

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Aiken County

Honorable Brian M. Gibbons, Circuit Court Judge

ARTRELL HICKSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000393

APPENDIX

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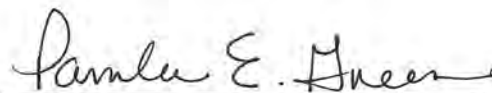
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Aiken County, South Carolina, on the 7th day of September, 2021.

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

December 23rd, 2021

A handwritten signature in cursive script that reads "Pamela E. Green". The signature is written in dark ink and is positioned above a horizontal line.

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Artrell Hickson, SCDC # 343019,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS 2021
) FOR THE SECOND JUDICIAL CIRCUIT
)

) Case Nos.: 2019-CP-02-01521 and
) 2020-CP-02-00640
)

) **ORDER GRANTING MOTION TO MERGE**
) **PCR ACTIONS AND GRANTING BELATED**
) **APPELLATE REVIEW OF INITIAL PCR**
) **ACTION PURSUANT TO AUSTIN v. STATE¹**
)

This matter is before this Court by way of two post-conviction relief (PCR) applications filed by Applicant Artrell Hickson: first, case no. 2019-CP-02-01521 filed on June 19, 2019; and second, case no. 2020-CP-02-00640 filed on March 16, 2020, both requesting belated appellate review of Applicant's initial post-conviction relief action. In response to these two applications, Respondent the State of South Carolina made a return and motion to merge these actions into one, with the 2019 case being the surviving docket number and the 2020 action being treated as an amendment to the surviving action. Respondent also requested a hearing to determine if Applicant was entitled to belated appellate review of his initial post-conviction relief action pursuant to Austin.

A hearing was convened before this Court on September 7, 2021, in this Court's virtual courtroom on the Cisco WebEx platform. Applicant was present and represented by his counsel, Nancy Fennell. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Applicant's prior post-conviction relief counsel, Aimee Zmroczek, was also present. At the start of the hearing,

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

FILED Sept. 10 20 21

Robert J. Harte CNP
C.C.P. & G.S.

Charlene Griffen Plouffe
Deputy Clerk

Respondent renewed its motion to merge the two applications, which was granted upon consent of Applicant.

Following the hearing, this Court determines Applicant did not make a knowing, voluntary, and intelligent waiver of his right to appeal his initial post-conviction relief action and grants him the right to seek belated appellate review of this initial post-conviction relief action pursuant to Austin. Pursuant to S.C. Code Ann. § 17-27-80, this formal order follows:

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. In June of 2009, Applicant Artrell Hickson and his brother, Javier Hickson, were arrested following an investigation into the armed robbery of the Graniteville branch of Security Federal Bank. In December of 2009, the Aiken County grand jury indicted Applicant and his brother for one count each of armed robbery. In April of 2010, the Aiken County grand jury additionally indicted Applicant and his brother for one count each of possession of a firearm during the commission of a violent crime. On September 20, 2010, a jury trial was commenced in the Aiken County court of general sessions with the Honorable Doyet A. Early, III, circuit court judge, presiding. Applicant was represented by Kelley P. Brown, Esquire. Second Circuit Solicitor J. Strom Thurmond, Jr., and Assistant Solicitor Susanna Ringler prosecuted the case. At the conclusion of trial, the jury convicted Applicant and his brother as indicted. The trial judge sentenced Applicant and his brother to concurrent terms of imprisonment of twenty-eight years for the armed robbery convictions and five years for the firearm convictions.

Subsequently, Appellant filed a timely notice of appeal and was represented on appeal by Jerry M. Screen, Esquire. Following briefing, the South Carolina Court of Appeals affirmed

Applicant's convictions and sentences. State v. Hickson, Op. No. 2012- UP- 667 (Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

First Post-Conviction Relief Action (2013-CP-02-1153)

Applicant filed his first application for post-conviction relief on May 21, 2013, alleging the following grounds for relief:

1. Ineffective assistance of trial counsel.
 - a. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
 - b. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
 - c. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
 - d. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses Crystal Harris, Charles Smalls, and Tommy Parker, for the defense during applicant's criminal trial.
 - e. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and

South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised."

- f. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil -vs- Biggers Hearing due to the alleged victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest."
- g. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury their entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence."

Respondent made its return to the application and requested an evidentiary hearing be held. An evidentiary hearing was convened before the Honorable Edgar W. Dickson, circuit court judge, on September 11, 2015. Applicant was present alongside counsel Aimee Zmroczek, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. Following the hearing, Judge Dickson denied and dismissed the action in full. A written order of dismissal was signed by Judge Dickson on December 21, 2016, and filed with the Aiken County Clerk of Court on January 9, 2017. Applicant filed and served a motion to reconsider. Respondent filed a return in opposition to the motion. On March 14, 2017, Judge Dickson summarily denied the motion to reconsider, and this order was filed on March 17, 2017. Applicant did not file an appeal following the denial of relief. However, he is now seeking belated appellate review in these two subsequent actions.

CURRENT ACTIONS BEFORE THE COURT

Since the denial of his initial post-conviction relief application, Applicant has filed two more post-conviction relief actions, both of which are before this Court. Applicant filed a second post-conviction relief action (2019-CP-02-01521), on June 19, 2019, asserting his first PCR counsel Aimee Zmroczek failed to file an appeal of the denial of his initial PCR action and asserting he was entitled to belated appellate review. Then, while his second action was still pending, Applicant filed a third application (2020-CP-02-00640) on March 16, 2020, again asserting that initial PCR counsel failed to file an appeal from the denial of his initial PCR action and seeking belated appellate review.

In response, Respondent moved to merge these two actions into one, with the 2019 case being the surviving docket number and the 2020 action being treated as an amendment to the surviving action. Respondent also requested a hearing to determine if Applicant was entitled to belated appellate review of his initial post-conviction relief action pursuant to Austin. Attached to this return and before this Court are the records of the Aiken County Clerk of Court regarding Applicant's general sessions matter, the records from Applicant's direct appeal (including the record on appeal which contains a copy of Applicant's trial transcript), the records from Applicant's initial post-conviction relief matter, Applicant's records from the South Carolina Department of Corrections, and the records from the two current actions.

At the start of the evidentiary hearing, Respondent renewed its motion to merge the two applications, which was granted upon consent of Applicant. Accordingly, this Court finds these two actions are to be merged into one, with the 2019 case being the surviving docket number and the 2020 action being treated as an amendment to the surviving action, and instructs the Aiken

County Clerk of Court to file this order in both actions, and promptly close the 2020 action (2020-CP-02-00640).

At the evidentiary hearing, prior PCR counsel Zmroczek testified that she discussed an appeal with Applicant several times, including before and after the hearing. She elaborated that Applicant repeatedly stated he wanted to pursue an appeal from the denial of his post-conviction relief action. She stated that due to a miscommunication with her office staff, a notice of appeal was inadvertently not filed on Applicant's behalf.

Applicant next testified on his own behalf. He also testified he wanted to pursue an appeal from the denial of his post-conviction relief action and asked prior PCR counsel Zmroczek several times to file an appeal on his behalf. He stated he is seeking permission to pursue belated appellate review of the denial of his first post-conviction relief action pursuant to Austin.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety and listened to the testimony provided at the evidentiary hearing. After this thorough review of the record and testimony, this Court determines Applicant has established he is entitled to seek belated appellate review of the denial of his first post-conviction relief proceeding. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80.

MOTION TO MERGE APPLICATIONS GRANTED

As discussed above, Applicant has filed two nearly identical applications for post-conviction relief seeking belated appellate review of the denial of his initial post-conviction relief proceeding: a second post-conviction relief action (2019-CP-02-01521), on June 19, 2019, and then, while his second action was still pending, Applicant filed a third application (2020-CP-02-00640) on March 16, 2020.

An applicant is not generally allowed to have multiple post-conviction relief proceedings in regard to the same conviction. See Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (PCR rules “contemplate adjudication on the merits of the original petition, one bite at the apple as it were.”); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981) (successive applications for post-conviction relief strongly disfavored); S.C. Code Ann. § 17-27-90 (“All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application.”). Respondent moved to have the two proceedings merged and that the application for post-conviction relief filed on March 16, 2020 be considered an amendment to the application for post-conviction relief filed on June 19, 2019.

This Court grants this motion to merge the two cases, with the action filed on June 19, 2019 (docket number 2019-CP-02-01521) being the surviving case. Accordingly, this Court further orders that the application filed on March 16, 2020 (docket number 2020-CP-02-00640) be dismissed and that the filings associated therewith be considered as amendments to the 2019 application.

GRANT OF BELATED APPELLATE REVIEW

Successive applications such as the one before this court are disfavored. *See* S.C. Code Ann. § 17-27-90. However, Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Inherent in this allegation is a claim that former post-conviction relief counsel was ineffective. The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, (1991). Therefore, “the contention that prior PCR counsel was ineffective is not *per se* a ‘sufficient reason’ warranting a successive PCR application under [S.C. Code Ann.] § 17-27-90.” Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin provides for a belated appellate review of an initial post-conviction relief action where prior post-conviction relief counsel fails to timely appeal the denial of the application. Id. at 454, 409 S.E.2d at 396; see S.C. Code Ann. § 17-27-100 (right to appeal final judgment by post-conviction relief court). But Austin “is limited to its particular factual situation.” Aice, 305 S.C. at 452, 409 S.E.2d at 394.² Pursuant to Austin, an evidentiary hearing may be conducted in regards to a successive post-conviction relief application “on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review.” Austin, 305 S.C. at 454, 409 S.E.2d at 396. “If the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding.” Id. at 455, 409 S.E.2d at 396. Austin, therefore, allows an applicant to petition the Supreme Court for discretionary review of the dismissal of his initial post-conviction relief application, and may do so outside of the ordinary time limits for bringing such an appeal.

In the present case, Applicant asserts prior post-conviction relief counsel failed to file an appeal on his behalf. As summarized above, the evidence before this Court establishes Applicant did not make a knowing, voluntary, and intelligent waiver of his right to seek appellate review from the denial of his first post-conviction relief action. Accordingly, this Court finds Applicant is entitled petition the South Carolina Supreme Court for belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin.

² Aice was issued in conjunction with Austin, limiting the reach of Austin and holding “that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel.” 305 S.C. at 454 n.1, 409 S.E.2d at 396 n.1.

