was lying when he was up
5 there and that's what his lawyer said I find to be false. I think he has
6 committed perjury. I find – and I so find that he has made a false claim,
7 committed perjury, abused the legal process during the course of these
8 proceedings and I recommend that he – that all forfeiture of all of his earned
9 work, education and good time's credit under the – under that code section
10 because this is just asinine for him to come in here and have to – open and
11 shut case as this was and to make these frivolous claims.

12 I find it is frivolous and so I make those findings.

13 MR. BULLARD: Thank you, Your Honor.

14 MR. DRAYTON: Thank you, Your Honor.

15 — END OF REQUESTED TRANSCRIPT OF RECORD —

1 I, the undersigned Donna Hartley, Official Court Reporter for the
2 Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify
3 that the foregoing is a true, accurate and complete transcript of record of all
4 the proceedings had and evidence introduced in the trial of the captioned
5 case, relative to appeal, in the circuit court for Beaufort County, South
6 Carolina on the seventeenth day of December, 2001.

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

9 October 4, 2002

10 
11 Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS

2001-CP-27-048

Marcus Jerrell Parker, 269675,
Applicant,

v.

State of South Carolina,
Respondent.

ORDER OF DISMISSAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 9, 2001. The Respondent made its Return on November 15, 2001. An evidentiary hearing into the matter was convened on December 18, 2001, at the Beaufort County Courthouse. The Applicant was present at the hearing and was represented by Larry Drayton, Esquire. The Respondent was represented by Allen Bullard of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. The Applicant also called Ethel Lee Parker, Ollie Mae Jones and trial counsel, Glenn Walters, Esquire as witnesses. The State did not call any witnesses. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Jasper County Clerk of Court and the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to the Jasper County Clerk of Court's orders of commitment. The Jasper County Grand Jury indicted the Applicant at the March 2000 term of

General Sessions for: Kidnapping (00-GS-27-0192), Possession of a Weapon during the Commission of a Violent Crime (0193), Assault and Battery with Intent to Kill (99-GS-27-0518), and Armed Robbery (0519). Glen Walters, Esquire represented the Applicant.

On September 25, 2000 the Applicant pled guilty to: Kidnapping, Possession of a Weapon during the Commission of a Violent Crime, Assault and Battery with Intent to Kill, and Armed Robbery. The Honorable Henry Floyd sentenced the Applicant to 25 years for Armed Robbery, 20 years concurrent for Assault and Battery with Intent to Kill, 25 years concurrent for Kidnapping, and 5 years consecutive for Possession of a Weapon during the Commission of a Violent Crimes. The Applicant did not appeal his conviction or sentence.

In his original application for post conviction relief the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel;
2. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

gny
This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

The Applicant alleged that he received ineffective assistance of counsel prior to and during his guilty plea and that Counsel's ineffectiveness rendered his plea involuntary. This Court finds

these allegations to be without merit. In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

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

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

First, the Applicant claimed counsel performed an inadequate investigation. Specifically, he claimed counsel was ineffective for failing to challenge the statement he gave to police in which

he confessed to the crimes with which he was charged. He claims that he informed counsel that he was intoxicated at the time he provided the statement. He also claimed his parents were present and could verify his intoxication. This Court finds the Applicant's testimony lacks credibility. This Court finds that the Applicant requested counsel try and negotiate a favorable plea for him. The Applicant had no interest in proceeding to trial. After reviewing the evidence available to the State, the Applicant decided it was in his best interest to plead guilty. Although he changed his story several times, he eventually admitted to counsel that he had robbed and shot the victim. The Applicant also admitted at his guilty plea that he had committed the crimes with which he was charged. He also commented that he took full responsibility for his actions and was wrong in committing these acts. This Court is not persuaded by his unbelievable testimony that he was instructed to lie to the trial court by his counsel.

JM
The Applicant also claimed counsel did not speak to several witnesses. He claimed he asked counsel to speak with his mother, his aunt, a teacher from school and a friend of the family. The Applicant claimed all of these witnesses except his aunt were character witnesses. He claimed his aunt could testify that she had not planned to get married. He claimed this testimony was relevant to contradict the victim's assertion that she knew him because he had been into her store in the past to buy a tuxedo for a wedding. Curiously, when called to testify at PCR, the Applicant's aunt, Ollie Mae Jones, did not provide testimony to this effect. Furthermore, the Applicant admitted during the hearing that he had, in fact, met the victim when he rented a tuxedo from her — just as she had claimed. Of the remaining witness the Applicant mentioned, only his mother appeared to testify. She admitted she had no knowledge of the facts of the Applicant's crimes. She provided marginal character evidence. This Court finds that even had counsel talked with the Applicant's mother and

aunt and developed the testimony that they presented at the PCR hearing, there is no reasonable likelihood the Applicant would have decided to proceed to trial. These witnesses provided absolutely no helpful evidence. The Applicant was still faced with the problem of the State's overwhelming evidence of guilt which included the confessions of both his co-defendant and himself, the fact that items stolen from the store were found in his car and the fact that the victim knew and had identified him. This Court is not persuaded by the Applicant's unbelievable testimony that the substance of these witnesses' testimony would have caused him to decide to proceed to trial. As for the Applicant's school teacher and friend of the family, who did not appear at the hearing, this Court finds prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991).

 The Applicant also claimed counsel was ineffective because he did not do the following: 1) investigate into the fact that the victim's statement was given 12 days after the incident, 2) investigate into the victim lying about him and about where on her body she was actually shot, 3) investigate into the fact that the incident report did not identify him as a suspect by name, 4) investigate into the fact that the SLED lab reports came back negative as to him and his co-defendant, 5) investigate into the fact that no gun was found in his car and 6) investigate into the fact that no gun was tested. This Court finds that all of these items are pieces of factual evidence which could have been presented at trial had the Applicant chosen to proceed to trial. This Court finds that the Applicant went over these pieces of evidence with counsel when they discussed the State's evidence against him. This Court finds that the Applicant made his decision to plead guilty with full

knowledge of these facts. Even if he was not found to be aware of them, this Court finds there is no reasonable probability that these pieces of evidence would have made any significant impact at trial. This Court finds that this evidence, if unknown to the Applicant at the time of his plea, would, likewise, not have affected his decision to plead guilty.

The Applicant also claimed counsel was ineffective for failing to object to his Armed Robbery indictment. He claimed the indictment did not allege an intent to permanently deprive the victim of goods and, therefore, did not confer subject matter jurisdiction on the trial court. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). A review of the records before this Court indicate that there is no basis upon which to conclude that the trial court lacked subject matter jurisdiction. The indictment in question is facially valid and proper. An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. James, 472 S.E.2d 38 (S.C. 1996); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952). This Court finds that the Applicant's Armed Robbery indictment properly conferred subject matter jurisdiction on the trial court. Therefore, counsel was not deficient for failing to object.

The Applicant also claimed counsel incorrectly advised him he could receive a life sentence for Kidnapping. Alleged erroneous sentencing advice from counsel can be cured by a trial court. Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). Here, the trial court correctly informed the Applicant that the maximum sentence for Kidnapping was thirty years. Nevertheless, if the Court

was to accept the Applicant's testimony that counsel informed him Kidnapping carried a life sentence, the Applicant would have agreed to plead guilty with no recommendation from the State thinking his maximum exposure was life plus 55 years. Since his actual exposure was 85 years, this Court finds no reasonable probability that the Applicant would have rejected the plea offer, since it carried less time than the plea offer he claims he thought he was accepting. Therefore, this allegation is denied.

The Applicant claimed counsel was ineffective for failing to have him evaluated for competency. A criminal defendant is competent to enter his guilty plea if "the accused [has] sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and [has] a rational as well as a factual understanding of the proceeding against him." Jeter v. State, 308 S.C. 230, 417 S.E.2d 594, 596 (1992). An Applicant challenging his competency to plead must prove this allegation by a preponderance of the evidence. Id. An Applicant claiming that trial counsel was ineffective in failing to pursue this defense "must produce some evidence of insanity or showing that with the exercise of due diligence, an insanity defense could have been developed." Jeter v. State, 308 S.C. 230, 233-34, 417 S.E.2d 594 (1992). The Applicant must show that he was "unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong." Here, the only evidence presented by the Applicant was a copy of two previous mental evaluations, neither of which indicated he was incompetent, and one of which indicated he had a history of malingering. This Court finds that counsel had no trouble discussing matters with the Applicant that related to his case. The Applicant answered questions and was able to read all materials. The Applicant never indicated he had any troubles and even informed the trial court that he did not have a history of mental health treatment. This Court finds that the Applicant

has failed to carry his burden with regard to this allegation.

Finally, the Applicant claimed counsel did not inform him of his right to appeal. This Court finds that counsel did inform the Applicant that he had a right to appeal from his guilty plea. He informed the Applicant if he prevailed on appeal he would be placed "back at square one" and could receive more time the next time. This Court finds that the Applicant did not request counsel to file an appeal for him. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to request counsel to file an appeal indicates his willingness to abandon that right. Additionally, this Court has reviewed the transcript of the Applicant's plea and finds no error which would have entitled him to relief on appeal even had one been filed.

CONCLUSION

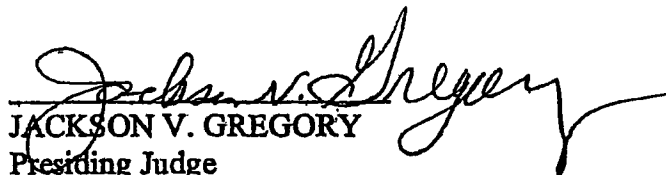
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 26th day of Feb, 2002.


JACKSON V. GREGORY
Presiding Judge
Fourteenth Judicial Circuit

Ridgeland, South Carolina.

COUNTY OF JASPER

Marcus Jerrell Parker, 269675

Applicant,

vs

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS ¹⁰¹101

01-CP-27-048

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

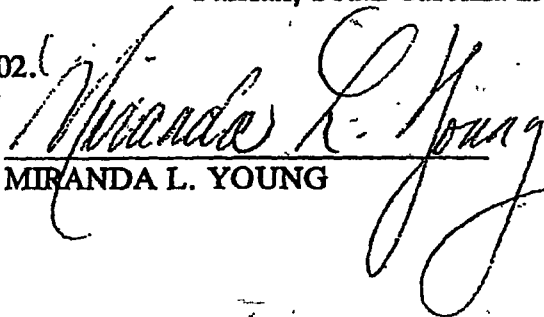
Personally appeared before me, Miranda L. Young, who being first duly sworn, states:

1. That I am an employee of the Office of the Attorney General.
2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.
3. That I have this day served a copy of the Order of Dismissal in the above-captioned matter on the following persons by depositing same in the United States mail, postage prepaid:

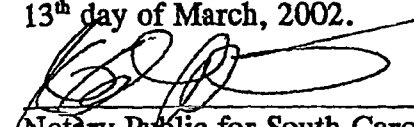
Larry S. Drayton, Esquire
Post Office Box 1553
Ridgeland, South Carolina 29936

Marcus Jerrell Parker, 269675
Allendale Correctional Institution
Highway 17
Post Office Box 1151
Fairfax, South Carolina 29827

DATED this 13th day of March, 2002.


MIRANDA L. YOUNG

SWORN to before me this
13th day of March, 2002.


Notary Public for South Carolina

My Commission Expires: 10/10/04

(L.S.)

FORM 5

2007-CP-27-~~004~~143

STATE OF SOUTH CAROLINA)

County of Tasper)

IN THE COURT OF COMMON PLEAS

Mr Marcus Terrell Baker, #2109675)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

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PAGEINSTRUCTIONS 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 Lieber Correctional Institution, PO Box 205
Ridgeville, South Carolina 29472
2. Name and location of Court which imposed sentence Tasper County Court of
General Sessions, PO Box 248 Ridgeville S.C. 29436
3. Name(s) of co-defendant(s) (if any) Kenneth D. Jones, Jr
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 99CS27-0519; Armed Robbery

- (b) 99GS27-0519 ; ARWIK
- (c) 00GS27-0192 ; Kidnapping ; and 00GS27-0193 ; Possession of Firearm
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) September 25, 2000 - 25 years
- (b) September 25, 2000 - 20 years
- (c) September 25, 2000 - 20 years ; and September 25, 2000 - 5 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty XXX
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) Trial Counsel failed to perfect direct appeal upon Applicants request

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel; pursuant to discovery provision § 17-
- (b) Involuntary Plea; pursuant to discovery provision § 17-27-45(c)
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE Applicant's PCR Attachment and Memorandum of Law / Exhibits
- (b) SEE Applicant's PCR Attachment and Memorandum of Law / Exhibits
- (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? Yes
- (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. Application for Post-Conviction Relief
- ii. Application for Post-Conviction Relief pursuant to Newly Discovered E
- iii. Petition for Habeas Corpus Relief (28 U.S.C § 2254)
- iv. Petition for Rehearing (28 U.S.C § 2254)
- (b) the name and location of the Court in which each was filed:
- i. Court of Common Pleas, P.O. Box 248 Ridgeland, S.C. 29936
- ii. Court of Common Pleas, P.O. Box 248 Ridgeland, S.C. 29936
- iii. U.S. District Court, P.O. Box 10768 Greenville S.C. 29603

iv. US Court of Appeals for the Fourth Circuit, Richmond, VA 2321
 (c) the disposition thereof:

- i. application "denied and dismissed with prejudice"
- ii. application "denied and dismissed" with prejudice
- iii. petition "dismissed" and denied with prejudice as time barred
- iv. petition "denied"

(d) the date of each such disposition:

- i. February 26, 2002
- ii. January 16, 2003
- iii. September 1, 2006
- iv. February 6, 2007

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

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

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

Yes

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

(a) which grounds have been presented:

- i. Ineffective Assistance of Trial counsel; pursuant to discovery provision
- ii. Involuntary Plea; pursuant to discovery provision § 17-27-45(c)
- iii. ---

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

- i. Post - Conviction Relief
- ii. Post - Conviction Relief
- 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) Effective Assistance of Trial Counsel; SEE Memorandum of Law / Ex
 (b) Involuntary PIPA; SEE Memorandum of Law / Exhibits
 (c) Both grounds listed above were not discovered until Dec 15, 2016; § 17

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

- (a) your arraignment and plea? Yes
 (b) your trial, if any? N/A
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

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

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

- i. Glen Walters, Esq. P.O. Box 1091 Orangeburg, S.C. 29115
 ii. Larry S. Drayton, Esq. P.O. Box 1553, 265 Logan St. Ridgeland, S.C. 2
 iii. Harry Brown, Sr. (Esq.), Ridgeland, S.C. 29936
~~iii~~ Timothy R. Walker / Miles E. Weaver, P.O. Box 655 Fort Mill, S.C. 2971

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

- i. Arraignment, Plea, Sentencing - Glen Walters
 ii. Post-Conviction Relief Hearing (1st)
 iii. Post-Conviction Relief Hearing (2nd)
~~iii~~ Petition for Habeas Corpus

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

Applicant respectfully seek an evidentiary hearing pursuant to
the discovery provision (S.C. Code Ann. § 17-²⁷⁻~~28~~ 45(c)), and
alternatively, vacation of conviction and a new trial.

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Jasper)

I, Mr. Marcus Terrell Parker, 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.

Mr. Marcus T. Parker

SWORN to and subscribed before me this 23
 day of Feb, 2016.

Yvette Blome (L.S.)
 Notary Public

My Commission Expires: 8/20/2016

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

I, Mr. Marcus Terrell Parker, 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.

Mr. Marcus Terrell Parker
Applicant

SWORN or affirmed to and subscribed before me this

23 day of Dec, 2015

Yvette Blome
Notary Public

My Commission Expires:

8/2/2016

February 23, 2007

Margaret Bistick, Clerk

PO Box 248

Adelound, S.C. 29936

Re: Request to file application for PER
(Marcus J Parkie v State of South Carolina)

Dear Margaret:

I do hope that this important letter finds you in great health and high spirit. Please find enclosed for filing with your office a application for post-conviction relief and Applicant's Memorandum of Law in Support of PER application, with attached exhibits. I am aware that these materials will be forwarded to the office of the Attorneys General for the appropriate action following the filing with you.

However, I request that you forward me a copy of these filed materials with your office at your earliest convenience. Again, thank you for your time, work, and generosity in this matter.

With kind personal regards, I am

Sincerely,

151 *M. J. Parkie*

cc: MJP / LCI Mathew

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CLERK OF COURT
JUDICIAL DEPARTMENT
SOUTH CAROLINA

APPLICANT'S PCR ATTACHMENT

10) State concisely and in the same order the facts which support each ground set out in (9):

The Applicant asserts the factual basis for his grounds is solely based on discovered evidence of material facts that was given to him by the Department of Corrections caseworker on December 18, 2006. The caseworker informed Applicant during a classification interview that he is currently serving a five-year mandatory minimum sentence, day-to-day, with the ineligibility for parole for his consecutive conviction of possession of a firearm during the commission of a violent crime. Moreover, Applicant was informed that he would not be released until completion of his mandatory minimum sentence as imposed by his court and required by state law for the non-violent offense. (SEE Exhibit No. 12 to Memorandum of Law In Support for PCR)

The Applicant advised his caseworker that prior to accepting the guilty pleas that neither the trial judge or defense counsel had informed him of any mandatory minimum penalty carried by the possession of a firearm during the commission of a violent crime charge. The Applicant emphasized that his counsel had informed that he could receive a five-year sentence (non-violent) and that he would be parole eligible for his consecutive charge once he had completed the sentence for his concurrent convictions. Applicant also explained it was only his understanding that he was given the maximum sentence which could be imposed upon him by the trial court for his consecutive charge. Following a review of the plea record and commitment sheet with his caseworker, the Applicant was informed the Department of Corrections was without legal jurisdiction to correct any error made with respect to the validity of his sentence and plea. However, Applicant's caseworker provided documentation to support his PCR Assertion that he had recently discovered the five-year mandatory minimum sentence with the ineligibility for parole for his consecutive convictions. (SEE EXHIBIT No. 13 to Memorandum of Law In Support for PCR)

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The Applicant having been provided this evidence of material fact, learned that counsel's erroneous parole advice was constitutionally ineffective. Further, the misleading statements and imposition of sentence by trial court rendered the Applicant's plea involuntary. Applicant's belief was that his five year maximum sentence for his consecutive charge would only require service pursuant to the non-violent provision, with the eligibility for parole. The Department of Corrections had initially informed Applicant of his parole eligibility for his consecutive conviction during his admission phase and Applicant had completed several institutional programs that was said to increase the grant of his parole (Exhibit No. 5 4 to Memorandum of Law In Support for PCR). Here, the Applicant was never made aware of any mandatory minimum sentence, with parole ineligibility for his consecutive charge (conviction) until he learned of it from his Department of Corrections caseworker on December 18, 2006, therefore Applicant cannot have raised the claim in a previous PCR application. Thus, the Applicant's guilty plea was in fact entered in ignorance of its direct consequences and therefore involuntary.

The Applicant exclusively relies on the discovery holdings of Wainwright v. State, 511 S.E.2d 689 (1999) and Coats v. State, 575 S.E.2d 557 (2003), to review his issues of material facts stated above. Additionally, the discovery provisions of S.C. Code Ann. § 17-27-20 (a) 4 and § 17-27-45 (c), Applicant is entitled to a evidentiary hearing on the voluntariness, knowing, and understanding of his guilty plea.

Attached herewith and incorporated by reference is Applicant's Memorandum of Law In Support for Post-Conviction Relief application and exhibits. The Applicant reserves the right to amend this application for PCR upon discovery of any relevant materials and information.

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

)
) IN THE COURT OF COMMON PLEAS
)

Marcus Jerrall Parker, 204675;

Applicant,

v.

State of South Carolina,

Respondent.

)
)
) APPLICANT'S MEMORANDUM
) OF LAW IN SUPPORT OF
) POST-CONVICTION RELIEF
) APPLICATION AND EXHIBITS
)
)
)

Now comes the Applicant, Mr Marcus J Parker, an inmate presently confined in the Leber Correctional Institution of the South Carolina Department of Corrections, respectfully submit this Memorandum of Law in Support for Post-Conviction Relief application with attached Exhibits. Applicant submit that the application should not be summarily dismissed as it is not successive or barred by the statute of limitations should the issue arise. The Applicant would respectfully move this Court, pursuant to the discovery provision of § 17-27-45 (c) and § 17-27-20 (a) (4), S.C. Code of Laws, for an evidentiary hearing based on the pleadings herein.

Respectfully Submitted,

151 Mr. Marcus J. Parker

dated this 23 day of February, 2007

Marcus Jerrall Parker, # 204675

P.O. Box 265

Ridgerville South Carolina 29928

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I.
STATUTE OF LIMITATIONS

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First, the Applicant submit that the current application for PCR, not successive to his prior application for PCR, therefore must not be summarily dismissed. The Uniform Post-Conviction Procedure Act (the Act) provides that:

Any ground finally adjudicated or not so ruled, knowingly, voluntarily, and intelligently, waived in any proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, "unless the court finds a ground for relief asserted which for sufficient reasons was not asserted or was inadequately raised in the original, supplemental or amended application."

See S.C. Code Ann. § 17-27-90 (1985). Although successive applications are disfavored, the burden is on the Applicant to establish that any new ground raised in a subsequent application, the interest of justice may require the court to review the subsequent application based upon "unique facts" presented on a case-by-case basis Rich v. State, 305 S.C. 448, 409 S.E2d 392 (1991); Case v. State, 297 S.C. 475, 289 S.E2d 413 (1992).

Applicant has applied for post-conviction relief solely on the basis of material facts that was given to him by his Department of Corrections caseworker during a classification interview on December 15, 2000. The caseworker (Ms. D. Bailey) informed the Applicant that he is currently serving a five-year mandatory minimum sentence, day-to-day, with the ineligibility for parole for possession of a firearm during commission of a violent crime. Further, Applicant was informed that he would not be released until completion of his consecutive mandatory minimum sentence as imposed by the trial court and required by state law. (See Exhibit No. 1, 2 to Memorandum of Law in Support for PCR) The Applicant advised his caseworker that prior to the acceptance of his guilty plea that neither the trial judge or defense counsel had informed him of any mandatory minimum penalty carried by his possession of a firearm during the commission of a violent crime charge.

Applicant emphasized that his trial counsel had informed him that he could receive a five-year sentence (non-volupt) and that he would be parole eligible for his consecutive charge since he had considered the sentence for his concurrent convictions. The Applicant also stated that he was orally informed of parole eligibility from the Department of Corrections during his admission and that he had completed various institutional programs that was said to increase the grant of his parole (See Exhibit Nos "4" to Memorandum of Law in Support for PCR). Following a review of Applicant's plea record and commitment sheets with his caseworker, Applicant was informed that the Department of Corrections was without legal jurisdiction to correct any error made with respect to the validity of his sentence and plea. However, the Applicant's caseworker provided documentation to support his PCR assertions that he had recently discovered the five-year mandatory minimum sentence with the ineligibility for parole for his consecutive conviction (See Exhibit Nos "3" to Memorandum of Law in Support for PCR).

In Al-Shabazz v. State, 358 S.C. 354, 577 S.E.2d 742 (S.C. 2001), the South Carolina Supreme Court held that, "except for two non-collateral matters specifically listed in the PCR Act, PCR is a proper avenue of relief only when a applicant mounts a collateral attack challenging the validity of his conviction or sentence. Unless counsel gives erroneous parole advice, parole information is not a ground for collateral attack of a guilty plea. Knox v. State, 530 S.E.2d 837 (S.C. 2000), Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997).

The Applicant contends that his claims concerning his mandatory minimum sentence and parole ineligibility are not successive. The claims are appropriate for PCR because the Applicant alleges that counsel was ineffective for improperly advising him that he would be parole eligible. Furthermore, trial counsel was ineffective for not advising and to have the court to advise him of the five-years mandatory minimum sentence carried by his consecutive charge. Here, the Applicant was never made aware of any mandatory minimum penalty and parole ineligibility with respect to his consecutive conviction until he learned of it from his Department of Corrections caseworker on December 15, 2006, therefore the Applicant could not have raised the claims in a previous PCR hearing because he was then unaware of such claims. See also Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999).

(fourth PCR application, challenging guilty plea as involuntary on grounds that he was parole ineligible, not successive where applicant could not have raised claim in previous application because he previously did not know he was parole ineligible).

The Applicant submit that he has made a prima facie showing and have established sufficient reason why he could not have raised his current allegation in his previous application for PCR, therefore he has satisfied the burden imposed upon him. Weck v. New Drigall, 246 S.C. 258, 143 S.E.2d 455 (1965), Lond v. State, 274 S.C. 243, 262 S.E.2d 755 (1980); Harold v. State / Platt v. State, *supra*. Applicant also relies on the South Carolina Supreme Court discovery holdings in Coats v. State, 575 S.E.2d 557 (2003), Tilley, *supra*, to renew his claim of ineffective assistance of counsel and involuntary plea. Therefore, the Applicant request this Court not to summarily dismiss the current application for PCR as it is not successive to his prior applications for PCR.

II.

Second, the Applicant submit that the current application for PCR has fully complied with the filing procedures of the Act. S.C. Code Ann. § 17-27-10 to 160 (1976 and Supp. 1997) The Act reads as follows:

If the Applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the Applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45 (c) (Supp. 2001). The South Carolina Supreme Court has held that the statute of limitations shall apply to all PCR applications filed after July 1, 1996. Pelagius v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

The Applicant contends that his claim that counsel was ineffective in improperly advising him that he would be parole eligible and failing to inform him that the trial court informed him of the five-year mandatory minimum penalty for possession of a firearm during a violent crime, fell well within discovery rule providing when there is evidence of material facts not previously presented, PCR application is to be filed within one year after date of actual discovery of facts, and he must have to be filed within one year after conviction Crofts, supra; Tilly, supra; U.S. v. Coast Armored Co., S.F. Fed. Dist. Ct. 17-27-45 (c) and § 17-27-20 (a) (4)

Applicant learned from his Department of Corrections caseworker that he was currently serving a five-year mandatory minimum sentence, day-to-day, with the ineligibility for his consecutive conviction on December 15, 2006. Applicant thereafter learned that he had a claim of ineffective assistance of counsel and involuntary plea and has within two months filed the current PCR application. It is undisputed that the Applicant could not have raised these claims in a previous PCR application because he did not know of the claim until December 15, 2006. The Applicant submit that the instant PCR application has been filed within one year after the actual date of discovery of the fact he was parole ineligible and serving a five-year mandatory minimum sentence for his consecutive conviction.

Therefore, the Applicant respectfully request this Court not to summarily dismiss the current application for PCR as it does comply with the filing procedures of the Uniform Post-Conviction Relief Act.

III.

DISCUSSION OF THE CLAIMS

Without waiving or abandoning the statute of limitations defense as discussed above, Applicant assert, in the alternative, he is otherwise entitled to relief.

Applicant's guilty plea was involuntary and trial counsel was ineffective for failing to advise and hear the court advise him of the mandatory minimum sentence for his charges and for erroneously advising him of parole eligibility.

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz supra. A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that counsel committed error, and that but for the error counsel committed, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart 474 U.S. 52, 59 (1985); Rascoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001).

Specifically, the Applicant contends that his plea was the result of counsel's failure to inform and have the court properly inform him of the five-year mandatory minimum sentence, and for erroneously advising him that he would be parole eligible for possession of a firearm during the commission of a violent crime. Applicant's plea likewise was the result of misleading statements made by the trial judge regarding the sentence for possession of a firearm during the commission of a violent crime. Section 16-23-490 of the S.C. Code of Laws (Supp 1998) provides that a person convicted of possession of a firearm or display what appears to be a firearm or knife during the commission of a violent crime or attempting to commit a violent crime "must be imprisoned five-years, in addition to the punishment provided for the principal crime, unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. (emphasis supplied). This provision is mandatory and a person convicted for this crime may not complete or be released in less than five-years. A trial judge likewise has no discretion to impose lesser sentence, suspend a portion of the five-year sentence and impose probation, and a defendant is not entitled to parole. (See Exhibit No. 1, 2 to Memorandum of Law in Support for PCR). The Applicant submits that while consulting with him regarding a possible plea of guilty to possession of a firearm during the commission of a violent crime, trial counsel advised him that the presiding judge might exercise discretion in passing sentence and that he could receive a five-year non-violent sentence with the eligibility for parole.

During the plea examination itself, the judge indeed informed Applicant that he "could" impose a "maximum" sentence of five-years. (Exhibit No. 5 - 2000 Plea transcript, p. 4), although the court questioned counsel if he had explained to Applicant the charges and possible punishments (Exhibit No. 6 - 2000 Plea transcript p. 2). Judge Floyd never inquired with Applicant whether his counsel had advised him of the five-year mandatory minimum penalty, nor did Judge Floyd himself inform him of this mandatory minimum penalty. The plea transcript is devoid of any five-years mandatory minimum sentence from the trial judge to Applicant, therefore not curing any misconception of the possible sentence by trial counsel Woodshead v. State, 329 SC 329, 496 S.E.2d 415 (1998). The transcript also indicates the plea judge did not affirmatively ask the Applicant whether he understood that this mandatory minimum sentence could be ran consecutive to his other imposed sentence (concurrent sentence), therefore the Applicant did not fully understand the severity of the consecutive charge or the penalty it carried. Here, the information given by counsel, the plea judge, and initially by the Department of Corrections to Applicant, logically was understood that his consecutive convictions would be served pursuant to the non-violent provisions and with the eligibility for parole. The Applicant did not reasonably learn that his plea was invalid until his Department of Corrections case-worker informed him on December 15, 2006 that he was currently serving a five-year mandatory minimum sentence, day-to-day, without the eligibility for parole for his consecutive convictions.

The Due Process Clause of the United States Constitution requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants. The test established is whether the record establishes that a guilty plea was voluntarily and understanding made. It is elementary that in order for a defendant to knowingly and voluntarily, pled guilty, he must have a full understanding of the consequences of his plea Boykin v. Alabama, 395 U.S. 233, 89 S.Ct. 1767 (1964); Fed. R. Crim. P. 11. The South Carolina Supreme Court has summarized the requirement for accepting a guilty plea as follows: In addition to Boykin *supra*, a defendant must be aware of the nature, crucial elements of the offense, and the maximum and "only mandatory minimum penalty", and the nature of the constitutional rights being waived State v. Hazel, 275 S.C. 372, 271 S.E.2d 602 (1980); Pittman v. State, 524 S.E.2d 623 (S.C. 1999); and Burnett v. State, 352 S.C. 589, 576 S.E.2d 144 (2003).

Upon the facts in this case, Applicant's plea was not knowing because it was entered without an understanding of the five-year mandatory minimum penalty and the ineligibility for parole for his consecutive charge. See U.S. Criminal Law § 414 (1989) ("prior to accepting a plea of guilty... the court is required to advise accused of the range of punishment attached to the offense charged such as... the mandatory minimum sentence"). Applicant's case is very much similar to Hazel Simon, where the South Carolina Supreme Court found defendant's plea involuntary since she never informed of the mandatory minimum sentence required by her guilty plea. The Applicant therefore concedes that his trial counsel was constitutionally ineffective in failing to inform him and request the plea court to properly inform him of the mandatory minimum sentence carried by his consecutive charge prior to accepting Applicant's guilty pleas. Applicant contends that counsel was required to raise these issues before the trial court to insure that Applicant's plea was freely, knowingly, intelligently, and voluntarily. The Applicant alleges that the trial judge was negligent, was deficient, and prejudiced the Applicant in that he pled guilty to the charge without being told in open court by trial judge, and without same being placed on the record, of the five-years mandatory minimum penalty carried by that charge (possession of a firearm during the commission of a violent crime). Trial counsel was likewise constitutionally ineffective for erroneously informing Applicant that he would be parole eligible for his consecutive charge once he completed the sentence for his concurrent convictions. The transcript of the Applicant's guilty plea speaks for itself and on its face provides enough evidence to find Applicant's plea was not voluntary or knowing. It was thus a plea entered in ignorance of its direct consequence and is therefore invalid. In Pittman, supra, the South Carolina Supreme Court cited Baylun, supra. Baylun, supra, held that where the record did not disclose that the defendant voluntarily and understandingly entered his pleas of guilty it was reversible error.