CONCLUSION

Based on the foregoing, this Court finds Applicant is entitled to seek belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant's two pending PCR actions be merged, with the action filed on June 19, 2019 (docket number 2019-CP-02-01521) being the surviving case and the application filed on March 16, 2020 (docket number 2020-CP-02-00640) be dismissed and that the filings associated therewith be considered as amendments to the 2019 application;
2. Applicant remain in the custody of the South Carolina Department of Corrections; and
3. Applicant is granted the right to seek belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin.

AND IT IS SO ORDERED this 10th day of September, 2021.



COURTNEY CLYBURN POPE
Presiding Judge
Second Judicial Circuit



, South Carolina

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

ARTRELL HICKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-001262

MOTION FOR A NEW TRIAL
OR, IN THE ALTERNATIVE, AN ORDER TO
RECONSTRUCT THE RECORD OF PETITIONER'S
POST-CONVICTION RELIEF HEARING

Pursuant to Rule 240 of the South Carolina Appellate Court Rules (SCACR), Petitioner respectfully requests this Court reverse his convictions and sentence and remand for a new trial. In the alternative, Petitioner moves to reconstruct of the record of the evidentiary hearing held during his first action for post-conviction relief. Without the transcript, meaningful appellate review of the denial of Petitioner's application for post-conviction relief is not possible.

In accordance with Rule 240(c), SCACR, Petitioner submits the following documents to support this motion: Indictment 2009-GS-02-02294 for armed robbery (Exhibit No. 1);

Indictment 2010-GS-02-00670 for possession of a firearm during the commission of a violent crime (Exhibit No. 2); Order of Dismissal filed January 9, 2017 (Exhibit No. 3); Applicant's Exhibits from September 11, 2015 Hearing (Exhibit No. 4); Order Granting Motion to Merge PCR Actions and Granting Belated Appellate Review of Initial PCR Action Pursuant to Austin v. State filed September 10, 2021 (Exhibit No. 5); Email chain confirming September 11, 2015 transcript cannot be transcribed (Exhibit No. 6).

Procedural History

An Aiken County grand jury indicted Petitioner in December 2009 for armed robbery and in April 2010 for possession of a firearm during the commission of a violent crime. Petitioner's case was called to trial on September 20, 2010 before the Honorable Doyet A. Early, III, and a jury. Petitioner was tried jointly with his brother and codefendant, Javier Hickson. Then Solicitor J. Strom Thurmond, Jr. and Assistant Solicitor Susanna Ringler represented the state. Kelley Brown represented Petitioner and Michael Routzong represented Javier Hickson. On September 22, 2010, the jury found Petitioner guilty as indicted. He was sentenced to twenty-eight years for armed robbery and five years concurrent for the weapons offense.

Petitioner filed a timely notice of appeal. The appeal was perfected by Jerry M. Screen. The Court of Appeals ultimately affirmed Petitioner's convictions and sentence in an unpublished opinion. State v. Hickson, 2012-UP-667 (S.C. Ct. App. filed December 19, 2012).

On May 21, 2013, Petitioner filed an application for post-conviction relief (PCR). The state filed a return to this application on July 3, 2013. An evidentiary hearing was held on September 11, 2015 before the Honorable Edgar W. Dickson. Assistant Attorney General Daniel Gourley represented the state, and Aimee Zmroczek represented Petitioner. Petitioner and his trial counsel, Kelley Brown, testified at the hearing. Two exhibits were entered in evidence:

Applicant's Exhibit No. 1 (Statement of Tommy Parker) and Applicant's Exhibit No. 2 (Statement of Charles Smalls). By order filed January 9, 2017, Judge Dickson denied Petitioner relief.

On January 19, 2017, Petitioner filed a motion to reconsider pursuant to Rule 59(e), SCRCR. The state filed a return to the motion to consider on February 6, 2017. By order filed March 17, 2017, Judge Dickson denied the motion.

Petitioner's counsel failed to file a notice of appeal from the order denying him post-conviction relief. On June 19, 2019, Petitioner filed a second PCR application seeking a belated appeal from the denial of his first application. On March 16, 2020, Petitioner filed a third PCR application again seeking a belated appeal. The state filed a return and a motion merge the two PCR actions on August 13, 2021. An evidentiary hearing was convened on September 7, 2021 before the Honorable Courtney Clyburn-Pope. Assistant Attorney General Megan Harrigan Jameson represented the state, and Nancy Fennell represented Petitioner.

By order filed September 10, 2021, Judge Clyburn-Pope granted Petitioner a belated appeal from the denial of his first application for post-conviction relief. In the same order, the judge also granted the state's motion to merge the two PCR actions.

Petitioner timely filed a notice of appeal with this Court. The Division of Appellate Defense undertook representation of Petitioner and undersigned counsel was assigned to represent Petitioner on appeal. Upon reviewing the file, undersigned counsel discovered that a transcript of the evidentiary hearing held on September 11, 2015 during Petitioner's first action for post-conviction relief cannot be transcribed because more than five years had passed from the date of the hearing and the date the transcript was first requested from the court reporter. See Rule 607(i), SCACR (requiring court reporters to retain the tapes of a proceeding for five years).

Reconstruction of the Record

The trial court has the authority to set the record for appeal. State v. Ladson, 373 S.C. 320, 644 S.E.2d 271, 273 (Ct. App. 2007). “[T]he inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal.” Id. (internal citations omitted). “Where a trial transcript has been lost or destroyed, a court may remand to have the record reconstructed.” Koon v. State, 358 S.C. 359, 595 S.E.2d 456, 460 (2004); See Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200, 203 (2002) (holding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Ladson, 373 S.C. at 325, 644 S.E.2d at 273-274; Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 418 S.E.2d 319, 321 (Ct. App. 1992).

In order for the record to be reconstructed, it must be done in a manner that provides for meaningful appellate review and complies with the constitutional guarantees of procedural due process. Ladson, 373 S.C. at 325, 644 S.E.2d at 273-274; See China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Adams v. H.R. Allen, Inc., 397 S.C. 652, 726 S.E.2d 9 (Ct. App. 2012); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 418 S.E.2d 319 (Ct. App. 1992). The Court of Appeals has held that “the party challenging a reconstructed record on appeal [must] demonstrate prejudice flowing from an inadequate record.” Ladson, 373 S.C. at 325, 644 S.E.2d at 273. “A new trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting meaningful appellate review.” Id. at 325, 644 S.E.2d at 274 (internal quotation marks omitted).

In China, “portions of the stenographic notes of the trial proceedings were lost before they were transcribed by the court reporter.” 251 S.C. at 332, 162 S.E.2d at 277. The appeal

concerned the form of a withdrawal for punitive damages. Id. The missing portions of the transcript were relevant to this issue. Id. The case was remanded to the trial judge “to settle the case for appeal.” Id. at 333, 251 S.E.2d at 277-278.

In Ladson, the appellant was convicted of first degree burglary at the conclusion of a three day trial. On appeal, he learned the court reporter could not produce a transcript of his trial. Ladson, 373 S.C. at 321, 644 S.E.2d at 271. Ladson moved for a new trial. Id. The state moved to reconstruct the record. The Court of Appeals ultimately remanded the case for reconstruction. Id. The reconstruction hearing took place more than a year after the trial. Id. The Court of Appeals noted “the passage of time clearly dimmed the recall of the participants.” Id. at 325, 644 S.E.2d at 274. After reviewing the transcript of the reconstruction hearing, the court emphasized, “It was clear from the outset of this hearing that reconstructing the record from scratch, after such a substantial delay, would be an uphill struggle.” Id. at 321-322, 644 S.E.2d at 271-272. The court concluded meaningful appellate review was not possible where the testimony of a majority of the witnesses was in summary fashion, the information provided was conclusory, the parties had forgotten about one witness altogether, and there was a dispute whether the defendant testified. Id. at 322, 644 S.E.2d at 272.

After the reconstruction hearing, the Court of Appeals asserted it was “left with a bare bones summary of the evidence (with more remaining unknown than known) from a lengthy multiday and fact intensive trial that resulted in a non-parolable twenty-five year person term.” Id. at 327, 644 S.E.2d at 274. The record before the court contained only “a few gratuitous references to generic motions and objections” without any information concerning “the context of the motions, the specific nature of the motions, and whether the challenged evidence was cumulative to other unchallenged evidence.” Id. The court refused to speculate. Id. In

concluding the record was insufficient for meaningful appellate review, the court also emphasized the record “would effectively foreclose any collateral challenge through post-conviction relief or otherwise.” Id. at 327, 644 S.E.2d at 275. Thus, the court concluded Ladson had demonstrated “clear prejudice.” Id.

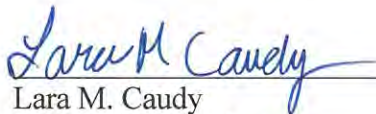
In Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983), the defendant’s convictions were set aside and a new trial had where the court reporter’s equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal. Citing Deaton, the Court of Appeals denied a request for reconstruction in State v. Serrette, 375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App. 2007), where the reason for the lack of transcript was due to the defendant’s absence for a ten year period, which the Court explained was “not a situation where the court reporter’s equipment malfunctioned at trial leading to a loss of the trial transcript.”

Without a transcript of the evidentiary hearing held during Petitioner’s first PCR action, the record does not permit meaningful appellate review of the lower court’s findings. The standard of review on appeal in a PCR case requires a determination of whether any evidence in the record supports the PCR court’s decision. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). The inability of the court reporter to produce a transcript is through no fault of Petitioner. Consequently, Petitioner respectfully requests this Court reverse his convictions and sentence and remand for a new trial. In the alternative, Petitioner moves to reconstruct of the record of the evidentiary hearing held on September 11, 2015 to permit meaningful appellate review of the denial of his application for post-conviction relief.

WHEREFORE, Petitioner respectfully requests this Court reverse his convictions and sentence and remand for a new trial. In the alternative, Petitioner requests this Court remand his

case to reconstruct the record of his evidentiary hearing in order to allow for meaningful appellate review of the denial of his application for post-conviction relief. While this motion is pending, Petitioner respectfully requests this Court hold the timelines for filing his petition for writ of certiorari and appendix in abeyance.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

Attorney for Petitioner

This 23rd day of February, 2022

EXHIBIT NO. 1

WITNESSES

Aiken, County Sheriff

J. Sanders

Law Enforcement Case #: 09-035912

SMR

ARREST WARRANT NUMBER

FILED *December 16, 2009*
M020089
[Signature]
U.C.P.S. Clerk
15th Amendment, Rosenkrantz
Deputy Clerk

ACTION OF GRAND JURY

TRUE Bill

[Signature]
Foreperson of Grand Jury
Date: December 10, 2009

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009GS0202294

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

DECEMBER TERM 2009

THE STATE

vs.