Therefore, the Applicant submits that his plea was involuntary and trial counsel's error and advice was constitutionally ineffective. Applicant contends that counsel's error and advice prejudiced him and that but for counsel's error and advice, he would have insisted on going to trial on all charges.

CONCLUSION

WHEREFORE, based on the pleadings and cited authorities stated herein this Memorandum of Law in Support for PCR, Applicant submit that the current application for post-conviction relief must not be summarily dismissed as it is not successive and has complied with the time set by statute to file. Alternatively, there exist a genuine issue of material facts, and the facts conclusively show that the applicant is entitled to relief on the issues presented. The Applicant respectfully request this Honorable Court for an evidentiary hearing, and to vacate sentence and remand the case for a New Trial.

dated this 23 day of Feb, 2007

Respectfully Submitted,
 is/ Mr. Marcus J. Parker
 Mr Marcus Jerrell Parker, #261615
 PO Box 265
 Ridgeville, South Carolina 29472

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

)

)

)

IN THE COURT OF COMMON PLEAS

Marcus Jerrell Parker, 269645,

Applicant,

v.

State of South Carolina,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

FILED
FEB 26 AM 11:41
CLERK OF COURT/RMC
JASPER COUNTY SCFILED
PAGESOUTH CAROLINA
COUNTY OF JASPER

Personally appeared before me, Marcus J. Parker, who being first duly sworn, states:

1). That I am an inmate confined in the South Carolina Department of Corrections - Lieber Institution;

2). That regular communications by mail exist throughout the State of South Carolina, and that this is a proper circumstance of service by mail;

3). That I have this date served Applicants Memorandum of Law in Support of Post-Conviction Relief application in the above-captioned matter on the following person by depositing same in the United States mail postage prepaid: Margaret Bostick, Clerk P.O. Box 248 Ridgeland, S.C. 29936

Sworn to before me this 23 day
of February, 2007

[Signature]
Notary Public for South Carolina

My Commission Expires: 8/10/2016

Respectfully Submitted,

151 M. Marcus J. Parker

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 14TH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	Case No.: 2007-CP-27-143
Marcus Jerrell Parker, # 269675	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return and Motion to Dismiss to the application for post-conviction relief (PCR) filed February 26, 2007, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Jasper County Clerk of Court. The Applicant was indicted at the October 1999 term of the Jasper County Grand Jury for assault and battery with intent to kill (ABWIK) (1999-GS-27-0518) and armed robbery (1999-GS-27-0519). He was also indicted at the March 2000 term for kidnapping (2000-GS-27-0192) and possession of firearms during commission of certain crimes (2000-GS-27-0193). Glen Walters, Esquire, represented the Applicant. On September 25, 2000, the Applicant pled guilty as charged. The Honorable Henry Floyd sentenced the Applicant to confinement for twenty-five (25) years for armed robbery, twenty (20) years concurrent for ABWIK, twenty (20) years concurrent for kidnapping, and five (5) years consecutive for possession of firearms during commission of certain crimes. Applicant did not appeal his guilty plea or sentence.

The Applicant subsequently filed an application for post-conviction relief on February 9,

2001. The State made its Return on November 15, 2001. An evidentiary hearing was convened on December 18, 2001 at the Beaufort County Courthouse, at which the Applicant was present and represented by Larry Drayton, Esquire. Allen Bullard, a South Carolina Assistant Attorney General, represented the State. The Applicant raised the following issues in his first PCR application:

1. Ineffective assistance of trial counsel.
2. Involuntary guilty plea.

The Honorable Jackson V. Gregory denied and dismissed Applicant's application by Order dated February 26, 2002. A timely Notice of Appeal was filed and an appeal perfected on behalf of the Applicant. Robert M. Pachak of the Office of Appellate Defense filed a Petition pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The Supreme Court of South Carolina issued an order denying the Petition and granting counsel's request to withdraw on May 16, 2003. The Remittitur was issued on June 3, 2003.

The Applicant filed a second PCR application on February 13, 2002. The State made its Return and Motion to Dismiss on May 9, 2002. A hearing was convened on June 6, 2002 at the Beaufort County Courthouse, at which the Applicant was present and was represented by Harry Brown, Sr., Esquire. Wm. Bryan Dukes of the Attorney General's Office represented the State. The Applicant raised the following issues in his second PCR application:

1. Trial counsel failed to perfect an appeal.
2. Newly discovered evidence.

The Honorable Jackson V. Gregory denied and dismissed the application by Order dated January 16, 2003. A timely Notice of Appeal was filed and an appeal perfected on behalf of the Applicant. Joseph L. Savitz, III of the Office of Appellate Defense filed a Petition pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The Supreme Court of South Carolina issued an order denying the Petition and granting counsel's request to withdraw on January 6, 2005.

The Remittitur was issued on January 24, 2005.

The Applicant subsequently filed a Petition for Habeas Corpus. By Order dated September 1, 2006, the Honorable Joseph F. Anderson, Jr., United States District Judge, denied the Petition and granted Respondents' Motion for Summary Dismissal. The Applicant appealed the district court's order to the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit dismissed the appeal by unpublished opinion dated November 27, 2006.

II.

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

1. Ineffective assistance of trial counsel in that counsel did not inform Applicant of a specific parole eligibility issue and Applicant discovered the information from a Department of Corrections caseworker on December 15, 2006.
2. Involuntary guilty plea in that Applicant would not have pled guilty had he known of the parole eligibility issue prior to the plea.

Attached herewith and incorporated herein by reference are the records of the Jasper County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Applicant's guilty plea transcript, the transcript from the first PCR hearing, the prior PCR applications and returns thereto, the Orders of Dismissal, the Supreme Court Orders dismissing the appeals, the Petition for Habeas Corpus, and the Fourth Circuit opinion dismissing the habeas corpus appeal.

III.

First, the State submits that the current application for PCR must be summarily dismissed because it is successive to the Applicant's prior applications for PCR. The Uniform Post Conviction Procedure Act (the Act) provides that:

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

S.C. Code Ann. § 17-27-90 (1985). Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The State submits that the Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous applications for PCR; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448. Therefore, the State requests that this Court summarily dismiss the application for PCR as successive.

IV.

The Respondent submits that this application for post-conviction relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all

applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on September 25, 2000. Therefore, the Applicant was required to file his application by September 25, 2001. This Application was filed on February 26, 2007, which was more than five years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Respondent submits that Applicant's allegation of newly discovered evidence based on parole eligibility is without merit. Unless counsel gives erroneous parole advice, parole information is not a ground for collateral attack of a guilty plea. Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997). Counsel is not ineffective for failing to advise a defendant regarding parole eligibility because it is a collateral consequence of sentencing. Id. The fact that the Applicant was not advised of the collateral consequence of his parole eligibility did not render his counsel ineffective. See Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002) (trial counsel need not advise client of collateral consequence of parole eligibility). Therefore, the State requests that the application be summarily dismissed.

VI.

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

VII.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Matthew J. Friedman
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

_____, 2008.

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Marcus Jerrell Parker, #269675,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2007-CP-27-0143

AFFIDAVIT OF SERVICE BY MAIL

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 this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person(s) by depositing it in the United States mail, postage prepaid to:

**Marcus Jerrell Parker, #269675
 Lieber Correctional Institution
 P.O. Box 205
 Ridgeville, SC 29472**

DATED this 29th day of January, 2008.


 Kristi P. Kohl, Legal Assistant
 Office of the Attorney General
 Post Office Box 11549
 Columbia, SC 29211-1549
 (803) 734-3737

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Marcus Jerrell Parker, # 269675

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
Case No.: 2007-CP-27-143

**CONDITIONAL ORDER OF
DISMISSAL**

2008 FEB 11 AM 10:42
CLERK/CLERK
JASPER COUNTY SC

This matter comes before this Court by way of an application for post-conviction relief filed February 26, 2007. The Respondent made its Return and Motion to Dismiss on January 29, 2008.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Jasper County Clerk of Court. The Applicant was indicted at the October 1999 term of the Jasper County Grand Jury for assault and battery with intent to kill (ABWIK) (1999-GS-27-0518) and armed robbery (1999-GS-27-0519). He was also indicted at the March 2000 term for kidnapping (2000-GS-27-0192) and possession of firearms during commission of certain crimes (2000-GS-27-0193). Glen Walters, Esquire, represented the Applicant. On September 25, 2000, the Applicant pled guilty as charged. The Honorable Henry Floyd sentenced the Applicant to confinement for twenty-five (25) years for armed robbery, twenty (20) years concurrent for ABWIK, twenty (20) years concurrent for kidnapping, and five (5) years consecutive for possession of firearms during commission of certain crimes. Applicant did not appeal his guilty plea or sentence.

The Applicant subsequently filed an application for post-conviction relief on February 9,

2001. The State made its Return on November 15, 2001. An evidentiary hearing was convened on December 18, 2001 at the Beaufort County Courthouse, at which the Applicant was present and represented by Larry Drayton, Esquire. Allen Bullard, a South Carolina Assistant Attorney General, represented the State. The Applicant raised the following issues in his first PCR application:

1. Ineffective assistance of trial counsel.
2. Involuntary guilty plea.

The Honorable Jackson V. Gregory denied and dismissed Applicant's application by Order dated February 26, 2002. A timely Notice of Appeal was filed and an appeal perfected on behalf of the Applicant. Robert M. Pachak of the Office of Appellate Defense filed a Petition pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The Supreme Court of South Carolina issued an order denying the Petition and granting counsel's request to withdraw on May 16, 2003. The Remittitur was issued on June 3, 2003.

The Applicant filed a second PCR application on February 13, 2002. The State made its Return and Motion to Dismiss on May 9, 2002. A hearing was convened on June 6, 2002 at the Beaufort County Courthouse, at which the Applicant was present and was represented by Harry Brown, Sr., Esquire. Bryan Dukes of the Attorney General's Office represented the State. The Applicant raised the following issues in his second PCR application:

1. Trial counsel failed to perfect an appeal.
2. Newly discovered evidence.

The Honorable Jackson V. Gregory denied and dismissed the application by Order dated January 16, 2003. A timely Notice of Appeal was filed and an appeal perfected on behalf of the Applicant. Joseph L. Savitz, III of the Office of Appellate Defense filed a Petition pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The Supreme Court of South Carolina issued an order denying the Petition and granting counsel's request to withdraw on January 6, 2005.

The Remittitur was issued on January 24, 2005.

The Applicant subsequently filed a Petition for Habeas Corpus. By Order dated September 1, 2006, the Honorable Joseph F. Anderson, Jr., United States District Judge, denied the Petition and granted Respondents' Motion for Summary Dismissal. The Applicant appealed the district court's order to the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit dismissed the appeal by unpublished opinion dated November 27, 2006.

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

1. Ineffective assistance of trial counsel in that counsel did not inform Applicant of a specific parole eligibility issue and Applicant discovered the information from a Department of Corrections caseworker on December 15, 2006.
2. Involuntary guilty plea in that Applicant would not have pled guilty had he known of the parole eligibility issue prior to the plea.

Before this Court are the records of the Jasper County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Applicant's guilty plea transcript, the transcript from the first PCR hearing, the prior PCR applications and returns thereto, the Orders of Dismissal, the Supreme Court Orders dismissing the appeals, the Petition for Habeas Corpus, and the Fourth Circuit opinion dismissing the habeas corpus appeal.

This Court finds that the current application for PCR must be summarily dismissed because it is successive to the Applicant's prior applications for PCR. The Uniform Post Conviction Procedure Act (the Act) provides that:

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

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

S.C. Code Ann. § 17-27-90 (1985). Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

This Court finds that the Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous applications for PCR; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448. Therefore, this Court summarily dismisses the application for PCR as successive.

This Court also finds that this application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on September 25, 2000. Therefore, the Applicant was required to file his application by September 25, 2001. This Application was filed on February 26, 2007, which was more than five years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of

limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court summarily dismisses the application for post-conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

Finally, this Court finds that Applicant's allegation of newly discovered evidence based on parole eligibility is without merit. Unless counsel gives erroneous parole advice, parole information is not a ground for collateral attack of a guilty plea. Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997). Counsel is not ineffective for failing to advise a defendant regarding parole eligibility because it is a collateral consequence of sentencing. Id. The fact that the Applicant was not advised of the collateral consequence of his parole eligibility did not render his counsel ineffective. See Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002) (trial counsel need not advise client of collateral consequence of parole eligibility). Therefore, this Court finds that the application be summarily dismissed.

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Jasper County, South Carolina.

AND IT IS SO ORDERED this 1 day of February, 2008.

C. Mullen
The Honorable Carmen Tevis Mullen
Administrative Judge
14th Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Marcus Jarrell Parker, 269675

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE 14TH JUDICIAL CIRCUIT
) Case No.: 2007-CP-27-0143

) RETURN AND MEMORANDUM OF
) LAW IN OPPOSITION TO RESPONDENT
) CONDITIONAL ORDER OF DISMISSAL

The above-named Applicant, making its Return and Memorandum of Law in Opposition to Respondent's Conditional Order of Dismissal, would respectfully show this Court why this Order should not become final and why counsel should be appointed:

I.

The Applicant has filed (February 26, 2007) an application for post-conviction relief solely on the basis of material facts that was given to him by his Department of Corrections caseworker on December 15, 2006. The caseworker informed Applicant that he is currently serving a five (5) years mandatory sentence, with the ineligibility for parole for his consecutive conviction for possession of a firearm during commission of a violent crime. Applicant's caseworker also informed that he would not be released until completion of this mandatory sentence as required under the state law.

The Applicant advised his caseworker that prior to the acceptance of his guilty plea that neither the trial judge or counsel had inform him of a five years mandatory sentence carried by the possession of a firearm during commission of a violent crime charge. Applicant emphasize that his trial counsel had inform him that he could receive up to a five years sentence with

parole eligibility for the above mentioned charge. The Applicant also advised that the trial judge had inform him that he could receive up to a "maximum five years sentence" for his consecutive charge. Applicant noted that he was informed of a five-years maximum sentence (65k) with parole eligibility during his admission in the Department of Corrections and have completed several institutional programs that was said to increase the grant of parole for possession of a firearm during commission of a violent crime.

The Applicant was never made aware of a five year mandatory sentence with parole ineligibility for his consecutive charge until he learned of it from his Department of Corrections caseworker on December 15, 2006. Applicant discovered that his trial counsels incorrect sentence and parole advise for possession of a firearm during commission of a violent crime was constitutionally ineffective and his guilty plea involuntary.

The Applicant has correctly filed his allegation and issues of material fact pursuant to the discovery provision of §17-27-45 (c) as setforth in the Uniform Post Conviction Procedure Act.

II.

The Applicant has alleged in this action for post conviction relief that he is being held in custody unlawfully for the following reasons:

- 1). Ineffective assistance of trial counsel in that counsel incorrectly inform Applicant of parole eligibility and a maximum sentence for his consecutive charge.
- 2). Involuntary guilty plea in that Applicant would not have entered guilty pleas had counsel not incorrectly inform Applicant of parole eligibility and had counsel correctly inform Applicant of a mandatory sentence for his consecutive charge prior to the plea.