ARTRELL JABAR HICKSON

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on December 14, 2009, the Grand Jurors of Aiken County present upon their oath:

That ARTRELL JABAR HICKSON, along with others, did in Aiken County, South Carolina on or about June 25, 2009, while armed with a deadly weapon or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, feloniously take from the persons or presence of [REDACTED] and [REDACTED] by means of force or intimidation goods or monies of Security Federal Bank, such goods or monies being described as follows: Four Thousand Nine Hundred Two and No/100 dollars (\$4,902.00), all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

EXHIBIT NO. 2

WITNESSES

Aiken County Sheriff

J. Sanders

Law Enforcement Case #: 09-035912

SMR

ARREST WARRANT NUMBER

M020088

ACTION OF GRAND JURY*True Bill*
L. A. Jr.
 Foreperson of Grand Jury
 Date: April 15, 2010
VERDICT
 Foreperson of Petit Jury
 Date:
DOCKET NO. 2010GS0200670**The State of South Carolina**

County of Aiken

COURT OF GENERAL SESSIONS**APRIL TERM 2010****THE STATE
vs.****ARTRELL JABAR HICKSON****CDR #: 0549****Indictment for****POSSESSION OF FIREARM DURING
COMMISSION OF OR ATTEMPT TO
COMMIT A VIOLENT CRIME****§ 16-23-0490****J. STROM THURMOND, SOLICITOR**
 FILED *April 15, 10*
[Signature]
 C.C.P. 2010
[Signature] 55
 Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN) INDICTMENT FOR
) POSSESSION OF FIREARM DURING
) COMMISSION OF OR ATTEMPT TO COMMIT
) A VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on April 19, 2010, the Grand Jurors of Aiken County present upon their oath:

That ARTRELL JABAR HICKSON did in Aiken County on or about June 25, 2009, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

EXHIBIT NO. 3

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Artrell Hickson, #343019,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2013-CP-02-1153

ORDER OF DISMISSAL

FILED

1.9.17

[Signature]
CCJP & C.S.
[Signature]
Deputy Clerk

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 21, 2013. Respondent filed its Return on July 1, 2013, requesting an evidentiary hearing be convened on Applicant's ineffective assistance of counsel allegations. A hearing was held on September 11, 2015, at the Aiken County Courthouse. Applicant was present and represented by Aimee Zmroczek, Esquire. Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Kelley Brown, Esquire. This Court had before it the Aiken County Clerk of Court records, the appellate records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the trial transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true bill indicted at the December 2009 term of the Aiken County Grand Jury for Armed Robbery (2009-GS-02-2294) and at the April 2010 term of the Aiken County Grand Jury for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime (2010-GS-02-0670). Kelley

Brown, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. On September 22, 2010 Applicant was found guilty. Judge Early sentenced Applicant to twenty-eight years imprisonment for Armed Robbery and five years imprisonment for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime with all sentences to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Jerry M. Screen, Esquire. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Hickson, Op. No. 2012- UP- 667 (Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

ALLEGATIONS

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

1. Ineffective assistance of trial counsel.
 - a. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
 - b. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
 - c. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United

States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."

- d. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses Crystal Harris, Charles Smalls, and Tommy Parker, for the defense during applicant's criminal trial.
- e. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised."
- f. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil -vs- Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest."
- g. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence."

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that

"counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Applicant asserts several allegations of ineffective assistance of counsel. These allegations are meritless and should be dismissed. This Court finds that Applicant was not deprived of effective assistance of counsel. Trial Counsel's decisions and conduct were appropriate under the circumstances, and did not fall below professional norms of reasonableness.

Arrest Warrants

Applicant alleges that Trial Counsel is ineffective for failing to move to quash the arrest warrants for Applicant's charges because the warrants were conclusory and insufficient to establish probable cause. Applicant further alleges that Trial Counsel was ineffective for failing to move to suppress evidence stemming from these arrest warrants and for failing to move to dismiss the charges because of the insufficient warrants. These allegations are meritless and should be denied and dismissed with prejudice.

This Court finds that Applicant has failed to present any evidence to prove that his arrest warrants were not supported by probable cause. Furthermore, this Court notes that Applicant was true bill indicted at the December 2009 term of the Aiken County Grand Jury. Applicant has failed to meet his burden of proof that Trial Counsel was ineffective in any way for failing to object to these warrants or anything stemming from the warrants, and this allegation is denied and dismissed with prejudice.

Failure to call alibi witnesses

Applicant failed to present his alibi witnesses at the PCR hearing, therefore he cannot claim ineffective assistance of counsel for failing to call said witnesses at the trial. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (an applicant cannot show prejudice due to the failure of trial counsel to call alleged alibi witnesses at trial if the applicant does not present said witnesses at the PCR hearing on his behalf). Applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Therefore, this allegation is denied and dismissed with prejudice.

Failure to advise Applicant to testify at trial

Applicant alleges that Trial Counsel was ineffective for failing to advise him to testify at trial. This allegation is meritless. The trial judge fully discussed Applicant's right to testify on the record, allowed him additional time to speak with his attorney, and Applicant stated that he wished to remain silent. Applicant was aware that this right was his alone to waive and not Trial Counsel's decision. Therefore, this allegation is denied and dismissed with prejudice.

Failure to request a Neil v. Biggers hearing

Applicant's argument that Trial Counsel was ineffective for failing to request a Neil v. Biggers hearing is also meritless. This was an armed robbery where the three suspects covered their faces, law enforcement did not present the Victims with any photo lineups to identify, nor did the Victims ever identify the suspects. This Court finds that there was no basis on which to request a Neil v. Biggers hearing, thus Trial Counsel cannot be found ineffective for this reason. Neither prong of the Strickland test is met, and this allegation is denied and dismissed with prejudice.

Failure to move to strike witnesses statements read at trial

Applicant alleges that Trial Counsel was ineffective for failing to move to strike the statements that were read before the jury at the trial. This allegation is meritless. Trial Counsel did object to the State's witness, Ms. Bryant, reading her statement into the record and was overruled, so Applicant cannot claim ineffective assistance of counsel for failing to object. This Court feels that pursuant to the Rule of Completeness it was proper for Ms. Bryant to read her statement to clarify what was elicited under cross examination.

In regard to the statement of Ms. Oakman, another of the State's witnesses, while Trial Counsel did not object, this Court feels that it was proper under the Rule of Completeness due to the information that was elicited under cross examination, and Trial Counsel did not act below the standards of professional norms. Furthermore, Applicant has failed to meet his burden in proving that he was prejudiced by Trial Counsel's actions. Thus, neither prong of the Strickland test is met, and this allegation is denied and dismissed with prejudice.

Failure to object to jury instructions

Applicant also raised the issue of the trial judge's instructions to the jury, specifically the comment made about a "true and just verdict." Trial Counsel was not ineffective for failing to object to the trial judge's jury instructions as the instructions were not objectionable. The use of the phrase "fair and impartial" does not rise to the level of the improper charge in State v. Daniels where the jury was instructed to reach a verdict that was just and fair "to all parties." State v. Daniels, 401 S.C. 251, 255, 737 S.E.2d 473, 475 (2012). Therefore, this allegation is denied and dismissed with prejudice.

Failure to cross-examine co-defendant

Applicant's argument that Trial Counsel was ineffective for failing to cross-examine his co-defendant about his plea deal is meritless. Trial Counsel asked if he was testifying to help himself out and co-defendant Kearsse admitted as such. Trial Counsel was not required under standards of professional norms to do anything more. Furthermore, there is nothing that could have been further elicited from his cross-examination testimony that would have changed the jury's verdict. Since this action would not have changed the outcome of the trial, it cannot be prejudicial. Neither prong of the Strickland test is met, and this allegation must be denied and dismissed with prejudice.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 21st day of December, 2016.



EDGAR W. DICKSON
Presiding Judge
Second Judicial Circuit

Orangeburg, South Carolina

EXHIBIT NO. 4

RECEIPT FOR EXHIBITS

Case No. 2013-CP-02-01153
 Plaintiff: Artrell J. Hickson
 Defendant: State of SC
 Date Trial Started: 9-11-2015

Judge E. Dickson
 Plt's Atty. Aimee Imroczeck
 Def's Atty. Daniel Gourley
 Date Trial Ended: _____

Received of Cheri Young, Court Reporter for the above case, these exhibits:
Applicant

	Clerk of Court Use
1 <u>Statement of Tommy Parker</u>	
2 <u>Statement of Charles Smalls</u>	✓
3	✓
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This 11th day of September 20 15

Page 1 of 1

By [Signature]

Richland County Clerk of Court

Clerk should retain white copy in Civil cases, yellow copy in Criminal cases.

Revised 3/96

FILED September 11, 2015

[Signature]
 2:00 pm



FILED September 15
Shirley Rutland
Jesse Conner
2:00 PM

State of South Carolina v. Javier Hickson

Statement of: Tommy Tucker

Date: 17 Aug 09

Time: 3:45

Witnessed by: Artrell Hickson

Written at the request of Mr. Parker by Michael
On June 25, 2009 I picked up Javier Hickson
from my sister's house (Beulah Hickson) on
Willard Drive in Aiken at 09.00. Javier
wanted to learn Auto mechanics and I agreed
to teach him. AFTER I picked him up we went
to [redacted] Brickley Ct, Aiken SC. ALSO with
me was Charles Smalls. I ALSO picked up
ARTRELL Hickson at the same time as I picked
up JAVIER we (JAVIER, ARTRELL, CHARLES AND I)
remained at [redacted] Brickley Court until 16:30.
At 16:30 (4:30 pm) JAVIER, ARTRELL, and I
took Charles Smalls to [redacted] Moody Street Aiken
SC. Mr. Smalls wife had an appointment and
Mr. Smalls had to go home. After we dropped
Mr. Smalls off we went to the BP store
for sodas and then we returned to
[redacted] Brickley Court until 7:00 pm. JAVIER
AND ARTRELL were with me the
entire day.

Sworn and Subscribed to before me this 1th day of August 2009
Shirley Rutland Bani
Notary Public
My Commission expires: 10-14-18

PLAINTIFF'S
EXHIBIT

2

Tyson
Best lawyer

The four sentences of
20-d

State of South Carolina v. Javier Hickson

Statement of: Charles Small

FILED September 11, 2009

Date: 17 Aug. 09

Time: 09:15

Witnessed by: Loretta Hinton

written by: Michael D. Rautzeny At my request

AT 08:35 MR. TOMMY PARKER PICKED ME UP
AT MY RESIDENCE (█████ Moody Street Aiken, SC)
MR. PARKER AND I WENT FOR COFFEE AND THEN
WENT TO MR. PARKER'S SISTER'S HOUSE (Mrs.
Remlah Hickson). We picked up JAVIER
AND ARTRELL AT APPROXIMATELY 09:00. THE
DATE WAS JUNE 05, 2009. AFTER WE PICKED
UP JAVIER WE WENT TO MR. PARKER'S PLACE
OF BUSINESS (█████ Brickley Court). We (MR.
PARKER, JAVIER, ARTRELL) TOOK ENGINES APART
AND CLEANED THE PARTS. WE SEPARATED THE
BAD PARTS FROM THE GOOD PARTS. JAVIER
AND ARTRELL WERE WITH ME AND MR. PARKER
UNTIL 4:30 PM, UNTIL THE TIME I WENT
HOME.

Sworn and Subscribed to before me this 17th day of August 2009.

Jennifer Rutland Bau

Notary Public

My Commission expires: 10-14-15

EXHIBIT NO. 5

I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Artrell Hickson, SCDC # 343019,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT

) Case Nos.: 2019-CP-02-01521 and 2020-CP-02-00640

) **ORDER GRANTING MOTION TO MERGE**
) **PCR ACTIONS AND GRANTING BELATED**
) **APPELLATE REVIEW OF INITIAL PCR**
) **ACTION PURSUANT TO AUSTIN v. STATE¹**

This matter is before this Court by way of two post-conviction relief (PCR) applications filed by Applicant Artrell Hickson: first, case no. 2019-CP-02-01521 filed on June 19, 2019; and second, case no. 2020-CP-02-00640 filed on March 16, 2020, both requesting belated appellate review of Applicant's initial post-conviction relief action. In response to these two applications, Respondent the State of South Carolina made a return and motion to merge these actions into one, with the 2019 case being the surviving docket number and the 2020 action being treated as an amendment to the surviving action. Respondent also requested a hearing to determine if Applicant was entitled to belated appellate review of his initial post-conviction relief action pursuant to Austin.

A hearing was convened before this Court on September 7, 2021, in this Court's virtual courtroom on the Cisco WebEx platform. Applicant was present and represented by his counsel, Nancy Fennell. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Applicant's prior post-conviction relief counsel, Aimee Zmroczek, was also present. At the start of the hearing,

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

FILED Sept. 10 2021

Robert J. Harte CNP
C.C.P. & G.S.
Charla Guiffre Plouffe
Deputy Clerk

Respondent renewed its motion to merge the two applications, which was granted upon consent of Applicant.

Following the hearing, this Court determines Applicant did not make a knowing, voluntary, and intelligent waiver of his right to appeal his initial post-conviction relief action and grants him the right to seek belated appellate review of this initial post-conviction relief action pursuant to Austin. Pursuant to S.C. Code Ann. § 17-27-80, this formal order follows:

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. In June of 2009, Applicant Artrell Hickson and his brother, Javier Hickson, were arrested following an investigation into the armed robbery of the Graniteville branch of Security Federal Bank. In December of 2009, the Aiken County grand jury indicted Applicant and his brother for one count each of armed robbery. In April of 2010, the Aiken County grand jury additionally indicted Applicant and his brother for one count each of possession of a firearm during the commission of a violent crime. On September 20, 2010, a jury trial was commenced in the Aiken County court of general sessions with the Honorable Doyet A. Early, III, circuit court judge, presiding. Applicant was represented by Kelley P. Brown, Esquire. Second Circuit Solicitor J. Strom Thurmond, Jr., and Assistant Solicitor Susanna Ringler prosecuted the case. At the conclusion of trial, the jury convicted Applicant and his brother as indicted. The trial judge sentenced Applicant and his brother to concurrent terms of imprisonment of twenty-eight years for the armed robbery convictions and five years for the firearm convictions.

Subsequently, Appellant filed a timely notice of appeal and was represented on appeal by Jerry M. Screen, Esquire. Following briefing, the South Carolina Court of Appeals affirmed

Applicant's convictions and sentences. State v. Hickson, Op. No. 2012- UP- 667 (Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

First Post-Conviction Relief Action (2013-CP-02-1153)

Applicant filed his first application for post-conviction relief on May 21, 2013, alleging the following grounds for relief:

1. Ineffective assistance of trial counsel.
 - a. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
 - b. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
 - c. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
 - d. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses Crystal Harris, Charles Smalls, and Tommy Parker, for the defense during applicant's criminal trial.
 - e. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and

South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised."

- f. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil -vs- Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest."
- g. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence."

Respondent made its return to the application and requested an evidentiary hearing be held. An evidentiary hearing was convened before the Honorable Edgar W. Dickson, circuit court judge, on September 11, 2015. Applicant was present alongside counsel Aimee Zmroczek, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. Following the hearing, Judge Dickson denied and dismissed the action in full. A written order of dismissal was signed by Judge Dickson on December 21, 2016, and filed with the Aiken County Clerk of Court on January 9, 2017. Applicant filed and served a motion to reconsider. Respondent filed a return in opposition to the motion. On March 14, 2017, Judge Dickson summarily denied the motion to reconsider, and this order was filed on March 17, 2017. Applicant did not file an appeal following the denial of relief. However, he is now seeking belated appellate review in these two subsequent actions.

CURRENT ACTIONS BEFORE THE COURT

Since the denial of his initial post-conviction relief application, Applicant has filed two more post-conviction relief actions, both of which are before this Court. Applicant filed a second post-conviction relief action (2019-CP-02-01521), on June 19, 2019, asserting his first PCR counsel Aimee Zmroczek failed to file an appeal of the denial of his initial PCR action and asserting he was entitled to belated appellate review. Then, while his second action was still pending, Applicant filed a third application (2020-CP-02-00640) on March 16, 2020, again asserting that initial PCR counsel failed to file an appeal from the denial of his initial PCR action and seeking belated appellate review.

In response, Respondent moved to merge these two actions into one, with the 2019 case being the surviving docket number and the 2020 action being treated as an amendment to the surviving action. Respondent also requested a hearing to determine if Applicant was entitled to belated appellate review of his initial post-conviction relief action pursuant to Austin. Attached to this return and before this Court are the records of the Aiken County Clerk of Court regarding Applicant's general sessions matter, the records from Applicant's direct appeal (including the record on appeal which contains a copy of Applicant's trial transcript), the records from Applicant's initial post-conviction relief matter, Applicant's records from the South Carolina Department of Corrections, and the records from the two current actions.

At the start of the evidentiary hearing, Respondent renewed its motion to merge the two applications, which was granted upon consent of Applicant. Accordingly, this Court finds these two actions are to be merged into one, with the 2019 case being the surviving docket number and the 2020 action being treated as an amendment to the surviving action, and instructs the Aiken

County Clerk of Court to file this order in both actions, and promptly close the 2020 action (2020-CP-02-00640).

At the evidentiary hearing, prior PCR counsel Zmroczek testified that she discussed an appeal with Applicant several times, including before and after the hearing. She elaborated that Applicant repeatedly stated he wanted to pursue an appeal from the denial of his post-conviction relief action. She stated that due to a miscommunication with her office staff, a notice of appeal was inadvertently not filed on Applicant's behalf.

Applicant next testified on his own behalf. He also testified he wanted to pursue an appeal from the denial of his post-conviction relief action and asked prior PCR counsel Zmroczek several times to file an appeal on his behalf. He stated he is seeking permission to pursue belated appellate review of the denial of his first post-conviction relief action pursuant to Austin.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety and listened to the testimony provided at the evidentiary hearing. After this thorough review of the record and testimony, this Court determines Applicant has established he is entitled to seek belated appellate review of the denial of his first post-conviction relief proceeding. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80.

MOTION TO MERGE APPLICATIONS GRANTED

As discussed above, Applicant has filed two nearly identical applications for post-conviction relief seeking belated appellate review of the denial of his initial post-conviction relief proceeding: a second post-conviction relief action (2019-CP-02-01521), on June 19, 2019, and then, while his second action was still pending, Applicant filed a third application (2020-CP-02-00640) on March 16, 2020.

An applicant is not generally allowed to have multiple post-conviction relief proceedings in regard to the same conviction. *See Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (PCR rules “contemplate adjudication on the merits of the original petition, one bite at the apple as it were.”); *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981) (successive applications for post-conviction relief strongly disfavored); S.C. Code Ann. § 17-27-90 (“All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application.”). Respondent moved to have the two proceedings merged and that the application for post-conviction relief filed on March 16, 2020 be considered an amendment to the application for post-conviction relief filed on June 19, 2019.

This Court grants this motion to merge the two cases, with the action filed on June 19, 2019 (docket number 2019-CP-02-01521) being the surviving case. Accordingly, this Court further orders that the application filed on March 16, 2020 (docket number 2020-CP-02-00640) be dismissed and that the filings associated therewith be considered as amendments to the 2019 application.

GRANT OF BELATED APPELLATE REVIEW

Successive applications such as the one before this court are disfavored. *See* S.C. Code Ann. § 17-27-90. However, Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Inherent in this allegation is a claim that former post-conviction relief counsel was ineffective. The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. *Coleman v. Thompson*, 501 U.S. 722, (1991). Therefore, “the contention that prior PCR counsel was ineffective is not *per se* a ‘sufficient reason’ warranting a successive PCR application under [S.C. Code Ann.] § 17-27-90.” *Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin provides for a belated appellate review of an initial post-conviction relief action where prior post-conviction relief counsel fails to timely appeal the denial of the application. Id. at 454, 409 S.E.2d at 396; see S.C. Code Ann. § 17-27-100 (right to appeal final judgment by post-conviction relief court). But Austin “is limited to its particular factual situation.” Aice, 305 S.C. at 452, 409 S.E.2d at 394.² Pursuant to Austin, an evidentiary hearing may be conducted in regards to a successive post-conviction relief application “on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review.” Austin, 305 S.C. at 454, 409 S.E.2d at 396. “If the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding.” Id. at 455, 409 S.E.2d at 396. Austin, therefore, allows an applicant to petition the Supreme Court for discretionary review of the dismissal of his initial post-conviction relief application, and may do so outside of the ordinary time limits for bringing such an appeal.