The Applicant notes to this Court that the asserted grounds for post conviction relief by Applicant in the Respondent's Conditional Order of Dismissal are clearly misplaced. In addition to the current application for post conviction relief which is before this Court, the Applicant attach herewith by reference the Applicant's Memorandum of Law in Support for Post Conviction Relief application which was originally filed therewith.

III.

First, Applicant asserts the Respondent's contention that the current application for PCR is successive to his prior applications for PCR is without merit. The Applicant submits that the current application is not successive and must not be summarily dismissed.

A successive application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings. Although successive application are disfavored, the Applicant has the burden to establish that any new ground raised in a subsequent application could not have been raised in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991)

The Applicant asserts that his allegation concerning his mandatory sentence and parole ineligibility for possession of a firearm during the commission of a violent crime are not successive. The claims are appropriate for PCR because the Applicant alleges that counsel was ineffective for incorrectly informing him that he would be parole eligible. Moreover, counsel was ineffective for not correctly informing and to have court inform Applicant of the five year mandatory sentence carried by his consecutive charge prior to the Acceptance of the plea. In Al-Shabbana v. State, 338 S.C. 354, 527 S.E.2d 742 (S.C. 2000), the South Carolina Supreme Court held, "that except for two non-collateral matters specifically listed in the PCR

Act, PCR is a proper avenue of relief only when a applicant mounts a collateral attack challenging the validity of his conviction or sentence. Unless, counsel gives erroneous parole advice, parole information is not a ground for collateral attack of a guilty plea." Also See Knox v. State, 530 S.E.2d 887 (S.C. 2000); Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997).

Here, the Applicant was never made aware of his current five years mandatory sentence and parole ineligibility with respect to his consecutive charge (possession of a firearm during commission of a violent crime) until he learned of it from a Department of Corrections caseworker on December 15, 2006. Therefore, Applicant could not have raise the current claim in a previous PCR application because the Applicant was then unaware of such claims. See Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999) (fourth PCR application, challenging guilty plea as involuntary on grounds that he was parole eligible, not successive where applicant could not have raised claim in previous application because he previously did not know he was parole ineligible)

The Applicant submit that he has establish sufficient reason why he could not have raised his current allegations in his previous application for PCR and has satisfied the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). Therefore, the Applicant request that this Court not to summarily dismiss the current application for PCR as successive.

IV.

The Applicant also asserts the Respondent's contention that the current application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act is without merit. The Applicant submits that this application has fully complied with the filing procedures of the Act. S.C. Code Ann. §17-27-45 (c) (2003) reads as follows:

If the Applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the Applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

The Applicant submits that S.C. Code Ann. 17-27-45 (a) is inapplicable to the current application for the purpose of statute of limitations. Applicant contends that his allegation that the guilty plea was involuntary because counsel was ineffective for incorrectly informing the Applicant that he would ^{be} parole-eligible and for ⁱⁿ ~~correctly~~ ^{correctly} informing Applicant of a five years ^{maximum} ~~mandatory~~ penalty for possession of a firearm during commission of a violent crime, fell well within discovery rule providing when there is evidence of material facts not previously presented, PCR application is to be filed within one year after date of actual discovery of facts, and do not have to be filed with one year after conviction. S.C. Code Ann. §17-27-45 (c); See also Coats v. State, 575 S.E.2d 557 (2003); Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999).

The Applicant learned for the first time from a Department of Corrections caseworker that he is currently serving a five years mandatory sentence with parole ineligibility for his consecutive charge on December 15, 2006. The Applicant thereafter discovered that his plea was involuntary and counsel was ineffective and filed this application on February 26, 2007, which is before the expiration of the statutory filing period. It is undisputed that the Applicant could not have raised these claims in a previous PCR application because Applicant did not know of the claim until December 15, 2006.

In the interest of fairness, Counsel should be appointed under Rule 71.1 (d) when the state moves for dismissal under S.C.

Code Ann. §17-27-45 (a) and the applicant raises an issue of material fact regarding the applicability of the one year statute of limitations. Gary v. State, 557 S.E.2d 662 (S.C. 2001); SCRPC. Rule 71.1 (d). The Applicant submit that the application has been filed within one year after the actual date of discovery of facts that he is currently serving a five years mandatory sentence for his consecutive charge, without the eligibility for parole.

Therefore, the Applicant request that this Court appoint counsel and not to summarily dismiss the application for post-conviction relief as it is file within the time mandated by the Post Conviction Procedure Act.

V.

The Applicant submits that the allegation of newly discovered evidence based on counsel incorrect sentence and parole eligibility advice is meritorious. In PCR cases, a defendant asserting a constitutional violation must frame the issue as on of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that counsel committed error, and that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001).

The Applicant did not learn that his counsel was ineffective and the guilty plea was invalid until a Department of Corrections caseworker advised Applicant on December 15, 2006 that he is now serving a five years mandatory sentence without parole eligibility for his consecutive conviction - possession of a firearm during commission of a violent crime. S.C. Code Ann. §16-23-490 (2003) provides: "that a person convicted of possession of a firearm or display what appears to be a firearm or knife during the commission of a violent crime or attempting

to commit a violent crime must be imprisoned five-years, in addition to the punishment provided for the principal crime.... (emphasis omitted)." This sentence is mandatory and a person convicted for this crime may not complete or be release in less than five years. A trial judge likewise has no discretion to impose a lesser sentence, suspend the five year sentence and impose probation, and a defendant is not entitled to parole.

The Applicant submits that while consulting with him regarding a possible plea for possession of a firearm during the commission of a violent crime, trial counsel advised that the presiding judge might exercise discretion in passing sentence and that Applicant could receive up to a five years (maximum) sentence, non-violent, with the eligibility for parole. The plea transcript reflects that the trial judge also inform the Applicant that he (court) "could impose a maximum sentence of five years." (2000 plea transcript, p. 4, lines 7-9). The judge never inquired with the Applicant whether his counsel had advised him of the five years mandatory penalty nor did the judge personally inform the Applicant of this mandatory penalty carried by the aforementioned charge. To this effect, the judge did not cure any misconception of the possible sentence given to the Applicant by counsel. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The plea transcript also indicate that the judge did not affirmatively asked the Applicant whether he understood that this mandatory sentence could be imposed consecutively to his other principle crimes and sentence, therefore the Applicant did not fully understand the severity of the consecutive charge or the penalty it carried.

The Due Process Clause of the United States Constitution requires that guilty pleas are entered into voluntarily, knowing, and intelligently by defendants. It is elementary that in order for a defendant to knowing and voluntarily plead guilty, he must have a full understanding of the consequences of his plea.

Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). The South Carolina Supreme Court has summarized the requirements for accepting a guilty plea as follows: "In addition to Boykin, *supra*, a defendant must be aware of the nature, crucial elements of the offense, the maximum and any mandatory penalty, and the nature of the constitutional rights being waived. Burnett v. State, 352 S.C. 589, 576 S.E.2d 144 (2003); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)

Upon these material facts, the Applicants plea was not knowing because it was entered without an understanding of the five years mandatory penalty without parole eligibility for possession of a firearm during commission of a violent crime. Applicants case is very much similar to Hazel, *supra*, where the South Carolina Supreme Court found defendants' plea involuntary since she was never advised of the mandatory penalty required by her guilty plea. The Applicant contends that counsel was constitutionally ineffective in failing to correctly inform and request the judge to properly inform Applicant of the mandatory sentence carried by his consecutive charge prior to accepting the Applicant's guilty pleas. Trial counsel was required to raise these issues before the plea court to insure that the Applicant pled guilty knowing, intelligently, and voluntarily. The Applicant submit that the misleading statements by the plea judge and counsels advice was deficient and prejudiced the Applicant in that he pled guilty without being told in open court, and without same being placed on the record of the five years mandatory sentence for the above reference charge. Applicants counsel was likewise ineffective for erroneously informing that the Applicant would be parole eligible for this charge. The Applicants guilty plea transcript provides enough evidence to hold that Applicants plea was in fact not knowing or voluntary. Thus, the Applicant's plea was entered in ignorance of its direct consequence and is invalid.

In Boykin, Supra, the United States Supreme Court held that where the record does not disclose that the defendant voluntarily and understandingly entered his pleas of guilty, it was reversible error. Therefore, the Applicant submit that his plea was involuntary and counsel's error and advice was ineffective. The Applicant submit that counsel's error and advice prejudiced him and that but for counsel's errors and advice he would have insisted on going to trial on all charges.

VI. -

WHEREFORE, based on the pleadings and cited authorities, herein this Return and Memorandum of Law in Opposition to Respondent's Conditional Order of Dismissal, the Applicant submit that the current application must not be summarily dismissed as it is not successive and has been timely filed within the statute of limitation. Alternatively, there exist a genuine issue of material facts, and the facts conclusively show that the Applicant is entitled to relief. The Applicant respectfully request this Court not to make the Conditional Order of Dismissal final and to appoint counsel in this post conviction relief matter.

Respectfully Submitted,

/s/ Mr. Marcus Jerrell Parker

Mr. Marcus Jerrell Parker,
Pro Se
P.O. Box 205
Ridgeville, South Carolina

March 21, 2008

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

Marcus Jerrell Parker, # 269675)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
Case No.: 2007-CP-27-143**FINAL ORDER**CLERK
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APR 29 2008

This matter comes before this Court by way of an application for post-conviction relief filed February 26, 2007. The Respondent made its Return and Motion to Dismiss on January 29, 2008, requesting that the application be summarily dismissed.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated February 1, 2008, provisionally denying and dismissing this action. Applicant was given twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached herewith is the Affidavit of Service, dated March 4, 2008, serving the Order on the Applicant.

Applicant has failed to sufficiently respond to the State's Motion to Dismiss. Therefore, this Court finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 1 day of April, 2008.



The Honorable Carmen T. Mullen
Administrative Judge
14th Judicial Circuit

Beaufort, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Marcus Jerrell Parker, # 269675

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE 14TH JUDICIAL CIRCUIT

Case No.: 2007-CP-27-143

AMENDED FINAL ORDER

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CLERK OF COURT/RMC
JASPER COUNTY SC

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Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated February 1, 2008, provisionally denying and dismissing this action. Applicant was given twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached herewith is the Affidavit of Service, dated March 4, 2008, serving the Order on the Applicant.

This Court issued a Final Order of April 1, 2008. Applicant filed a Return in Opposition to the Conditional Order of Dismissal after the twenty (20) day period to respond had expired. Nonetheless, this Court finds that Applicant's response is not sufficient to show why the Conditional Order of Dismissal served upon him should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. *See* Rule 203, SCACR. Applicant's attention is directed to Rule 227, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 1 day of May, 2008.



The Honorable Carmen T. Mullen
Administrative Judge
14th Judicial Circuit

Beaufort, South Carolina.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO JASPER COUNTY

CARMEN T. MULLEN, CIRCUIT COURT JUDGE

MARCUS J. PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

JOHNSON PETITION FOR WRIT OF CERTIORARI

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

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ISSUE PRESENTED

Should Petitioner be allowed to withdraw his guilty plea when his attorney did not inform him of parole eligibility?

STATEMENT

Parker was indicted at the October 1999 term of the Jasper Grand Jury for assault and battery with intent to kill (1999-GS-27-0518), and armed robbery (1999-GS-27-0519). He was also indicted during the March 2000 term for kidnapping (2000-GS-27-0192), and possession of a firearm during the commission of a crime (2000-GS-27-0193). On September 25, 2000 he pleaded guilty before the Honorable Henry Floyd who sentenced him to confinement for twenty-five (25) years on the armed robbery, twenty (20) years for the ABWIK, twenty (20) years for kidnapping (all concurrent), and five (5) years consecutive for the firearms charge. He was represented by Glen Walters, Esquire. Parker did not appeal his convictions or sentence.

Parker then filed an application for post-conviction relief on February 9, 2001. A hearing was held on December 17, 2001. Parker was represented by Larry Drayton, Esquire. An Order of Dismissal was filed February 26, 2002.

According to the State's return (App. p. 134), Parker then filed a Petition for Habeas Corpus, and the Honorable Joseph F. Anderson, Jr. granted Respondent's Motion for Summary Dismissal. Parker then appealed to the Fourth Circuit Court of Appeals, and they dismissed the appeal by unpublished opinion on November 27, 2006.

Parker then filed another post conviction relief petition on February 26, 2007. The State filed a Return and Motion to Dismiss (motion is unsigned, but Affidavit of Service by Mail is dated January 29, 2008). A Conditional Order of Dismissal was filed on February 1, 2008. Parker then submitted a Return and Memorandum of Law in Opposition to Respondent Conditional Order of Dismissal on March 21, 2008 (file date illegible). The Honorable Carmen T. Mullen then signed a Final Order on April 1, 2008, and an Amended Final Order on May 1, 2008.

This Petition for Writ of Certiorari timely follows.

ARGUMENT

Petitioner should be allowed to withdraw his guilty plea when his attorney did not inform him of parole eligibility.

Petitioner's plea was involuntary because he was not informed of his parole eligibility. As the South Carolina Supreme Court has recognized:

This Court has repeatedly acknowledged that *normally*, parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea. Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983). See also Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000) (counsel is not ineffective for failing to advise a defendant regarding parole eligibility in connection with his guilty plea because it is a collateral consequence of sentencing); Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997) (unless counsel gives erroneous advice, parole information is not a ground for collateral attack of a guilty plea); Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991) (guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence).

Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004) (emphasis added).

The closest the judge came to informing him of this important consequence of his plea was when he informed him:

THE COURT: Sir, the kidnapping, the armed robbery and the assault and battery with intent to kil (sic) require service of eight~(sic)-five percent of whatever sentence I give you, do you understand that?

MR. PARKER: Yes, sir.

(App. p. 4, lines 15-19).

In light of the substantial legal exposure that Petitioner was subjecting himself to, it was error for the judge to not provide him with more information. Petitioner's plea was rendered involuntary as a result. See Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed. 2d 274 (1969). Respectfully, Petitioner asks this Court to grant his Petition for Writ of Certiorari, and ultimately allow him to withdraw his guilty pleas.

CONCLUSION

For the foregoing reason, Petitioner respectfully asks this Court grant his Petition for Writ of Certiorari and ultimately allow him to withdraw his guilty pleas.

Respectfully submitted,

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of October, 2008.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO JASPER COUNTY
CARMEN T. MULLEN, CIRCUIT COURT JUDGE

MARCUS J. PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Marcus J. Parker states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on no hearing. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Marcus J. Parker.

Respectfully submitted,

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of October, 2008

The South Carolina Court of Appeals

Marcus J. Parker,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER

Petitioner's first application for post-conviction relief (PCR) was denied by The Honorable Henry Floyd. Petitioner filed a subsequent PCR application. Petitioner now seeks a writ of certiorari from an order of Judge Carmen T. Mullen dismissing Petitioner's subsequent PCR application. We grant the Petition for Writ of Certiorari from Judge Mullen's order.

Petitioner's counsel has filed a Petition for Writ of Certiorari from Judge Mullen's order, asserting the petition is without merit and requesting permission to withdraw from further representation. Petitioner filed a pro se petition.

We deny the petition to be relieved and direct the parties to address the following question:

Did the PCR court err in dismissing Petitioner's ineffective assistance of counsel claim, in which Petitioner alleged his counsel erroneously advised Petitioner that he was eligible for parole on his possession of a firearm sentence, as successive and filed outside of the applicable statute of limitations without ordering an evidentiary hearing?

Petitioner shall serve and file a petition on this question within thirty (30) days of the date of this order. Thereafter, respondent shall have thirty (30) days to serve and file its return.

IT IS SO ORDERED.

Paul E. Short, Jr. J.

H. R. Lee J.

James E. Smith J.

Columbia, South Carolina

February 11, 2010

FILED

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Jasper County

Carmen T. Mullen, Circuit Court Judge

MARCUS J. PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

BRIEF OF PETITIONER

ELIZABETH A. FRANKLIN-BEST
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ATTORNEY FOR PETITIONER.