In the present case, Applicant asserts prior post-conviction relief counsel failed to file an appeal on his behalf. As summarized above, the evidence before this Court establishes Applicant did not make a knowing, voluntary, and intelligent waiver of his right to seek appellate review from the denial of his first post-conviction relief action. Accordingly, this Court finds Applicant is entitled petition the South Carolina Supreme Court for belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin.

² Aice was issued in conjunction with Austin, limiting the reach of Austin and holding “that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel.” 305 S.C. at 454 n.1, 409 S.E.2d at 396 n.1.

CONCLUSION

Based on the foregoing, this Court finds Applicant is entitled to seek belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant's two pending PCR actions be merged, with the action filed on June 19, 2019 (docket number 2019-CP-02-01521) being the surviving case and the application filed on March 16, 2020 (docket number 2020-CP-02-00640) be dismissed and that the filings associated therewith be considered as amendments to the 2019 application;
2. Applicant remain in the custody of the South Carolina Department of Corrections; and
3. Applicant is granted the right to seek belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin.

AND IT IS SO ORDERED this 10th day of September, 2021.



COURTNEY CLYBURN POPE
Presiding Judge
Second Judicial Circuit



South Carolina

EXHIBIT NO. 6

Caudy, Lara

From: Joshua Osborne <joshuaosborne@scag.gov>
Sent: Wednesday, December 29, 2021 10:42 AM
To: Flynn, Sean
Subject: [External] RE: Artrell Hickson
Attachments: RE: Transcript Request Form for Artrell Hickson v. State (2013-CP-02-1153)

Follow Up Flag: Follow up
Flag Status: Flagged

Good Morning Mr. Flynn,

Unfortunately, we were unable to obtain the transcript for the referenced hearing, as when we requested it past the 5-year limit for court reporters to retain records. I've attached the transcript request and the court reporters' response to this email for your convenience.

Sincerely,
 Joshua Osborne

From: Flynn, Sean <sflynn@sccid.sc.gov>
Sent: Wednesday, December 29, 2021 10:14 AM
To: Joshua Osborne <joshuaosborne@scag.gov>
Subject: Artrell Hickson

Good morning,

Can you please forward me the PCR Hearing Transcript dated September 11, 2015? Thank you so much. I look forward to hearing back from you.

Sean Flynn
 Administrative Coordinator
 SCCID/Appellate Division
 (803) 734-1330

This communication and any attachment thereto is intended only for use by the addressee(s) named herein, and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, utilization, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error please notify the Commission on Indigent Defense immediately and permanently delete the original and any copy of any e-mail and any printout thereof. SCCID may be reached by using the email address of the sender, or at 803-734-1343.

Caudy, Lara

From: Transcripts <transcripts@sccourts.org>
Sent: Wednesday, June 23, 2021 10:11 AM
To: Kaitlyn Slice
Subject: RE: Transcript Request Form for Artrell Hickson v. State (2013-CP-02-1153)

Unfortunately, pursuant to rule 607, court reporters are not required to retain records after five-years. The date you provided is over the five-year limit.

From: Kaitlyn Slice <KSlice@scag.gov>
Sent: Wednesday, June 23, 2021 9:31 AM
To: RetiredCR <Retiredcr@sccourts.org>
Cc: Transcripts <transcripts@sccourts.org>
Subject: RE: Transcript Request Form for Artrell Hickson v. State (2013-CP-02-1153)

Sorry, forgot to attach the request form!

From: Kaitlyn Slice
Sent: Wednesday, June 23, 2021 9:30 AM
To: retiredcr@sccourts.org
Cc: Transcripts <transcripts@sccourts.org>
Subject: Transcript Request Form for Artrell Hickson v. State (2013-CP-02-1153)

Good morning!

Please find the attached transcript request form for the above-referenced hearing. If the transcription amount is over \$500, please let me know prior to preparing.

****Please note that we would like it expedited****

Thanks!



Kaitlyn S. Slice
 Legal Assistant
 SC Attorney General's Office
 Rembert C. Dennis Building
 1000 Assembly St.
 Columbia, SC 29201
 Office: 803-734-3737
kslice@scag.gov

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Aiken County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

---

ARTRELL HICKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-001262

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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies that a true copy of the Motion for a New Trial, or in the Alternative, an Order to Reconstruct the Record of Petitioner's Post-Conviction Relief Hearing in the above referenced case has been served upon Megan Harrigan Jameson, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and Artrell Jabar Hickson, #343019, at Allendale Correctional Institution, P.O. Box 1151, Highway 47, Fairfax, SC 29827, this 23rd day of February, 2022.

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

**RECEIVED****Mar 04 2022**

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

On Petition for Writ of Certiorari to Aiken County  
Courtney Clyburn Pope, Post-Conviction Relief Judge  
Appellate Case No. 2021-001262

---

ARTRELL HICKSON,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

---

**RETURN TO PETITIONER'S "MOTION FOR A NEW TRIAL OR, IN THE  
ALTERNATIVE, AN ORDER TO RECONSTRUCT THE RECORD OF PETITIONER'S  
POST-CONVICTION RELIEF HEARING"**

---

Respondent the State of South Carolina, through its undersigned counsel, makes the following return to "Petitioner's Motion for a New Trial or, In the Alternative, An Order to Reconstruct the Record of Petitioner's Post-Conviction Relief Hearing" and would respectfully show unto the Court as follows:

**I. PROCEDURAL HISTORY**

Petitioner is presently confined in the South Carolina Department of Corrections. In June of 2009, Petitioner Artrell Hickson and his brother, Javier Hickson, were arrested following an investigation into the armed robbery of the Graniteville branch of Security Federal Bank. In December of 2009, the Aiken County Grand Jury indicted Petitioner and his brother for one count each of armed robbery. In April of 2010, the Aiken County Grand Jury additionally indicted Petitioner and his brother for one count each of possession of a firearm during the

commission of a violent crime. On September 20, 2010, a jury trial was commenced in the Aiken County Court of General Sessions with the Honorable Doyet A. Early, III, circuit court judge, presiding. Petitioner was represented by Kelley P. Brown, Esquire. Second Circuit Solicitor J. Strom Thurmond, Jr., and Assistant Solicitor Susanna Ringler prosecuted the case. At the conclusion of trial, the jury convicted Petitioner and his brother as indicted. The trial judge sentenced Petitioner to concurrent terms of imprisonment of twenty-eight years for the armed robbery conviction and five years for the firearm conviction.

Subsequently, Petitioner filed a timely notice of appeal and was represented on appeal by Jerry M. Screen, Esquire. Following briefing, the South Carolina Court of Appeals affirmed Petitioner's convictions and sentence. State v. Hickson, Op. No. 2012- UP- 667 (Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

***First Post-Conviction Relief Action (2013-CP-02-1153)***

Petitioner filed his first application for post-conviction relief on May 21, 2013, alleging the following grounds for relief:

1. Ineffective assistance of trial counsel.
  - a. "The Petitioner's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the Petitioner's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
  - b. "The Petitioner's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the Petitioner's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory



- and insufficient to establish probable cause.”
- c. “The Petitioner’s right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel’s failure to MOTION TO DISMISS with prejudice against the State, the Petitioner’s arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.”
  - d. “The Petitioner’s right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel’s failure to call alibi witnesses Crystal Harris, Charles Smalls, and Tommy Parker, for the defense during Petitioner’s criminal trial.
  - e. “The Petitioner’s right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel’s failure to advise Petitioner as to the pros and cons of offering testimony and negligently advising Petitioner not to testify and for failing to explain to the Petitioner without his testimony his attempt to corroborate his albi witness testimony would be seriously compromised.”
  - f. “The Petitioner’s right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel’s failure to request a Neil –vs- Biggers Hearing due to the allege victim’s bank employee never picked the Petitioner out of any type of photo array or line-up procedures prior to his arrest.”
  - g. “The Petitioner’s right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel’s failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence.”

Respondent made its return to the application and requested and evidentiary hearing be held to resolve these claims. An evidentiary hearing was convened before the Honorable Edgar

W. Dickson, circuit court judge, on September 11, 2015. Petitioner was present alongside counsel Aimee Zmroczek, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. Following the hearing, Judge Dickson denied and dismissed the action in full. A written order of dismissal was signed by Judge Dickson on December 21, 2016 and filed with the Aiken County Clerk of Court on January 9, 2017. Petitioner filed and served a motion to reconsider. Respondent filed a return in opposition to Petitioner's motion. On March 14, 2017, Judge Dickson summarily denied the motion to reconsider, and the order was filed on March 17, 2017. Petitioner did not file an appeal following the denial of relief.

However, Petitioner filed a second post-conviction relief action (2019-CP-02-01521), on June 19, 2019, asserting his first PCR counsel Aimee Zmroczek failed to file an appeal of the denial of his initial PCR action and asserting he was entitled to a belated appellate review pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Then, while his second action was still pending, Petitioner filed a third application (2020-CP-02-0586) on March 16, 2020, again asserting that initial PCR counsel failed to file an appeal from the denial of his initial PCR action and seeking belated appellate review.

In response to these two applications, Respondent the State of South Carolina made a return and motion to merge these actions into one, with the 2019 case being the surviving docket number and the 2020 action being treated as an amendment to the surviving action, as well as requested a hearing to determine if Petitioner was entitled to belated appellate review of his initial post-conviction relief action pursuant to Austin.

A hearing was convened before the Honorable Courtney Clyburn Pope, circuit court judge, on September 7, 2021, in the court's virtual courtroom on the Cisco WebEx platform.

Petitioner was present and represented by his counsel, Nancy Fennell. Respondent was represented by undersigned counsel, Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Petitioner's prior post-conviction relief counsel, Aimee Zmroczek, was also present. At the start of the hearing, Respondent renewed its motion to merge the two applications, which was granted upon consent of Petitioner.

At the evidentiary hearing, prior PCR counsel Zmroczek testified that she discussed an appeal with Petitioner several times, including before and after the hearing. She elaborated that Petitioner repeatedly stated he wanted to pursue an appeal from the denial of his post-conviction relief action. She stated that due to a miscommunication with her office staff, a notice of appeal was inadvertently not filed on Petitioner's behalf.

Petitioner next testified on his own behalf. He also testified he wanted to pursue an appeal from the denial of his post-conviction relief action and asked prior PCR counsel Zmroczek several times to file an appeal on his behalf. He stated he is seeking permission to pursue belated appellate review of the denial of his first post-conviction relief action pursuant to Austin.

Following the hearing, the post-conviction relief court determined Petitioner did not make a knowing, voluntary, and intelligent waiver of his right to appeal his initial post-conviction relief action and granted him the right to seek belated appellate review of this initial post-conviction relief action pursuant to Austin.

## **II. RETURN TO THE CURRENT PETITION BEFORE THIS COURT**

In his "Petitioner's Motion for a New Trial or, In the Alternative, An Order to Reconstruct the Record of Petitioner's Post-Conviction Relief Hearing," Petitioner, rather than asking for a new post-conviction relief proceeding based on the unavailability of the transcript

from Petitioner's initial post-conviction relief proceeding, inexplicably seeks a new trial on his underlying general sessions convictions, thereby eliminating his need to meet his burden of proof of establishing he is entitled to post-conviction relief as required by the Uniform Post-Conviction Procedures Act and long-established precedent. S.C Code Ann. § 17-27-10 et seq., Rule 71.1(e), SCRCPP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Petitioner fails to cite to any authority whatsoever to support his position that he is entitled to the windfall of a new trial without meeting his requisite burden based solely on the unavailability of a transcript from his first post-conviction relief proceeding in which relief was denied. It is crucial to note that Petitioner's trial transcript is readily available, and Petitioner fails to make any argument as to why the appropriate relief of a new post-conviction relief proceeding is unavailable or inadequate should a reconstruction of the record of the hearing not be fruitful. It is unclear why Petitioner has adopted this argument. Petitioner's motion for a new trial should be denied.

Here, the proper course of action is to remand back to the circuit court for a reconstruction hearing of Petitioner's initial post-conviction relief proceeding. The trial court has the authority to set the record for appellate review. State v. Ladson, 373 S.C.320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). When a transcript cannot be produced, the proper remedy is to attempt to reconstruct the record. "[T]he inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal." Id. (internal citations omitted). "Where a trial transcript has been lost or destroyed, a court may remand to have the record reconstructed." Koon v. State. 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); see also Whitehead v. State. 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) (holding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968) (same); Ladson. 373 S.C.

at 325, 644 S.E.2d at 273-274; Dolive v. J.E.E. Developers. Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992) (same).

Further, the Court has discretion in remanding the case to the trial court for a reconstruction of the content of the recordings. See State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007) (“The authority of the trial court in South Carolina to reconstruct the record for appellate purposes aligns our state with the majority of jurisdictions that hold ‘the inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal.’ ” (quoting Smith v. State, 433 A.2d 1143, 1148 (Md. 1981))); id. at 325, 644 S.E.2d at 273–74 (concluding a reconstructed record on appeal must allow for “meaningful appellate review,” and a new trial is only appropriate if the appellant establishes “the incomplete nature of the transcript prevents the appellate court from conducting a ‘meaningful appellate review.’ ” (quoting In re D.W., 615 S.E.2d 90, 94 (2005))). Respondent submits an attempt to reconstruct the record of Petitioner’s initial post-conviction relief proceeding is the appropriate course of action, not a de novo PCR hearing as Petitioner asks this Court to grant.

Accordingly, Respondent requests that this Court grant Petitioner’s alternative request in his motion for this matter to be remanded back to the circuit court for a reconstruction hearing to attempt to reconstruct the record of Petitioner’s initial post-conviction relief proceeding. Petitioner has failed to provide any reason whatsoever why this is not the appropriate form of relief at this juncture based on the specific circumstances involved.

### **III. PRAYER FOR RELIEF**

Based on the foregoing, Respondent respectfully asks this Court to deny Petitioner’s “Petitioner’s Motion for a New Trial or, In the Alternative, An Order to Reconstruct the Record

of Petitioner's Post-Conviction Relief Hearing" as to Petitioner's request for a new trial. Rather, Respondent submits the appropriate course of action would be to remand this matter back to the circuit court for all parties to attempt to reconstruct the record of Petitioner's initial PCR proceeding. Furthermore, Respondent requests this Court hold the appeal in abeyance until this matter has been ruled upon.

**WHEREFORE**, Respondent prays this Court will deny to Petitioner's motion for a new trial on his general sessions convictions, remand the matter to the circuit court to allow the parties to attempt to reconstruct the record of Petitioner's initial PCR proceeding; hold this appeal in abeyance pending a ruling on Petitioner's petition; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

By:



Megan Harrigan Jameson

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

March 4, 2022

## The Supreme Court of South Carolina

Artrell Hickson, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2021-001262

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### ORDER

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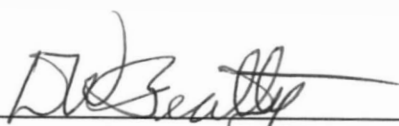
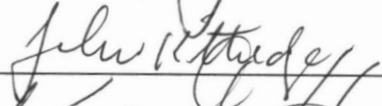
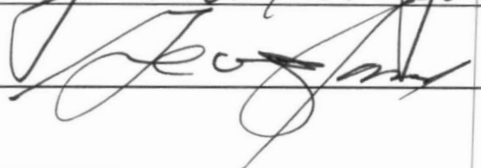
Petitioner has filed a notice of appeal from an order of the circuit court granting him an *Austin*<sup>1</sup> review of the denial of his first application for post-conviction relief (PCR). However, counsel for Petitioner has advised the Court that the transcript from the hearing on Petitioner's first PCR application is no longer available. Accordingly, Petitioner has filed a motion for a new trial or, in the alternative, for an order to remand the case for a hearing to reconstruct the record of Petitioner's first PCR hearing. Respondent opposes the motion for a new trial but does not oppose a remand for reconstruction of Petitioner's first PCR hearing.

The motion for a new trial is denied. We remand this matter to the Honorable Edgar W. Dickson to reconstruct the record of the September 11, 2015 hearing on Petitioner's first PCR application (2013-CP-02-1153). See *Koon v. State*, 358 S.C. 359, 595 S.E.2d 456 (2004), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (2002); *China v. Parrott*, 251 S.C. 329, 162 S.E.2d 276 (1968); *State v. Ladson*, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007). A hearing should be held within 45 days of the date of this order. If Judge Dickson determines reconstruction is not possible, he shall notify this Court and the parties within 15 days of the reconstruction hearing. If the record is reconstructed, the parties shall notify this

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<sup>1</sup> *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

Court, and the matter will proceed upon Petitioner's receipt of the transcript from the reconstruction hearing.

|                                                                                    |      |
|------------------------------------------------------------------------------------|------|
|  | C.J. |
|  | J.   |
|  | J.   |
|  | J.   |
|  | J.   |

Columbia, South Carolina  
April 5, 2022

cc:

Megan Harrigan Jameson, Esquire  
Lara Mary Caudy, Esquire  
The Honorable Edgar W. Dickson



1 STATE OF SOUTH CAROLINA)

2 ) IN THE COURT OF  
3 COUNTY OF AIKEN ) GENERAL SESSIONS

4  
5 THE STATE, )

6 Plaintiffs, )

7 Vs. ) CASE NO. 2013-GS-02-01153

8 ARTRELL HICKSON, )

9 Defendant. )

10  
11 APRIL 28, 2022

12 (VIRTUAL)

13  
14 HONORABLE EDGAR W. DICKSON, JUDGE

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

16 BY: MEGAN H. JAMESON, ESQUIRE

17 Attorney for the Plaintiffs

18 BY: LARA M. CAUDY, ESQUIRE

19 Attorney for the Defendant

20  
21  
22  
23  
24 KATHERINE A. SPIRES

25 REGISTERED PROFESSIONAL REPORTER

|    |                         |                  |              |                                |
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| 2  | <u>WITNESS</u>          | <u>DIRECT</u>    | <u>CROSS</u> | <u>REDIRECT</u> <u>RECROSS</u> |
| 3  | <b>AIMEE ZMROCZEK</b>   |                  |              |                                |
| 4  | Ms. Jameson             | 10               |              |                                |
| 5  | Ms. Caudy               |                  | 12           |                                |
| 6  | <b>KELLEY BROWN</b>     |                  |              |                                |
| 7  | Ms. Jameson             | 15               |              |                                |
| 8  | Ms. Caudy               |                  | 52           |                                |
| 9  | <b>ARTRELL HICKSON</b>  |                  |              |                                |
| 10 | Ms. Jameson             | 18               |              |                                |
| 11 | Ms. Caudy               |                  | 20           |                                |
| 12 | <b>DAVID GOURLEY</b>    |                  |              |                                |
| 13 | Ms. Jameson             | 21               |              |                                |
| 14 | Ms. Caudy               |                  | 40           |                                |
| 15 | <b>JUDGE DICKSON</b>    | 60               |              |                                |
| 16 | Ms. Jameson             | 69               |              |                                |
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| 18 | Certificate of Reporter |                  | 80           |                                |
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| 3  | R-1             | Notes              |           | 79        |
| 4  | R-2             | Email chain        |           | 79        |
| 5  | C-1             | Notes              |           | 79        |
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1 THE COURT: Ms. Jameson, do you have  
2 this organized?

3 MS. JAMESON: I do, Your Honor. If I  
4 can put the brief procedural background on the  
5 record and Ms. Caudy and I have already been able  
6 to agree on two exhibits to introduce and kind of  
7 the procedures. So hopefully it will stream plan  
8 things a little bit for the Court.

9 THE COURT: Okay. And let me just --  
10 before we do that, let me harass Ms. Zmroczek for  
11 driving and trying to do this. Okay. But now, go  
12 ahead, Ms. Jameson.

13 MS. JAMESON: Thank you, Your Honor.  
14 Megan Jameson on behalf of the State. This is the  
15 matter of Artrell Hickson verses the State of South  
16 Carolina and we are here for a reconstruction  
17 hearing to attempt to reconstruct the record from  
18 Mr. Hickson's first PCR hearing held before Your  
19 Honor on September 11, 2015.

20 For a brief procedural background. In  
21 June of 2009, Mr. Hickson and his brother Javier  
22 were arrested following an investigation into an  
23 armed robbery of the Graniteville branch of the  
24 Security Federal Bank. In December of 2009, the  
25 Aiken County Grand Jury indicted Mr. Hickson for

1 one count of armed robbery. And then in April of  
2 2010, the Grand Jury additionally indicted  
3 Mr. Hickson and codefendants for one count of  
4 possession of firearm during the commission of a  
5 violent crime.