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ISSUE PRESENTED

Did the PCR court err in dismissing Petitioner's ineffective assistance of counsel claim, in which Petitioner alleged his counsel erroneously advised Petitioner that he was eligible for parole on his possession of a firearm sentence, as successive and filed outside of the applicable statute of limitations without ordering an evidentiary hearing?

STATEMENT

Parker was indicted at the October 1999 term of the Jasper Grand Jury for assault and battery with intent to kill (1999-GS-27-0518), and armed robbery (1999-GS-27-0519). He was also indicted during the March 2000 term for kidnapping (2000-GS-27-0192), and possession of a firearm during the commission of a crime (2000-GS-27-0193). On September 25, 2000 he pleaded guilty before the Honorable Henry Floyd who sentenced him to confinement for twenty-five (25) years on the armed robbery, twenty (20) years for the ABWIK, twenty (20) years for kidnapping (all concurrent), and five (5) years consecutive for the firearms charge. He was represented by Glen Walters, Esquire. Parker did not appeal his convictions or sentence.

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Counsel then filed a petition for writ of certiorari and asked to be relieved. This Court denied that motion and ordered counsel to submit a brief addressing the particular question raised herein.

This brief timely follows.

ARGUMENT

The PCR judge erred in dismissing Petitioner's ineffective assistance of counsel claim, in which Petitioner alleged his counsel erroneously advised Petitioner that he was eligible for parole on his possession of a firearm sentence, as successive and filed outside of the applicable statute of limitations without ordering an evidentiary hearing.

This issue is controlled by the South Carolina Supreme Court case, Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999).¹ In addition to kidnapping, armed robbery, and assault and battery with intent to kill, petitioner also pleaded guilty to possession of a firearm during the commission of certain crimes pursuant to S.C. Code Ann. §16-23-490 (1976). According to subsection (C), a person convicted under this section is ineligible for parole and may not have any portion of this sentence reduced due to accumulation of good time or work credits. In short, with this conviction, an inmate is mandated to serve the time, day for day.

Petitioner alleges in his post-conviction relief application that he only became aware of his parole ineligibility on December 15, 2006 after meeting with his caseworker who informed him of the fact. Petitioner further alleges that his attorney informed him, prior to his entry of his plea, that he would receive a 5 year sentence (non-violent), for the offense, and that he would be parole eligible on this charge once he completed the rest of his sentence. App. 121. There is, then, a real issue of fact that a post-conviction judge needs to resolve, and an evidentiary hearing is necessary.

The PCR judge filed a conditional order of dismissal on February 11, 2008. Petitioner filed a return and memorandum of law in opposition to the order on March 21, 2008 requesting the

¹ Petitioner argued that Tilley was relevant to his claim in his application for post-conviction relief, App. 122, and in his response to the conditional order of dismissal to explain why he could not have raised this argument in an earlier PCR application. App. 148-49. Neither the conditional order of dismissal nor the final order address his argument.

appointment of counsel, App. 150, and reiterating that he only found out about his mandatory 5 year sentence on December 15, 2006. And see App. 160, the Request to Staff Member, South Carolina Department of Corrections, confirming that petitioner only received this information on December 15, 2006. The PCR judge erred in dismissing this claim on the basis of its successiveness. See App. 141 ("This Court finds that the current application for PCR must be summarily dismissed because it is successive to the Applicant's prior application for PCR."); App. 142 ("This Court finds that the Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous applications for PCR; therefore, he has failed to meet the burden imposed on him.").

As in Tilley, petitioner's application was not successive because he could not have raised this claim in a previous PCR application because he did not know the relevant facts at any earlier date. Like Tilley, petitioner promptly filed his application for post-conviction relief after being informed of his parole eligibility issue. Because the PCR judge erred in finding the application successive, petitioner respectfully asks this Court to grant him an evidentiary hearing, with the assistance of counsel. Bryant v. State, 384 S.C. 525, 683 S.E.2d 280 (2009); Turner v. State, 384 S.C. 451, 682 S.E.2d 792 (2009).

CONCLUSION

For the preceding reason, petitioner respectfully asks this Court to grant him an evidentiary hearing with the assistance of counsel.

Respectfully submitted,

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR PETITIONER.

This 2nd day of March, 2010

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Marcus J. Parker, Petitioner,

v.

State of South Carolina, Respondent.

Appeal From Jasper County
Carmen Mullen, Circuit Court Judge

Unpublished Opinion No. 2011-UP-508
Heard November 1, 2011 – Filed November 18, 2011

REVERSED AND REMANDED

Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Petitioner.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliot, and
Assistant Attorney General Matthew J. Friedman,
all of Columbia, for Respondent.

FEW, C.J.: In his third post-conviction relief application, Marcus Parker claims his plea counsel erroneously advised him he would be parole eligible on a conviction for possession of a firearm during the commission of a dangerous crime. The PCR court summarily dismissed the application as successive and filed outside the statute of limitations. Because Parker's application states a *prima facie* claim under Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999), we reverse for an evidentiary hearing.

In September 2000, Parker pled guilty to armed robbery, assault and battery with intent to kill (ABWIK), kidnapping, and possession of a firearm during the commission of a violent crime. The plea judge sentenced Parker to twenty-five years' imprisonment for armed robbery, twenty years concurrent for ABWIK, twenty-five years concurrent for kidnapping, and five years consecutive for possession of a firearm during the commission of a violent crime. A person

convicted of possession of a firearm during the commission of a violent crime is not eligible for parole during the five-year sentence. S.C. Code Ann. § 16-23-490(C) (Supp. 2010).

In February 2007, Parker filed the PCR application at issue. In his application Parker claims plea counsel affirmatively told him he would be parole eligible for the possession of a firearm conviction after he served his concurrent sentences. Parker alleges he first learned he was parole ineligible on December 15, 2006, when his Department of Corrections caseworker told him. Parker contends that his plea counsel was ineffective for giving him erroneous advice about his parole eligibility and that if he had known he would be parole ineligible, he would not have pled guilty to possession of a firearm. The State filed a motion for summary dismissal contending Parker's application was successive and filed outside of the one-year statute of limitations in section 17-27-45(A) of the South Carolina Code (2003).

"[T]o be entitled to a successive PCR application, the applicant must establish that the grounds raised in the subsequent application could not have been raised in the previous application." Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). "When considering the State's motion for summary dismissal of a[] [PCR] application, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant." Al-Shabazz v. State, 338 S.C. 354, 364, 527 S.E.2d 742, 747 (2000). "Furthermore, summary dismissal without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief." Id.

Assuming the facts presented by Parker are true, his application states a prima facie claim for PCR under Tilley. See 334 S.C. at 26-28, 511 S.E.2d at 690-91 (affirming PCR court's decision to grant Tilley's fourth PCR application when the applicant did not previously know he was parole ineligible for possession of a firearm because he received printouts each year from the Parole Board with his parole eligibility date). Accordingly, we reverse and remand for an evidentiary hearing.^[1]

REVERSED and REMANDED.

THOMAS and KONDUROS, JJ., concur.

[1] The PCR court also held Parker's "allegation of newly discovered evidence based on parole eligibility is without merit" because plea counsel could not be "ineffective for failing to advise a defendant regarding parole eligibility because it is a collateral consequence of sentencing." The principle of law is correct, but the PCR court misconstrued Parker's claim. See Smith v. State, 329 S.C. 280, 283, 494 S.E.2d 626, 628 (1997) ("[I]f the defendant's attorney undertakes to advise the defendant about parole eligibility and gives erroneous advice, then the plea may be collaterally attacked."). Parker does not allege counsel failed to advise him about his parole eligibility. He alleges counsel gave him erroneous advice about parole eligibility, which may be attacked through a PCR application.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS/PCR
COUNTY OF JASPER) CASE NO.: 2007-CP-27-0143

MARCUS J. PARKER,)
APPLICANT,)
v.) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA,)
RESPONDENT.)

APRIL 4TH, 2012
BEAUFORT, SOUTH CAROLINA
BEFORE THE HONORABLE CARMEN T. MULLEN, JUDGE.

APPEARANCES:

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Rebecca H. Hill
Official Court Reporter

INDEXWITNESS: GLENN WALTERS, ESQ.

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EXHIBITS

NONE.

1 ASST. ATTY. GEN. CORNEY: Your Honor, the next case the
2 State would call is Marcus J. Parker. It's docket number
3 2007-CP-27-0143. Mr. Parker was indicted at the October
4 1999 term of Jasper County Grand Jury for assault and
5 battery with intent to kill, armed robbery, and additionally
6 indicted at the March 2000 term for kidnapping and
7 possession of a firearm during the commission of a violent
8 crime. Mr. Parker pled guilty as indicted on September
9 25th, 2000, before The Honorable Henry Ford, at which time
10 he was sentenced to 25 years for armed robbery, 20 year
11 concurrent term for assault and battery with intent to kill,
12 and 20 years concurrent for the kidnapping charge, and five
13 years consecutive for the weapons charge. It's got a little
14 bit of a confusing background, so I'll just run through the
15 procedural history leading us to this Application today.

16 THE COURT: Okay.

17 ASST. ATTY. GEN. CORNEY: First, the Applicant filed
18 the PCR on February 9th, 2001. That Application was denied
19 and dismissed after a full evidentiary hearing and the
20 appeal was subsequently denied by the South Carolina Supreme
21 Court. After that, he filed a second PCR Application on
22 February 13th, 2002. It was denied and dismissed on the
23 State's Return and motion to dismiss after a hearing, and
24 the appeal was dismissed on that one. Mr. Parker then had a
25 Federal Habeas Corpus petition. That was denied and

1 appealed to the Fourth Circuit Court of Appeals, and after
2 that, he filed a third PCR Application, which is the one
3 that is before the Court today, on February 26th, 2007.

4 The State made its Return and motion to dismiss in
5 January of 2008, and a conditional Order of Dismissal was
6 signed. Thereafter, a final Order was issued in May of 2008
7 denying and dismissing the Application with prejudice. An
8 appeal was filed and the Office of Appellant Defense filed a
9 Johnson petition on Mr. Parker's behalf. The request to be
10 relieved was denied by the Court and the Court ordered both
11 sides to address an issue regarding whether Applicant's plea
12 counsel had erroneously advised him of parole eligibility on
13 the possession of a firearm charge.

14 After briefing, the Court of Appeals issued an
15 unpublished Opinion on November 18th, 2011, ordering that
16 the case be remanded back down for evidentiary hearing into
17 whether plea counsel actively misadvised Applicant about
18 whether his parole eligibility for the possession of a
19 weapon charge. That's what we're here for today to hold
20 that evidentiary hearing.

21 THE COURT: Okay.

22 ASST. ATTY. GEN. CORNEY: From a jurisdictional
23 standpoint, I'd just like to note for the record that the
24 Remittitur was issued January 4th, 2012, upon the Court
25 giving this Court jurisdiction to hear this evidentiary

1 hearing. He is represented today by Mr. Gerald Kelly, and
2 Glenn Walters is here who was his original plea counsel to
3 discuss that parole eligibility issue.

4 THE COURT: Okay. Thank you. Mr. Kelly, call your
5 first witness.

6 MR. KELLY: I call attorney Glenn Walters.

7 THE COURT: Come on up, Mr. Walters.

8 (Whereupon, Mr. Gerald Kelly is duly sworn.)

9 BAILIFF: Give your full name to the court reporter and
10 spell your last name, please.

11 MR. WALTERS: My name is Glenn Walters, W-A-L-T-E-R-S.

12 MR. KELLY: May it please the Court?

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION

15 BY MR. GERALD KELLY:

16 Q Attorney Walters, where do you practice?

17 A Orangeburg.

18 Q And how long have you practiced?

19 A I've been a member of the Bar for 22 years, I think.

20 Q - Do you remember your representation in this series of
21 cases?

22 A I did not. And when you called my office, we were able
23 to determine that it's a 12 year old case and when you
24 mentioned to me that it was the issue that involved the
25 tuxedo shop in Ridgeland, I remember there was a robbery

1 that occurred at a tuxedo shop and it's been about 13 years
2 now.

3 Q Do you recall that you were appointed on the case?

4 A I don't. I just remember the facts that the shop was
5 robbed and a lady was shot twice and she survived.

6 Q Do you have any documents from the file of the cases in
7 your office or elsewhere?

8 A No. When we originally received notice that the PCR
9 was going on, I was mad with my staff because we couldn't
10 find the file, and then we determined that it's a 12 to 13-
11 year old case.

12 Q Do you have any recollection of meeting with the
13 petitioner and advising him of the charges against him and
14 the penalties?

15 A I can't sit here today and go and delineate all of the
16 -- I've looked at the transcript and what was said. I think
17 Judge Floyd was the judge who sentenced him, but I can't sit
18 here today and tell you exactly what I told Marcus 12 or 13
19 years ago.

20 Q Do you have any recollection of meeting with him in his
21 holding cell in Jasper County Detention Center?

22 A Honestly, no. I would probably meet in a jail or a
23 detention cell once or twice a week.

24 Q Do you have any recollection of meeting with him and a
25 co-defendant, Kenneth Jones, and Jones' attorney, at any

1 time?

2 A I'm sorry. I've probably gone to a detention cell once
3 a week for the last 22 years, and I can't remember what went
4 on 13 years ago.

5 Q Is it fair to say that you really just don't have any
6 recollection of any of the facts?

7 A That would be fair to say and I'm not trying to avoid
8 you, it's just I -- I -- it's hard to remember 12 or 13
9 years ago.

10 Q Thank you for your testimony.

11 CROSS-EXAMINATION

12 BY ASST. ATTY. GEN. CORNEY:

13 Q Mr. Walters, just very briefly. I know you went over
14 just very briefly, you've been part of the Bar for 22 years.
15 If you could, just give me a little bit of background and
16 about the type of law you practice and the cases you handle
17 and that sort of thing.

18 A When I started practicing law, I practiced with
19 Johnson, Toal and Battiste in Columbia and they had me run
20 their Orangeburg office. My law school had a loan
21 forgiveness program where if I worked for indigent people,
22 they would pay my student loans. So I took advantage of
23 that particular program and I became a public defender, and
24 I was a public defender in Richland County for probably
25 close to a year. And then, I moved to Orangeburg and I was

1 a public defender there for probably about a year. They
2 allowed me to have a private practice on the side and that
3 private practice, it kept growing, so we ended up doing real
4 estate, bankruptcy, worker's comp, personal injury,
5 domestic, social security, so I turned into a general
6 practice and more people came in with me. We've done that
7 for probably 15, 18 years doing that.

8 Q All right. I know that I see a lot with these PCR's
9 and would it be fair to say that a fair amount of your
10 practice is dedicated to defending against pretty serious
11 criminal clients?

12 A We handle death penalty and everything else with
13 regards to criminal cases, so armed robbery and kidnapping
14 and burglary are major offenses, and we've been doing them
15 for the last 20-something years.

16 Q So you're no stranger to defending against these
17 possession of a weapon charges in your past in your capacity
18 as a criminal defense attorney?

19 A No. When I looked at the transcript, I think the judge
20 said that you do 85 percent on the other charges and then at
21 the end of the sentence, he ran it consecutive with the five
22 years on the weapon charge. But he didn't state it was an
23 85 percent with regards to the weapons charge in the
24 transcript.

25 Q Okay. So in your experience, generally you would be

1 aware that that weapons charge carries a five-year mandatory
2 and that's with a no parole sentence.

3 A Sure. That's for all defendants.

4 Q And generally on these charges, that's the kind of
5 thing that you would advise your client before allowing him
6 to plea or proceed to trial?

7 A Normally, that's what you do. I can't remember every
8 single plea, and if you're asking me what I said to someone
9 12 or 13 years ago, I can't come in here and tell you
10 exactly what I said. If there was a meeting, I apologize; I
11 can't remember. If I had to count the number of times I was
12 in a holding cell in the last 20 years, probably twice a
13 week.