6 On September 20, 2010, Mr. Hickson and  
7 his brother Javier proceeded to a jury trial before  
8 Judge Early. Mr. Hickson was represented by Kelly  
9 Perkins Brown and Solicitor Thurmond and Assistant  
10 Solicitor Susanna Ringler prosecuted the case. At  
11 the conclusion of the trial, the jury convicted  
12 Mr. Hickson and his brother as indicted and Judge  
13 Early sentenced Mr. Hickson and his brother to  
14 concurrent terms of imprisonment of 28 years for  
15 the armed robbery and five years concurrently for  
16 the firearm conviction.

17 He subsequently had a direct appeal and  
18 his convictions were affirmed on appeal. He then  
19 commenced to ten week PCR action on May 21, 2013.  
20 The State made its return and requested an  
21 evidentiary hearing. As I mentioned before, an  
22 evidentiary hearing was convened before Your Honor  
23 on September 11, 2015. He was represented by  
24 Counsel Aimee Zmroczek and the State was  
25 represented by Assistant Attorney General Daniel

1 | Gourley.

2 |           At this hearing, trial counsel  
3 | testified and Mr. Hickson testified. Following the  
4 | hearing, Your Honor took the matter under  
5 | advisement and then subsequently denied relief. A  
6 | written order was signed by Your Honor on December  
7 | 21, 2016 and filed on January 9th of 2017.

8 |           Mr. Hickson through Counsel Zmroczek  
9 | filed and served a timely motion to reconsider.  
10 | Respondent filed a return in opposition. And on  
11 | March 14th of 2017, Your Honor summarily denied the  
12 | motions for reconsideration. An order was signed  
13 | on March 17 of 2017. He did not file an appeal  
14 | following that denial of relief.

15 |           However, he did seek belated appellate  
16 | review through the filing of two subsequent PCR  
17 | actions seeking relief pursuant to *Austin v. State*.  
18 | One filed in 2019 and one filed in 2020. The State  
19 | filed a return requesting these two actions be  
20 | merged into one. And we have a hearing to  
21 | determine whether he was entitled to belated  
22 | appellate review of the first PCR pursuant to  
23 | *Austin*. That hearing was conducted in September of  
24 | last year and Judge Clyburn Pope granted *Austin*  
25 | relief. Mr. Hickson then initiated an appeal. And

1 he is currently represented by Appellate Defender  
2 Laura Caudy.

3 Mr. Hickson moved to reconstruct the  
4 record once it was discovered that the transcript  
5 from his first PCR hearing from September 11, 2015  
6 before Your Honor could not be transcribed. And on  
7 April 5th of this year, the Supreme Court issued an  
8 order remanding the matter back to Your Honor for a  
9 reconstruction hearing within 45 days and we are  
10 here today for that reconstruction hearing.

11 Before Your Honor and as part of the  
12 record, a judge's packet has been previously  
13 provided to the Court with the entire record for  
14 Mr. Hickson's first PCR, his second and third PCR  
15 proceedings, and his current appeal.

16 And at this time, there are two  
17 exhibits that I believe we either like to jointly  
18 move in as Court's exhibits or Respondent exhibits,  
19 however the Court would prefer to do. These were  
20 provided yesterday by email to the Court. The  
21 first is a nine page document which is handwritten  
22 and typed notes from Former Assistant Attorney  
23 General Daniel Gourley that were taken during the  
24 hearing and we'll have some testimony regarding  
25 those notes from Mr. Gourley. And the second

1 document that we would like to introduce is a chain  
2 of emails starting with an email from your law  
3 clerk at the time on Friday, April 8th to Ms.  
4 Zmroczek and Mr. Gourley with Your Honor's ruling  
5 in the case followed by an exchange with Mr.  
6 Gourley. And then eventually, Ms. Coleman from our  
7 office who took over Mr. Gourley's position when he  
8 moved for the post-conviction relief unit of our  
9 office. So we would like to introduce those two  
10 documents and I'll defer to Ms. Caudy, I don't  
11 believe she has any objection to either.

12 THE COURT: Ms. Caudy, any objection?

13 MS. CAUDY: No Judge.

14 THE COURT: How do -- you want to  
15 designate those as Court's exhibits or how did  
16 y'all want to have them marked?

17 MS. JAMESON: However Your Honor would  
18 prefer, we can either do them as Respondent's or  
19 Court's exhibits.

20 THE COURT: Well, if there's no  
21 objection, let's do them as Respondent's. Okay.  
22 And were those exhibits forwarded -- they probably  
23 haven't been, they've not been forwarded to  
24 Katherine the court reporter, have they?

25 MS. JAMESON: No, and I can do that



1 right after this hearing if that's agreeable with  
2 the Court and our court reporter.

3 THE COURT: And, Ms. Caudy, is that  
4 agreeable with you? We'll have them marked as  
5 Respondent's -- you said they're two exhibits? So  
6 that would be Respondent's 1 and 2?

7 MS. JAMESON: Yes, Your Honor.  
8 Respondent's 1 is nine pages of notes from Mr.  
9 Gourley. And Respondent's Exhibit 2 is an email  
10 chain that is four pages in total.

11 THE COURT: Okay. All right. Okay.  
12 Those are in evidence. And what now, Ms. Jameson?  
13 Do you have this organized?

14 MS. JAMESON: I do, Your Honor. We  
15 discussed, although it is technically Mr. Hickson's  
16 motion just for ease of everyone that the State  
17 would call witnesses. So if agreeable with the  
18 Court, at this time, we'll call Ms. Zmroczek first  
19 so we could hopefully get her taken care of.

20 THE COURT: I want to make sure Ms.  
21 Zmroczek is not driving right now.

22 MS. ZMROCZEK: I am not driving, Your  
23 Honor. As you can see, I'm not even in the  
24 driver's seat. I cut my leg, Your Honor, of  
25 course, you know me, and I had 22 stitches or

1 | excuse me, 22 staples.

2 | THE COURT: Okay. I'm sorry. Ms.  
3 | Zmroczek, you're at your office and you want to go  
4 | inside or are you good from there?

5 | MS. ZMROCZEK: I'm good.

6 | THE COURT: Okay.

7 | AIMEE ZMROCZEK,  
8 | being first duly sworn, was examined and testified  
9 | as follows:

10 | THE COURT: All right. Thank you,  
11 | ma'am. Now, Ms. Jameson, do you want -- since you  
12 | called her, I'll let you go first. Ms. Jameson,  
13 | are you going to ask her questions?

14 | MS. JAMESON: Yeah, I did. Was I muted  
15 | before?

16 | THE COURT: You were muted. I didn't  
17 | know.

18 | MS. JAMESON: Sorry, Your Honor.

19 | THE COURT: The fun thing about doing  
20 | this like this, we can't often hear each other.  
21 | Okay. Go ahead.

22 | DIRECT EXAMINATION BY MS. JAMESON:

23 | Q. Ms. Zmroczek, where are you currently  
24 | employed?

25 | A. Still at AJZ Law Firm.

1 Q. Are you a solo practitioner?

2 A. I am.

3 Q. Okay. Did you ever represent

4 Mr. Artrell Hickson?

5 A. I did.

6 Q. In what capacity did you represent him?

7 A. I was appointed to his PCR.

8 Q. Do you recall approximately when you  
9 represented Mr. Hickson?

10 A. I don't recall much of anything from  
11 this case, unfortunately.

12 Q. Did you represent him at his 2015 PCR  
13 hearing that we're here to reconstruct?

14 A. Yes. I was going to say sometime  
15 around 2013. I thought so, yeah, 2015 the hearing  
16 would be, yes.

17 Q. Do you have any notes from this  
18 hearing?

19 A. I don't. I actually went from archives  
20 and had my file pulled. I do have notes, but not  
21 from the hearing. All my notes are in preparation  
22 for the hearing, but not from the hearing.

23 Q. Do you have any independent  
24 recollection of this hearing?

25 A. I have no independent recollection.

1 I'm so sorry.

2 Q. Do you recall what witnesses testified?

3 A. I believe that Ms. Brown did testify.

4 I do remember her. I can't remember or not if my  
5 client testified, but I do remember that she did.

6 Q. Have you had an opportunity to review  
7 the order of dismissal that Judge Dickson issued in  
8 this case?

9 A. I did. I did, yes.

10 Q. Do you believe this accurately reflects  
11 the issues that were presented at the PCR hearing?

12 A. It's just -- it's impossible for me to  
13 say. I feel like there were a lot of issues in  
14 this case. I went back and looked at the order  
15 verses the -- verses the application and I'm just  
16 -- I'm just -- I'm not comfortable saying yes or  
17 no, I just don't know.

18 Q. All right. Thank you.

19 MS. JAMESON: The State has no  
20 additional questions for Ms. Zmroczek.

21 THE COURT: All right. Ms. Caudy, any  
22 questions?

23 MS. CAUDY: Yes, Your Honor.

24 CROSS EXAMINATION BY MS. CAUDY:

25 Q. Ms. Zmroczek, how long have you been

1     doing PCR?

2           A.     So, when I first started my own company  
3     in 2010, that's when they started the contract  
4     system, and so I signed up for that. I'm no longer  
5     on it now. Thank you, Judge Dickson. Just  
6     kidding. But I am no longer on it now. I have  
7     enough just personal, you know, outside business so  
8     that I don't do the contracts anymore. But when I  
9     was on it, I was on SBP contracts, PCR's, and  
10    criminal contracts, so I was helping them with a  
11    lot of stuff which meant a lot of appointments.  
12    So, a lot.

13           Q.     And given that you don't recall the  
14    specific PCR hearing, I just want to ask you one  
15    question about what you would typically do in  
16    preparation for a hearing and during and actual  
17    hearing. Would you normally attempt to elicit  
18    testimony from the trial attorney about the  
19    allegations listed in the PCR location or the  
20    amended PCR conviction?

21           A.     Yes.

22           Q.     So typically you would want to  
23    establish testimony to either support or refute  
24    your allegations?

25           A.     True.

1           Q.     So, in this case, it looks like there  
2 was seven claims that were ruled upon in an Order  
3 of Dismissal and seven claims that you alleged in  
4 the Motion to Reconsider that was filed on January  
5 19, 2017. So would you have attempted to elicit  
6 testimony from trial counsel on each of those seven  
7 allegations?