14 ASST. ATTY. GEN. CORNEY: Your Honor, I believe that's
15 all I have for Mr. Walters.

16 THE COURT: Okay. Mr. Kelly, anything further?

17 REDIRECT EXAMINATION

18 MR. GERALD KELLY:

19 Q Do you recall the first PCR hearing that was held in
20 this case?

21 A No, sir.

22 Q Do you recall any of your testimony at that hearing?

23 A No, sir.

24 Q Let me show you the transcript of that hearing.

25 (Hands transcript to witness.)

1 Q Page 31, lines 1 - 8 in response to this question from
2 Mr. Drake. "Did you go over the range of sentencing for
3 each of these offenses, these charges, of the four
4 different" -- and then was interrupted. Would you look at
5 that response?

6 A "Armed robbery, which has 25 years" -- it should be 30,
7 I think. "Did you interview and investigate any of the
8 witnesses he provided you?"

9 Q No. Above that, at the top of the page.

10 A "We sat down and discussed each one of them. Of
11 course, he was questioning how he could be charged with
12 kidnapping, because he thought he had to actually take
13 someone away, I think. In this particular case, they pulled
14 a weapon and took her in the back of the store, I think, and
15 I think they put her inside of a bathroom, if memory serves
16 me correctly, and they also talked about assault and battery
17 with intent to kill, possession of a weapon during the
18 commission of a violent crime, and I think that was all the
19 charges. An armed robbery charge, which was 25 years,"
20 which I think is really 30.

21 Q And so, in that, there's reference to you remembering
22 that there was some discussion about the weapons charge?

23 A If that was in the transcript -- what year was that?
24 Excuse me.

25 ASST. ATTY. GEN. CORNEY: Your Honor, I don't think

1 that's part of the packet. I don't have that transcript,
2 assuming it is the transcript from that hearing.

3 MR. KELLY: I received it from your office.

4 MR. WALTERS: It's September 25th from the year 2000.

5 THE COURT: I do have that.

6 Q And at that hearing, you didn't make any mention of
7 whether or not it was -- that that charge, that probation
8 could be allowed on that charge or not, did you?

9 A I can't sit here and say that. Whatever that record
10 reflects that's what I said. Certainly, I try to remember
11 things, and it's hard for me to try to remember everybody
12 from 12 to 13 years ago.

13 MR. KELLY: Nothing further. Thank you.

14 ASST. ATTY. GEN. CORNEY: No further questions, Your
15 Honor.

16 EXAMINATION BY THE COURT:

17 Q Mr. Walters, let me ask you while you're here. I'm
18 going through and looking at the guilty plea, and it appears
19 that Judge Floyd went through and asked this young man at
20 the time whether or not he understood that armed robbery
21 carried 30 years, with a minimum of 10. That assault and
22 battery with intent to kill carried a maximum of 20 years.
23 Possession of a firearm during the commission of a violent
24 crime carried a maximum of five years, and then kidnapping
25 carried a maximum of 30 years. And do you recall that the

1 Court said, "And now, do you understand that if I ran all of
2 those sentences consecutively, you would receive 85 years in
3 prison." Do you remember seeing that in the transcript?

4 A Yes, ma'am. That's in the transcript.

5 Q Okay.

6 THE COURT: All right, sir. You may step down.

7 MR. WALTERS: Yes, ma'am.

8 MR. KELLY: I call the Petitioner, Marcus J. Parker.

9 (Whereupon, Mr. Parker is duly sworn.)

10 BAILIFF: Please be seated. State your full name and
11 spell your last name for the court reporter.

12 MR. PARKER: For the record, my name is Marcus Jarrell
13 Parker. My last name is spelled P-A-R-K-E-R.

14 DIRECT EXAMINATION

15 BY MR. KELLY:

16 Q Marcus, what's your complaint today against attorney
17 Walters? Tell us.

18 A My complaint against my former attorney, Mr. Walters,
19 is pretty simple. During the time that he represented me,
20 he basically informed me, specifically with the charge of
21 kidnapping -- I'm sorry, possession of a firearm, that I
22 could receive up to a maximum of five years with the
23 possibility of parole, in conjunction with the other
24 sentences that the judge may impose.

25 Q And did you plead in front of Judge Floyd in Jasper

1 County to those charges?

2 A Yes, I did, sir.

3 Q To all those charges?

4 A Yes, I did, sir.

5 Q And when you pled did you understand that the judge was
6 not bound by the recommendation? That he could give you
7 whatever he chose to give you, that the law would allow?

8 A That was explained, yes, sir.

9 Q And you understood the sentence that he did give you,
10 as far as the information that you had?

11 A That I was provided by my attorney, yes, sir.

12 Q Okay. But later, you found out that some of that
13 information was not correct?

14 A That's correct.

15 Q Okay. And the only part of the information that was
16 not correct was what?

17 A Specifically, the possession of a firearm where I
18 learned that the Department of Corrections had me serving a
19 five year mandatory sentence, without the possibility of
20 parole.

21 Q Now, you had a PCR hearing following your conviction,
22 correct?

23 A That's correct.

24 Q And you were represented by whom?

25 A My initial PCR attorney was Mr. Larry S. Drayton.

1 Q And was this issue that we're talking about today
2 raised at that hearing?

3 A At the time, no, it was not.

4 Q Why not?

5 A At the time, 2001, the first PCR, I was currently
6 eligible for parole and as I was informed during my
7 admission, I was serving a five year non-violent sentence.
8 It wasn't a mandatory sentence.

9 Q When did that change?

10 A Due to my information provided to me through my
11 caseworker, I discovered in 2007 that there had been some
12 adjustments in regards to my sentence and classification
13 status, which now reflected that I was serving a five year
14 mandatory sentence with no possibility for parole.

15 Q Okay. And do you have documents that you've brought to
16 the witness stand with you that speak to just what you have
17 told us about learning this new information?

18 A That's correct, sir.

19 Q Would you separate those and show them to me, please.

20 A I believe those are in my other file sitting on the
21 desk.

22 Q Marcus, I'm just talking about the ones that revealed
23 information that the sentence had changed.

24 A Right here.

25 Q Is this the only document that reflects that?

1 A This.

2 Q And is this also a document?

3 A And this one.

4 Q These three documents that I hold in my hand are the
5 documents that reflect that information of the change?

6 A Yes, sir.

7 Q Do you have any others in there that show that?

8 A No, just those.

9 Q And what are these? They're documents from whom to
10 whom?

11 A Those are official documentations from the Department
12 of Corrections having advised that I was currently serving
13 now a mandatory sentence without the possibility of parole
14 for the possession of a firearm.

15 Q And when did you receive these?

16 A This was back in February of 2007.

17 THE COURT: Mr. Parker, what's your max-out date?

18 MR. PARKER: As of right now, I believe it's December
19 of 2025, Your Honor.

20 THE COURT: All right. Thank you, sir.

21 MR. KELLY: Your Honor, would you instruct me in this
22 matter?

23 THE COURT: Yes, sir.

24 MR. KELLY: Would you want these marked into evidence
25 or do you want to make sure these are documents before you

1 in the record?

2 ASST. ATTY. GEN. CORNEY: And they are already a part
3 of the record, as a part of the packet.

4 THE COURT: They are. I'm reading them right now.
5 I've got them, Mr. Kelly. So we're fine. They are part of
6 the record.

7 MR. KELLY: May I hand them up so that you can check
8 these three and that you have all three?

9 THE COURT: Yes, sir. Thank you, sir.

10 ASST. ATTY. GEN. CORNEY: Ma'am, do you want to keep
11 those or may I have them back?

12 THE COURT: These are the exact same ones I have.

13 MR. KELLY: Okay. Mr. Parker, I'm going to hand these
14 back to you.

15 BY MR. KELLY:

16 Q When you received these documents, what did you do as a
17 consequence of receiving this information?

18 A Well, initially, I was getting notified by the
19 Department of Corrections Administrators as to the error and
20 I would need to file a post-conviction relief because the
21 Department of Corrections didn't have the jurisdiction to
22 correct that matter. It was something to do with the trial,
23 the judge and my attorney. From there, I -- as requested, I
24 filed the post-conviction relief alleging that it was a
25 claim of ineffective assistance of trial counsel and

1 voluntary plea.

2 Q Now, do you recall meeting with your attorney, your
3 trial attorney, Mr. Walters, and receiving his advice about
4 the sentence of the weapons charge; do you remember that?

5 A Yes, I do.

6 Q Where was it?

7 A It was two occasions. The first occurred in the Jasper
8 County Detention Center where he consulted with me about my
9 case and the second was on the morning of the plea where he
10 actually had warned me of the requirements and what I could
11 possibly face if I entered.

12 Q When you were at the Jasper County Detention Center
13 with your attorney, Mr. Walters, was anybody else present?

14 A No, it was just he and I at the time at the detention
15 center.

16 Q Was there ever a time when Mr. Kenneth Jones was
17 present with you in a room with him when he advised you?

18 A I think it was moreover during the sentencing, the
19 plea.

20 Q Excuse me?

21 A During the sentencing, at the plea, yes, I do remember
22 Mr. Jones being there.

23 Q That's your recollection?

24 A Yes.

25 Q And was there any other person in the room beside you,

1 your attorney, Mr. Walters and Mr. Jones?

2 A Not to my understanding. Maybe a few other guys who
3 were being sentenced that day, but I can't specifically call
4 the names.

5 Q And on both occasions, what was the advice of your
6 attorney to you about the sentence on this weapons charge?

7 A He specifically advised for this gun charge that was
8 against me that I could receive up to a maximum five year
9 sentence with the possibility of parole.

10 Q Did you understand that that sentence would be
11 consecutive to any other sentences that you would receive?

12 A That was not explained.

13 Q And he told you what about whether or not you would be
14 eligible for parole? What did he tell you?

15 A That I would be eligible for parole on the conviction
16 for possession of a firearm, said I could receive anywhere
17 up to a maximum of a five year sentence, zero to five.

18 Q During your first post-conviction relief, was this
19 issue ever raised before the Court?

20 A At the time, the issue wasn't available, because at the
21 time I was serving a five year non-violent, and therefore,
22 there wasn't any reason for me to raise it at that time.

23 Q You didn't know about it?

24 A Right.

25 Q Do you have other documents that you want placed before

1 the Court this morning?

2 A Yes. I would like to place two documents. These
3 documents are programs that I was involved with at the
4 Department of Corrections that was advised by administrators
5 had I take, I would increase my possible changes of being
6 granted parole. This is one back from 2006 and another
7 dated back in 2002. Both years was before I became known of
8 the facts that I was serving a mandatory sentence without
9 the possibility of parole.

10 MR. KELLY: Your Honor, I'm told that these are a part
11 of your record. One is a certificate of completion for
12 work-smart program and the other one is a certificate of
13 achievement. Do you have those?

14 THE COURT: I have both of those, yes, sir.

15 Q Is it my understanding, sir, that you took both of
16 these programs in order to increase your probability for a
17 chance of parole?

18 A It was highly recommended by staff throughout the
19 Department of Corrections, based upon my parole eligibility
20 status that those programs, or these programs, would
21 increase my chance of being granted parole.

22 Q Other than the documents in which you've just shown us
23 and which are already in the record, do you have any other
24 documents or any other issues that you want to present to
25 this Court this morning?

1 A Basically, just two other documents. Specifically,
2 records from the guilty plea transcript, Your Honor.

3 THE COURT: I have that.

4 A Where the Court did inform me that I could receive up
5 to a maximum five year sentence for the gun charge. It was
6 never explained that it would be a mandatory sentence. My
7 counsel, again, never informed that it would be a mandatory
8 sentence, along with him informing that I could receive
9 anywhere from probation to five, with the possibility of
10 parole, so I would like to submit that.

11 Q That's in the record. What other document do you have?

12 A And for the record, just basically the sentencing
13 sheet, which reveals that the Court did sentence me to a
14 five year non-violent sentence for the possession of a
15 firearm, and nothing mandatory saying that I had to serve a
16 five year mandatory sentence.

17 Q And that also is in the record.

18 A Yes, sir.

19 Q Now, of all the documents that you have examined during
20 your time as an inmate, since you were convicted, until you
21 received the documents that told you and which were first
22 shown to the Court and are already in the record, did you
23 have any idea that the information given to you by your
24 attorney was incorrect?

25 A I did not.

1 Q No further questions.

2 THE COURT: Mr. Corney?

3 CROSS-EXAMINATION

4 ASST. ATTY. GEN. CORNEY:

5 Q Mr. Parker, you pled guilty to these charges without
6 negotiations or recommendations from the State, correct?

7 A That's correct.

8 Q So it was an open-ended plea under which you could have
9 received 85 years?

10 A That is correct.

11 Q Okay. And the judge at that plea actually asked you
12 has anybody promised you any particular sentence, other than
13 the maximum, to get you to plead guilty today, right?

14 A That was basically, yes, from the transcript, that's
15 correct.

16 Q Okay. And you said that nobody had promised you any
17 particular sentence other than the maximum on each charge?

18 A That's correct.

19 Q So entering your plea, you were under that assumption
20 that you could get five years on the weapons charge and you
21 would serve every day of that, right?

22 A No, sir. That's not correct. I had the understanding
23 that I could receive up to a maximum of five years, which
24 specifically means from probation to a five year sentence,
25 with eligibility for parole in regards to that conviction.

1 Q Okay. So clearly, you're unhappy now that you're doing
2 this five year consecutive with no parole, correct?

3 A I am unhappy.

4 Q You're unhappy with that now, but you're telling the
5 Court today that you would not have entered that plea to
6 this 30-year sentence and risk doing 85 years consecutive,
7 with all those charges running consecutively, had you known
8 that this five years was going to be non-parole eligible?

9 A Had I correctly was informed about those sentences and
10 the possibility of me receiving it, I wouldn't have entered
11 into any of those charges, sir.

12 Q You would have gone to trial, facing 85 years?

13 A I would have exercised my right in going to trial.

14 Q Okay. And you confessed to these crimes, didn't you?

15 A There was a statement written in regards to it, but I
16 wouldn't moreover say a confession.

17 Q You wouldn't say it was a confession?

18 A No, sir.

19 Q That's what it was referred to in your first PCR,
20 right, a confession by Mr. Walters?

21 A That's what Mr. Walters referred to it as.

22 Q And at the plea, you also told the judge that you were
23 guilty of these crimes, right?

24 A Procedurally, yes. I admitted that. He asked was I,
25 in fact, guilty of the crime, based upon counsel's advice, I

1 admitted that yeah, I was, in fact, guilty as part of the
2 plea procedure.

3 Q Okay. But you are guilty of the crimes, right? That's
4 what you told the judge.

5 A I am not.

6 MR. KELLY: Objection. I think the record speaks for
7 itself.

8 THE COURT: It's irrelevant. Okay.

9 ASST. ATTY. GEN. CORNEY: I think that's all I have,
10 Your Honor.

11 THE COURT: Okay. Anything further?

12 MR. KELLY: Not from this witness.

13 THE COURT: Okay. You can step down, sir.

14 MR. KELLY: Kenneth Jones.

15 THE COURT: Come forward, Mr. Jones, to be sworn.

16 (Whereupon, Mr. Kenneth Jones is duly sworn.)

17 BAILIFF: Please be seated. Give your full name to the
18 court reporter and spell your last name.

19 MR. JONES: Kenneth Jones, J-O-N-E-S.

20 DIRECT EXAMINATION

21 BY MR. GERALD KELLY:

22 Q Kenneth, where do you live now?

23 A Ridgeland, South Carolina.

24 Q How old are you?

25 A Twenty-six.

- 1 Q How far did you go in school?
- 2 A Two years, Associate's Degree.
- 3 Q Are you working now?
- 4 A Yes.
- 5 Q What do you do?
- 6 A I'm a floor tech manager at Ridgeland Elementary.
- 7 Q Are you married?
- 8 A No.
- 9 Q Do you have children?
- 10 A Two kids.
- 11 Q How old are they?
- 12 A Both of them are two weeks apart. One, and one going
- 13 on two.
- 14 Q Okay. Do they live with you?
- 15 A Yes.
- 16 Q Okay. And you support them?
- 17 A Definitely.
- 18 Q Okay. You were the co-defendant in these crimes?
- 19 A Yes, Uh-huh (affirmative).
- 20 Q And you were convicted?
- 21 A Yes.
- 22 Q Served time?
- 23 A Well, juvenile, life, pretty much.
- 24 Q And how long have you been out?
- 25 A I've been out since 2002.

1 Q Do you recall the name of the attorney who represented
2 you?

3 A No.

4 Q Was he appointed to you?

5 A Yes.

6 Q It was in Jasper County?

7 A Yes.

8 Q Okay. Do you recall ever being in a meeting with you,
9 your attorney, Mr. Walters, and the Petitioner, Mr. Parker,
10 when the sentences were discussed amongst you?

11 A Yes. That's when we was -- or I was getting ready to
12 be sentenced. And he was discussing with his appointed
13 attorney.

14 Q Do you recall any discussion between Mr. Walters and
15 Mr. Parker having to do with the weapons charge that we're
16 speaking about today?

17 A Well, they was going over, by me eavesdropping on his
18 conversation, they were going over his crimes and his
19 charges, and on the gun charge, they would say he would be
20 eligible for parole.

21 Q You remember that?

22 A Yes.

23 MR. KELLY: No further questions.

24 ASST. ATTY. GEN. CORNEY: I have no questions of this
25 witness, Your Honor.

1 THE COURT: Okay. Sir, you may step down. Thank you.

2 MR. KELLY: Your Honor, we rest.

3 THE COURT: All right. I will take it under advisement
4 and let y'all know.

5 MR. KELLY: Thank you, ma'am.

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STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department 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 in the hearing of the captioned case, in the Court of General Sessions/PCR for Beaufort County, South Carolina, on the 4th day of April 2012.

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

July 31, 2012

Rebecca H. Hill
Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF Jasper

STATE

VS.

Marcus Parker

AKA:

Race: B

Sex: M

DOB: _____

Age: 31

SSN: _____

DL#: _____

SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

00 -GS- 27 - 0193

A/W#: JAS0079

Date of Offense: 9-10-99

S.C. Code §: 16-23-490

CDR Code #: 0151419

SENTENCE

☒ PLEA ☐ TRIAL

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

TO: POSSESSION OF FIREARM DURING COMMISSION OF CRIME

in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0151419

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

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:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 99-68-27-0192

SPECIAL CONDITIONS: 99-68-27-0519

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 - Assessments 100%..... \$

§ 14-1-211 - Surcharge..... \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$

County (3%)..... \$ 3.00

TOTAL..... \$ 103.00

Clerk of Court/Deputy Clerk Margaret Boston

Court Reporter: Annette Nole

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

PTUP _____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

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

payments of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

PRESIDING JUDGE [Signature]

Judge Code: 19516

Sentence Date: 9/25/2000

SECTION 16-23-490. Additional punishment for possession of firearm or knife during commission of, or attempt to commit, violent crime.

(A) If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five years, in addition to the punishment provided for the principal crime. This five-year sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime.

(B) Service of the five-year sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five-year sentence to run consecutively or concurrently.

(C) The person sentenced under this section is not eligible during this five-year period for parole, work release, or extended work release. The five years may not be suspended and the person may not complete his term of imprisonment in less than five years pursuant to good-time credits or work credits, but may earn credits during this period.

(D) As used in this section, "firearm" means any machine gun, automatic rifle, revolver, pistol, or any weapon which will, or is designed to, or may readily be converted to expel a projectile; "knife" means an instrument or tool consisting of a sharp cutting blade whether or not fastened to a handle which is capable of being used to inflict a cut, slash, or wound.

(E) The additional punishment may not be imposed unless the indictment alleged as a separate count that the person was in possession of a firearm or visibly displayed what appeared to be a firearm or visibly displays a knife during the commission of the violent crime and conviction was had upon this count in the indictment. The penalties prescribed in this section may not be imposed unless the person convicted was at the same time indicted and convicted of a violent crime as defined in Section 16-1-60.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME:	TITLE:	DATE:
Ms. D. Bailey	Lieber Correct "Cosewiczko"	Feb. 21, 2007
INMATE'S NAME:	SCDC #:	
Mr. Marcus Terrell Parker	269675	
INSTITUTION:	LIVING QUARTERS:	
Lieber Correctional Institution	Wando - C-262	

Ms. D. Bailey:

I will again hope that this important request finds you in good health and spirit. This request concerns the nature and sentence for my consecutive conviction for possession of a firearm during the commission of a violent crime. During a classification hearing on December 14, 2006, you informed me of the "true nature and sentence" for this consecutive charge. As you are already aware, I was never informed of this ^(true) nature and sentence regarding this offense by anyone until I learned of it from you on December 14, 2006. Through you and your supervisor (Miss. Gilmore), I understood per agency policy that I am not entitled to such conviction screen without confirming the information that you provided to me. However, I am now requesting you to state the current nature and sentence for my consecutive charge which was properly informed to me by you. Likewise, I request a initial date that you informed me of such information. As you already know, the information requested will corroborate my discovery assertion and support the claim in a Post-Conviction Relief proceeding. (This document is a supplement to the Agency printout that I am not entitled). Thank you very much! - Marcus J. Parker

DISPOSITION BY STAFF MEMBER:

As per inmate records you are serving 5 years (day for day) on the Firearms Provision. This 5 years starts after the completion of your other offenses. As we discussed at the waiver/notice process on December 15, 2006, if you have any further questions, go to the Law Library.

DATE:	SIGNATURE:
2-22-07	Ms. Bailey

Contact your
1. 11.11.11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME:	TITLE:	DATE:
Mrs. M. Gilmore	L.C.E. - Case Manager	Feb. 7, 2007
INMATE'S NAME:	SCDC #:	
Mr. Marcia Terrill Parker	269675	
INSTITUTION:	LIVING QUARTERS:	
Liber Correctional Institution	Whoda - C-262	

Mrs. Gilmore:

Hopfully, this important request finds you in good health and spirit. I was recently informed for the first time, that I am currently serving a mandatory five year sentence for my consecutive conviction for possession of a weapon during violent crime. This information was provided by my assigned caseworker (Mrs. Biley) at a classification meeting on or about Dec. 19, 2006. My sentencing sheet and court transcript has been reviewed with my caseworker, however there is no indication or information in either documents regarding a mandatory five year sentence. From the judge's Attorney, Mrs. Biley has made me aware of her consultation with you in connection to this matter and my request for a institutional conviction screen printout for all of current convictions. I am curious as to your response to her indicating this sentence is accurate, however I am not entitled to such printout. Fortunately, my family (wife - I) has contacted both Inmate Records in Headquarters and DPPPS, which have advised that I am indeed entitled to a departmental printout of my convictions. I am aware that Inmate Records personnel in Headquarters contacted you recently concerning this matter/request. Therefore, please forward me a copy of my conviction screen printout immediately. Thank you - Mr. Alb.

DISPOSITION BY STAFF MEMBER:

Per Policy you can not get a print out you can request copies of the commitment papers at your own expense. If that is what you are asking let me know and I will send you the debit form for cost of the printouts.

DATE: 2/17/07

SIGNATURE:

Thank you
M. Gilmore

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER**

TO: NAME: <i>Ms. D. Bailey</i>	TITLE: <i>Lieber Corr. Caseworker</i>	DATE: <i>Jan. 16, 2007</i>
INMATE'S NAME: <i>MR Marcus Terrell Parker</i>	SCDC #: <i>269675</i>	
INSTITUTION: <i>Lieber Correctional Institution</i>	LIVING QUARTERS: <i>Wanda - C-262</i>	

Ms. Bailey:

Hopefully, this important request finds you in good health and spirit. During a classification waiver on December 19, 2006, I was informed by you I am currently serving a consecutive mandatory sentence (day-for-day) for possession of a firearm during violent crimes. I was likewise informed that there are no parole eligibilities or work credits pursuant to this conviction — despite being a non-violent offense. I was totally unaware of such "mandatory sentence" and ineligibilities until you apprised me of it. I understand that the Classification Manager or the SC Dept of Corrections does not have jurisdiction over the matter mentioned above and as ~~suggested~~ ^{suggested}, bringing this issue to the attention of the courts are my remedy.

Therefore, I am formally requesting relevant documentation regarding my convictions and service of sentence herewith the S.C. Dept of Corrections to substantially support my application for Post-Conviction Relief. Again, thanks for your time, concern, and generosity in this important matter.

Sincerely Yours,

Mr. Marcus J. Parker

DISPOSITION BY STAFF MEMBER:

I have been informed by Ms. Gelmore that I cannot give you a printout of your conviction screen. May I suggest you send a request to Staff to I/m Records in Headquarters?

DATE: <i>1-17-07</i>	SIGNATURE: <i>Ms. Bailey</i>
----------------------	------------------------------

Certificate of Completion

This is to certify that

Marcus J. Parker

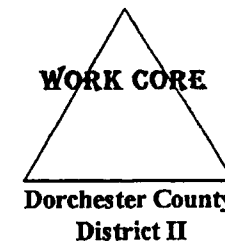
has successfully completed the

Work Smart Program

with Dorchester County Adult Education Workcore Program

This 9th day of October in the year of 2006


C. Bryant
Instructor



Certificate of Completion

This is to certify that

Jamarcus Parker

has successfully completed the

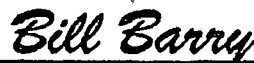
REAL TIMES, REAL LIFE PROGRAM

at Lieber Correctional Institution.

This 25th day of February in the year 2004.



C. Bryant
Instructor



Bill Barry
Author



SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS

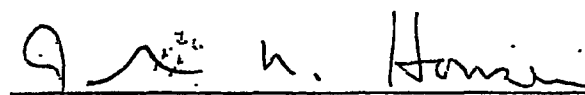
ALLENDALE CORRECTIONAL INSTITUTION
FAIRFAX, SOUTH CAROLINA

CERTIFICATE OF ACHIEVEMENT

This Certifies That
Marcus J. Parker, SCDC #269675

Has Successfully Completed
"A Guide to Spiritual Success" Training Seminar (20 hrs)

Given at Kirkland Correctional Institution,
This 26th *day of* June, 2002


Chaplain (Doctor) John R. Houser
Acting Chaplain
Allendale Correctional Institution

1 MR. PARKER: No, sir.

2 THE COURT: Sir, do you understand that you
3 are offering to plead guilty to one count of armed
4 robbery and it carries a maximum penalty of thirty
5 years and minimum of ten, one count of assault and
6 battery with intent to kill that carries a maximum
7 penalty of twenty years, one count of possession of
8 a firearm during the commission of a violent offense
9 and it carries a maximum of five years, and one count
10 of kidnapping which carries a maximum of thirty years.

11 MR. PARKER: Yes, sir.

12 THE COURT: If I ran all of those sentences
13 consecutive, you could receive eighty-five years.

14 MR. PARKER: Yes, sir.

15 THE COURT: Sir, the kidnapping, the armed
16 robbery and the assault and battery with intent to
17 kill require service of eight-five percent of whatever
18 sentence I give you, do you understand that?

19 MR. PARKER: Yes, sir.

20 THE COURT: You also need to understand that
21 you earn a strike under the two strike/three strike
22 rule in that if you were to persist in this type of
23 conduct in the future, you could land in jail for a
24 life without parole sentence.

25 MR. PARKER: Yes, sir.

SEE ALSO:
Cooks v State
575 S.W.2d 557 (5x)

1 SOLICITOR: Your Honor please, the State
2 is ready in indictment #99-519, State against Marcus
3 Parker, charged with armed robbery, #193, Marcus Parker
4 charged with possession of a firearm during the commission
5 of a crime of violence; #518, Marcus Parker charged
6 with assault and battery with intent to kill; and #192,
7 Marcus Parker charged with kidnapping.

8 He is represented by Mr. Glenn Walters of
9 the Orangeburg Bar ---no, the Columbia Bar.

10 MR. WALTERS: Right, and I have an office
11 here.

12 SOLICITOR: Okay, and in Jasper County. I
13 am informed that he wishes to enter a plea.

14 THE COURT: Mr. Parker, would you raise your
15 right hand, please, sir.

16 (WHEREUPON, Dependant was duly sworn.)

17 THE COURT: You can put your hand down. Your
18 correct name is Marcus Parker?

19 MR. PARKER: Yes, sir.

20 THE COURT: And are you represented by Mr.
21 Walters in this case?

22 MR. PARKER: Yes, sir.

23 THE COURT: Mr. Walters, have you explained
24 to your client the charges contained in the indictments,
25 the possible punishments, his constitutional rights,

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Marcus J. Parker, #269675,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

2007-CP-27-00143

ORDER OF DISMISSAL

RECEIVED
JAN 30 2012
CLERK OF COURT
JASPER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of a Post-Conviction Relief (PCR) application filed February 26, 2007. Per order of the South Carolina Court of Appeals dated November 18, 2011, remanding the case for hearing, this Court convened an evidentiary hearing on Wednesday, April 4, 2012, at the Beaufort County Courthouse. The Applicant was present at the hearing represented by counsel, Gerald Kelly, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Glenn Walters, Esquire. At the hearing, this Court had before it a copy of the transcript of the proceedings against Applicant, the records of the Jasper County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections and the relevant documents from the South Carolina Court of Appeals.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Jasper County Clerk of Court. Applicant was indicted at the October 1999 term of the Jasper County Grand Jury for Assault and Battery with Intent to Kill and Armed Robbery; and at the March 2000 term for Kidnapping and Possession of a Firearm During the Commission of a Violent Crime. He was

POSTED

BY [Signature] DATE 2.31.12

represented by Glenn Walters, Esquire, on the charges. On September 25, 2000, Applicant appeared before the Honorable Henry Floyd, where he pled guilty as indicted and was sentenced to twenty-five (25) years imprisonment for Armed Robbery, twenty (20) years imprisonment for each ABWIK and Kidnapping all set to run concurrently, and a five (5) year term of imprisonment for the Possession of a Firearm charge to run consecutively for an aggregate thirty (30) year term of imprisonment. Applicant did not appeal his plea or sentence.

Applicant thereafter filed an application for PCR on February 9, 2001 (2001-CP-27-00048). The State made its Return on November 15, 2001. Applicant was represented by Larry Drayton, Esquire, on the action. On December 18, 2001, an evidentiary hearing was convened at the Beaufort County Courthouse at which Applicant was present and testified. By Order dated February 26, 2002, the Honorable Jackson V. Gregory denied and dismissed the application with prejudice. A Timely Notice of Appeal was filed and a Johnson¹ Petition for Writ of Certiorari was submitted on Applicant's behalf by the South Carolina Office of Appellate Defense. The South Carolina Supreme court issued an order denying the petition and granting counsel's request to be relieved on May 16, 2003. The Remittitur was issued June 3, 2003.

Applicant subsequently filed a second application for PCR on February 13, 2002 (2002-CP-27-00065). The State filed a Return and Motion to Dismiss on May 9, 2002, after which a hearing was convened on the motion on June 6, 2002. Applicant was represented by Harry Brown, Sr., Esquire, at the hearing. By order dated January 16, 2003, the Honorable Jackson V. Gregory dismissed the application. A timely Notice of Appeal was filed and a Johnson Petition for Writ of Certiorari was submitted on Applicant's behalf. By order on January 6, 2005, the South Carolina Supreme Court dismissed the petition. The Remittitur was issued January 24, 2005.

Applicant then filed a Petition for Writ of Habeas Corpus in the South Carolina Federal

District Court. By order dated September 1, 2006, the Honorable Joseph F. Anderson, Jr., United States District Judge, granted Respondent's Motion for Summary Judgment and denied the Petition. Applicant appealed the decision to the United State's Court of Appeals for the Fourth Circuit which was dismissed by unpublished opinion dated November 27, 2006.

Applicant then filed the current application for PCR on February 26, 2007. The State made a Return and Motion to Dismiss the application in January of 2008, after which the Court issued a Conditional Order of Dismissal provisionally dismissing the application with prejudice. By order issued May 5, 2008, the Court summarily dismissed the application with prejudice. A timely Notice of Appeal was filed and a Johnson Petition for Writ of Certiorari was submitted by the South Carolina Office of Appellate Defense on Applicant's behalf. Appellate counsel's request to be relieved was denied and the Court ordered both sides to submit merits briefs on the issue of whether Applicant's plea counsel erroneously advised him of parole eligibility for the Possession of a Firearm charge. Upon receiving those briefs, the South Carolina Court of Appeals issued an unpublished opinion ordering the matter be remanded to the circuit court for evidentiary hearing into whether counsel in fact misinformed Applicant about parole eligibility for the Possession of a Firearm charge. The Remittitur was issued January 4, 2012, bringing the current hearing before this Court.

According to the November 18, 2011, order remanding this matter for hearing, the issue to be addressed at hearing is as follows:

Did plea counsel actively give Applicant erroneous information that he would be parole eligible on the Possession of a Firearm sentence received as a result of his September 25, 2000, guilty plea?

1 Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a

reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Counsel's Erroneous Parole Eligibility Advice

The sole matter to be addressed at the evidentiary hearing convened was whether plea counsel actively provided erroneous information to Applicant about his potential parole eligibility for the Possession of a Firearm charge as pled to by Applicant on September 25, 2000. The Court of Appeals, in its Order remanding the matter for hearing, specifically noted that Applicant's claim to be addressed is that he was actively misinformed of parole eligibility by plea counsel, not that plea counsel failed to inform Applicant of parole eligibility in the first place.

Plea counsel, a criminal defense attorney for roughly twenty-two (22) years, testified that he had very little recollection of Applicant's case as roughly thirteen (13) years had passed since his involvement in the matter. He went on to say that while he does not recall specifically meeting with Applicant to discuss the charges or plea, he is very familiar with the no-parole condition imposed on Possession of Weapons charges under S.C. Code § 16-23-490 and generally does advise all of his clients charged with such as to the no-parole repercussion of the charge.

Applicant thereafter testified that counsel told him during their meetings before the plea that he should expect to receive "up to five years with the possibility of parole" on the weapons charge under the plea. Applicant went on to say he discovered in 2007 from his case worker that he would not be parole eligible on the weapon charge, at which time he contacted the Department of Corrections and learned he needed to file a PCR application to challenge the issue. Applicant conceded that he had given a statement confessing to the crimes to police and that he faced up to eighty-five (85) years imprisonment on the charges if run consecutively. Applicant also agreed that his plea was entered to an open ended sentence without negotiations and he entered his plea with the knowledge that he may receive the full eighty-five year sentence. Applicant finished by handing up

several certificates and documents from various Department of Corrections programs in an effort to show he had been actively working to be released early through parole.

Applicant also presented testimony of Kenneth Jones ("Jones"), his co-defendant in the case. Jones testified he recalled having discussions with his attorney in the presence of Applicant and Applicant's attorney on the day of their pleas, at which time he overheard Applicant's counsel tell Applicant he would be parole eligible under the terms of the plea.

Based on the testimony presented at the PCR hearing and a thorough review of the record, I find Applicant has failed to carry his burden in proving counsel actively misadvised him as to his parole eligibility for the Possession of a Firearm charge. As a preliminary matter, I find both Jones and Applicant's testimonies to be wholly incredible, while conversely finding counsel to be entirely credible and very candid.

"Normally, parole eligibility is a collateral consequence of sentencing which a defendant need not be specifically advised before entering a guilty plea." Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983), *citing* Bell v. North Carolina, 576 F.3d 564 (4th Cir. 1978). As set forth in Bell, this so called "collateral consequence rule" may be inapplicable where a defendant is actively misinformed by counsel about parole eligibility and that mistaken information induces the defendant to enter a plea. Id. First, I find Applicant has failed to present any credible, persuasive evidence to carry his burden of proving counsel did in fact actively misadvise him on parole eligibility. Neither Jones' testimony nor Applicant's self-serving testimony were credible to this Court, and this Court has not been convinced that counsel, who has a long history as a respected criminal defense attorney, did in fact actively misadvise Applicant as to his parole eligibility under the statute. More importantly, I find Applicant has failed to prove that counsel's alleged erroneous advice induced his entry of the pleas he now seeks to challenge. Applicant readily admitted he entered the pleas without negotiations or recommendations from the State, and was fully aware at the time that the plea judge

could impose maximum, consecutive sentences on each charge for a total eighty-five year aggregate term of imprisonment. The record of the plea hearing similarly reflects that Applicant voluntarily entered the pleas without any preconceived expectations as to the amount of jail time he would receive, and Applicant went as far as to assure the plea judge that his plea was being entered without any promises as to a particular sentence he would receive outside of the maximums. (Plea Tr. p. 8, lns 9 – 15). Therefore, Applicant's allegation that he would not have entered the plea had he known he would not be parole eligible for that five year portion of a thirty year aggregate sentence is both unconvincing and implausible to this Court. I find Applicant has failed to carry his burden in proving both deficiency on counsel's part and resulting prejudice in inducing Applicant's plea. Accordingly, this allegation must be denied on the merits and dismissed with prejudice.

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed in its entirety.

CONCLUSION

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

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BML, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so.

Therefore, any and all remaining allegations are denied and dismissed.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

IT IS SO ORDERED this 8 day of May, 2012.

Beaufort, South Carolina


 CARMEN T. MULLEN
 Presiding Judge
 Fourteenth Judicial Circuit

WITNESSES

Knola Miles

Lance Graven

ARREST WARRANT #:

F932267

Arrested on September 11, 1999

ACTION OF GRAND JURY

TRUE BILL ☒NO BILL ☐FOREMAN ☐Foreman: Diana B. Bane

Grand Jury

VERDICT

Foreman: _____

Petit Jury

Date: _____

DOCKET #: 99GS27-0518

THE STATE OF SOUTH CAROLINA
County of Jasper

COURT OF GENERAL SESSIONS

Term: -October, 1999

THE STATE

vs.

Marcus Parker

INDICTMENT FOR

0014

ASSAULT AND BATTERY WITH INTENT TO KILL

(16-3-620)

STATE OF SOUTH CAROLINA)
County of Jasper)

INDICTMENT #99GS27-0518

At a Court of General Sessions, convened on October 18, 1999,
the Grand Jurors of Jasper County present upon their oath:

COUNT: ASSAULT AND BATTERY WITH INTENT TO KILL
(16-3-620)

That Marcus Parker did in Jasper County on or about September 10, 1999,
with malice aforethought commit an assault and battery upon one Knola Miles
with intent to kill said victim, to wit: by shooting ~~him~~ with a handgun.
HER-100

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

SOLICITOR

[Signature]

217

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Ridgeland

THE STATE
against

Marcus Jerrell Parker
Address: _____
Phone _____ SS# _____
Sex M Race B Height _____ Weight _____
DL State _____ DL # _____
DOB _____ Agency ORI #: SC0270200
Prosecuting Agency. Ridgeland P.D.
Prosecuting Officer. Det/SGT. L. Graven
Offense. Assault and Battery w/
Intent to Kill Offense Code: _____
Code/Ordinance Sec 16-3-612

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____
The accused
is to be arrested and brought before me to be
dealt with according to law

Signature of Judge (L.S.)
Date _____

RETURN
A copy of this arrest warrant was delivered to
defendant Marcus Parker
on 9-11-99
Macl L. Alf
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

POSTED IN COMPUTER
9/27/99

Ridgeland)
Personally appeared before me the affiant DET. L. GRAVEN who
being duly sworn deposes and says that defendant Marcus Parker
did within this county and state on September 10th, 1999 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Ridgeland)
in the following particulars: Assault and Battery With The Intent To Kill
DESCRIPTION OF OFFENSE: 16-3-612

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That, on September 10th, 1999, the defendant committed ~~and~~ an
assault and battery with the intent to kill by shooting Knola Miles
the owner of "The Outpost Store", with a handgun. This offense did
in fact, occur at the ~~XXXX~~ "Outpost Store", which is located in the
State of South Carolina, County of Jasper, Town of Ridgeland.

Sworn to and subscribed before me
on 9-10-99
Bobby O. Smith (L.S.)
Signature of Issuing Judge

Signature of Affiant _____
Affiant's Address One Town Square
Ridgeland, SC 29936
Affiant's Telephone _____

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
Ridgeland)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on September 10th, 1999 defendant Marcus Parker
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Ridgeland) as set forth below:

DESCRIPTION OF OFFENSE: Assault and Battery With The Intent To Kill
16-3-612

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her 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.

Bobby O. Smith (L.S.)
Signature of Issuing Judge
Judge Code: _____

Judge's Address Ben Hall
Ridgeland SC
Judge's Telephone 726 5053
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

WITNESSES

Knola Miles

Lance Graven

ARREST WARRANT #:

F932266

Arrested on September 11, 1999

ACTION OF GRAND JURY

TRUE BILL ☒NO BILL ☐FOREMAN ☐Foreman: Wanda Burnett

Grand Jury

VERDICT

Foreman: _____

Petit Jury

Date: _____

DOCKET #: 99GS2/-0519

THE STATE OF SOUTH CAROLINA
County of Jasper

COURT OF GENERAL SESSIONS

Term: October, 1999

THE STATE

vs.

Marcus Parker

INDICTMENT FOR

0139

ARMED ROBBERY

(16-11-330)

STATE OF SOUTH CAROLINA)
) **INDICTMENT #99GS27-0519**
County of Jasper)

At a Court of General Sessions, convened on October 18, 1999,
the Grand Jurors of Jasper County present upon their oath:

COUNT: ARMED ROBBERY
 (16-11-330)

That Marcus Parker did in Jasper County on or about September 10, 1999,
while armed with a deadly weapon, to wit: a handgun, feloniously take from the
person or presence of the victim, Knola Miles , by means of force or
intimidation goods or monies of said victim, such goods or monies being
described as follows: U.S. CURRENCY ^{R.M.T.}.

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

SOLICITOR



ARREST WARRANT

F- 932266

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Ridgeland

THE STATE
against

Marcus Jerrell Parker

Address _____

Phone _____ SSN _____

Sex M Race: B Height: _____ Weight: _____

DL State: _____ DL #: _____

DOB: _____ City ORI # SC0270200

Prosecuting Agency: ~~XXXXXXX~~ Ridgeland P.D.

Prosecuting Officer: Det/Sgt. L. Graven

Offense: Armed Robbery

Offense Code: _____

Code/Ordinance Sec. 16-11-330

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law

Signature of Judge (L.S.)

Date _____

RETURN

A copy of this arrest warrant was delivered to
defendant Marcus Parker

on 9-11-99

Marcus Parker
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

INDEXED IN COMPUTER

RJM 9/27/99

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Ridgeland

Personally appeared before me the affiant Det L. Graven who
being duly sworn deposes and says that defendant Marcus Parker
did within this county and state on September 10th, 1999 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Ridgeland)
in the following particulars.

DESCRIPTION OF OFFENSE: Robbery While Armed With a Deadly Weapon

16-11-330

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That, on September 10th, 1999, the defendant did, in fact,
commit robbery from the person of another. The defendant used force
and violence. The defendant was armed with a deadly weapon. This
offense did, ~~xxx~~ in fact, occur at the "Outpost" Store, which is
located in the State of South Carolina, County of Jasper, Town of
Ridgeland.

Sworn to and subscribed before me

on 9-10-99

Bobby O. Smith (L.S.)
Signature of Issuing Judge

Signature of Affiant

Affiant's Address One Town Square
Ridgeland, SC 29936

Affiant's Telephone _____

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
Ridgeland

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on September 10th, 1999 defendant Marcus Parker
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Ridgeland) as set forth below:

DESCRIPTION OF OFFENSE: Robbery While Armed with a Deadly Weapon

16-11-330

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her 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.

Bobby O. Smith (L.S.)
Signature of Issuing Judge
Judge Code: 376

Judge's Address

Judge's Telephone

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

STATE OF SOUTH CAROLINA

COUNTY OF Jasper

STATE

VS.

Marcus Parker

AKA:

Race: B

Sex: M

DOB

Age:

SSN:

DL#:

SID#:

IN THE COURT OF GENERAL SESSION

INDICTMENT/CASE#:

00 -GS- 27 - 0192

A/W#: JAS 0078

Date of Offense: 9-10-99

S.C. Code § : 16-3-910

CDR Code #: 0101915

SENTENCE

☒ PLEA ☐ TRIAL

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

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0101915

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ 17-25--

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

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

ATTORNEY

[Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Cen for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ y and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payn of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard condition probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$

§ 14-1-206 - Assessments 100%.....\$

§ 14-1-211 - Surcharge.....\$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$

County (3%).....\$ 3.00

TOTAL.....\$ 103.00

Clerk of Court/Deputy Clerk

Maya Bostick

Court Reporter: Annelle Rolle

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

PRESIDING JUDGE

Judge Code: 101506

Sentence Date: 9/25/2000

STATE OF SOUTH CAROLINA)
)
County of Jasper) INDICTMENT #00GS27-0192

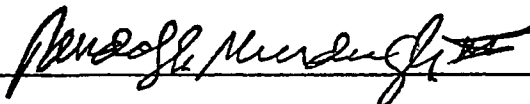
At a Court of General Sessions, convened on March 20, 2000,
the Grand Jurors of Jasper County present upon their oath:

COUNT: KIDNAPPING
 (16-3-910)

That Marcus Parker did in Jasper County on or about September 10, 1999, did
wilfully and unlawfully seize, confine, inveigle, decoy, abduct, or carry away
one Knola Miles , without authority of law.

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

SOLICITOR



WITNESSES

Knola Miles

Lance Graven

DOCKET #: 00GS27-0192

THE STATE OF SOUTH CAROLINA
County of Jasper

COURT OF GENERAL SESSIONS

Term: March, 2000

THE STATE

vs.

T Marcus Parker

ARREST WARRANT #:

JAS0078

Arrested on September 11, 1999

ACTION OF GRAND JURY

TRUE BILL ☒NO BILL ☐FOREMAN *[Signature]*Foreman: *[Signature]*

Grand Jury

VERDICT

Foreman: _____

Petit Jury

Date: _____

INDICTMENT FOR

0095

KIDNAPPING

(16-3-910)

WITNESSES

Knola Miles

Lance Graven 5

ARREST WARRANT #:

JAS0079

Arrested on September 11, 1999

ACTION OF GRAND JURY

TRUE BILL. ☒NO BILL ☐FOREMAN *[Signature]*Foreman: *[Signature]*

Grand Jury

VERDICT

Foreman: _____

Petit Jury

Date: _____

DOCKET #: 00GS27-0193

THE STATE OF SOUTH CAROLINA
County of Jasper

COURT OF GENERAL SESSIONS

Term: March, 2000

THE STATE

vs.

J Marcus Parker

INDICTMENT FOR

0082

POSSESSION OF FIREARMS DURING
COMMISSION OF CERTAIN CRIMES (16-23-490)

STATE OF SOUTH CAROLINA)
)
County of Jasper) INDICTMENT #00GS27-0193

At a Court of General Sessions, convened on March 20, 2000,
the Grand Jurors of Jasper County present upon their oath:

COUNT: POSSESSION OF FIREARMS DURING
 COMMISSION OF CERTAIN CRIMES (16-23-490)

That Marcus Parker did in Jasper County on or about September 10, 1999,
while committing the violent crime of Armed Robbery and/or Assault & Battery
With Intent to Kill and/or Kidnapping have in his possession and/or did visibly
display a firearm or knife during the commission of the aforementioned crime.

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

SOLICITOR