8           A.     Yes.

9           MS. CAUDY: That's all I have, Your  
10 Honor.

11          THE COURT: Okay. All right. Ms.  
12 Jameson, anything on redirect?

13          MS. JAMESON: No additional questions  
14 and we'd ask that Ms. Zmroczek be excused.

15          THE COURT: Ms. Zmroczek, you're  
16 excused. Good seeing you. I hope your leg gets  
17 better.

18          MS. ZMROCZEK: Thank you. I hope I get  
19 invited to the party.

20          THE COURT: Okay. Ms. Jameson, are you  
21 ready to call on your next witness?

22          MS. JAMESON: Yes, Your Honor. At this  
23 time the State would call Mr. Hickson's former  
24 trial counsel, Kelly Perkins Brown.

25          THE COURT: Ms. Brown, how are you?

1 MS. BROWN: I'm good, Judge. How are  
2 you?

3 THE COURT: I'm doing well. I need to  
4 swear you in, please, ma'am.

5 KELLEY BROWN,  
6 being first duly sworn, was examined and testified  
7 as follows:

8 THE COURT: All right. Ms. Jameson,  
9 Ms. Brown is your witness.

10 MS. JAMESON: Thank you, Your Honor.

11 DIRECT EXAMINATION BY MS. JAMESON:

12 Q. Ms. Brown, where do you currently  
13 practice law?

14 A. I'm an attorney with the Second Circuit  
15 Public Defender's Office.

16 Q. And in that capacity, did you have an  
17 opportunity to represent Mr. Hickson?

18 A. Yes.

19 Q. Do you recall approximately when you  
20 represented Mr. Hickson?

21 A. I don't recall and did not look up when  
22 I began my representation, but I represented him  
23 through his trial in 2010.

24 Q. And he was convicted at the conclusion  
25 of that trial; correct?

1           A.     That's correct.

2           Q.     Were you present at his September 11,  
3     2015 post-conviction relief hearing?

4           A.     Yes, I was.

5           Q.     Did you testify?

6           A.     I did.

7           Q.     Do you have any notes from this  
8     hearing?

9           A.     I do not.

10          Q.     Is this the first time you've been  
11     called as a witness in a post-conviction relief  
12     proceeding?

13          A.     No, it was not.

14          Q.     When you are a witness at a PCR  
15     hearing, do you typically take notes?

16          A.     No, I do not generally take notes as a  
17     witness. At a hearing, I'm prepared. I bring my  
18     file to the hearing. I'm prepared to testify as to  
19     my representation. But as I am not a party to the  
20     action, I do not make it a practice to take notes.

21          Q.     And, again, here you did not take  
22     notes; correct?

23          A.     That's correct.

24          Q.     Do you have any independent  
25     recollection of this hearing?



1           A.     I do not.

2           Q.     You don't recall any of the issues that  
3 were raised independent from the record you  
4 reviewed?

5           A.     No.  As I have my file I have the  
6 order.  I reviewed the Order of Dismissal, so --  
7 and I had prior to reviewing the Order of  
8 Dismissal, I had zero recollection of the issues in  
9 this case.  So I cannot testify of any certainty  
10 that I have specific recollection of that hearing.

11          Q.     And do you have any recollection of  
12 issues that were raised that are not encompassed in  
13 that Order of Dismissal you've reviewed?

14          A.     No.

15          Q.     Do you recall who else testified at the  
16 hearing?

17          A.     I believe the only testimony came from  
18 myself and from Mr. Hickson.

19                MS. JAMESON:  No further questions at  
20 this time, Your Honor.

21                THE COURT:  All right.  Ms. Caudy,  
22 anything on cross?

23                MS. CAUDY:  I have no questions, Your  
24 Honor.  Ms. Jameson covered it all.

25                THE COURT:  All right.  Thank you, Ms.

1 Brown. May she be excused?

2 MS. JAMESON: Yes, Your Honor. Thank  
3 you.

4 THE COURT: All right. Ms. Jameson,  
5 who is your next witness? Are you prepared to call  
6 your next witness?

7 MS. JAMESON: Yes, Your Honor. The  
8 State would call Mr. Hickson.

9 THE COURT: All right. Mr. Hickson,  
10 can you hear me?

11 MR. HICKSON: Yes, sir.

12 ARTRELL HICKSON,  
13 being first duly sworn, was examined and testified  
14 as follows:

15 THE COURT: All right. Thank you, sir.  
16 Mr. Hickson, if you wouldn't mind, if you'd just  
17 answer any questions that you're asked, okay? All  
18 right. Ms. Jameson?

19 MS. JAMESON: Thank you, Your Honor.

20 DIRECT EXAMINATION BY MS. JAMESON:

21 Q. Good morning, Mr. Hickson. Were you  
22 present at your first PCR hearing on September 11,  
23 2015?

24 A. Yes, ma'am.

25 Q. Did you testify at that hearing?

1 A. Yes, ma'am.

2 Q. Do you recall who else testified?

3 A. Ms. Kelley, Ms. Brown.

4 Q. Were there any other witnesses called?

5 A. No, ma'am.

6 Q. So it was just yourself and Ms. Brown;

7 correct?

8 A. Yes, ma'am.

9 Q. Okay. And you were represented by Ms.  
10 Aimee Zmroczek who testified earlier today?

11 A. Yes, ma'am.

12 Q. Okay. Do you have any notes from this  
13 hearing?

14 A. No.

15 Q. Do you have any memory of this hearing  
16 and what specific issues were raised?

17 A. Honestly, no.

18 Q. Have you had an opportunity to review  
19 the Order of Dismissal that Judge Dickson issued  
20 following the hearing?

21 A. Yes.

22 Q. Does it cover the issues that you  
23 recall being raised in your application and at the  
24 hearing?

25 A. Yes.

1           Q.    Are there any issues you can recall  
2    raising to the Court that are not in that Order of  
3    Dismissal?

4           A.    I can't remember.

5           Q.    Is there anything else you recall about  
6    that hearing that you'd like to tell the Court?

7           A.    No, ma'am.  It's been --

8           Q.    Thank you very -- oh, sorry.  Go ahead.

9           A.    It's been so long.  It's been so long  
10   ago, I don't remember.

11          Q.    I understand, Mr. Hickson.  Thank you  
12   very much.

13          A.    You're welcome.

14                THE COURT:  All right.  Ms. Caudy,  
15   anything on cross?

16                MS. CAUDY:  Just one, Your Honor.

17   CROSS EXAMINATION BY MS. CAUDY:

18          Q.    Mr. Hickson, do you recall whether any  
19   exhibits were marked and admitted into evidence  
20   during the course of the hearing?

21          A.    I can't recall.

22          Q.    Okay.

23                MS. CAUDY:  That's all, Your Honor.

24                THE COURT:  Okay.  Anything on  
25   redirect, Ms. Jameson?

1 MS. JAMESON: No, Your Honor. Thank  
2 you.

3 THE COURT: All right. Thank you,  
4 Mr. Hickson. All right. Is the State prepared to  
5 call its next witness?

6 MS. JAMESON: Yes. The final witness  
7 the State will call is Daniel Gourley.

8 DANIEL GOURLEY,  
9 being first duly sworn, was examined and testified  
10 as follows:

11 THE COURT: Thank you, sir. Ms.  
12 Jameson, he is your witness.

13 MS. JAMESON: Thank you, Your Honor.  
14 DIRECT EXAMINATION BY MS. JAMESON:

15 Q. Good morning, Mr. Gourley. You served  
16 as an assistant attorney general at the South  
17 Carolina Attorney General's Office; correct?

18 A. I did.

19 Q. What timeframe were you employed by the  
20 AG's office?

21 A. From 2012 to around 2015.

22 Q. And during those years at the AG's  
23 office, did you work in the post-conviction relief  
24 division?

25 A. I did.

1           Q.     How long were you in the  
2 post-conviction relief division?

3           A.     From about 2012 to 2015, so roughly  
4 three, three and a half years.

5           Q.     Do you recall what circuits you handled  
6 when you were at the AG's office?

7           A.     I was assigned to the Second Circuit  
8 and the Third Circuit.

9           Q.     In this capacity, did you represent the  
10 State at post-conviction relief hearings arising  
11 out of the Second Circuit?

12          A.     Yes.

13          Q.     Did you represent the State in the  
14 post-conviction relief hearing for Artrell Hickson?

15          A.     Yes.

16          Q.     So you were counsel for the State at  
17 the September 11, 2015 hearing?

18          A.     Yes.

19          Q.     Can you describe your standard process  
20 for preparing for a post-conviction relief hearing?

21          A.     Certainly. So I would have reviewed  
22 the trial transcript and take notes of any issues  
23 that I saw in my review and just kind of outlined  
24 just some basic understanding of the trial  
25 transcript. I also speak with defense counsel and

1 review the allegations in the post-conviction  
2 relief application. That could be in person or  
3 over the phone.

4 Q. Do you prepare any outline or notes to  
5 use at the hearing?

6 A. I did. I always did some boiler plate  
7 questions that we would always ask every PCR  
8 applicant and defense counsel in a PCR hearing just  
9 to kind of have foundational questions to ask. And  
10 then, of course, any additional questions that may  
11 arise from the direct or cross examination  
12 questions that were asked during the hearing.

13 Q. Would that include any sort of  
14 procedural history or call of the case?

15 A. Yes. I would always just kind of do  
16 our standard script so that we could get the ball  
17 rolling. Just a PCR application number, who the  
18 witnesses were going to be, who PCR counsel was,  
19 procedural history of the case. When the  
20 post-conviction relief was filed, the allegations  
21 alleged, and then when the State did its return.

22 Q. And have you had an opportunity to look  
23 at any notes that you may have taken in preparation  
24 for and during this hearing?

25 A. Yes.

1           Q.    Have you been -- you were previously  
2 provided with a copy of Respondent's Exhibit Number  
3 1, nine pages of notes; correct?

4           A.    I was.

5           Q.    Okay. Do these appear to be notes that  
6 you took in preparation for and during the hearing?

7           A.    Yes, that's absolutely my handwriting.

8           Q.    And the first three pages which are  
9 typed pages, is this the kind of outline call of  
10 the case with the allegations that you just  
11 discussed?

12          A.    It is.

13          Q.    Does that include the specific  
14 allegations that were being raised by Mr. Hickson  
15 and through his counsel Ms. Zmroczek at the  
16 hearing?

17          A.    Yes. So those alligations are in that  
18 script are the allegations that were pled in the  
19 post-conviction relief application. Any additional  
20 allegations that were raised, I would have written  
21 down in my notes if those were raised during the  
22 course of the PCR hearing or alleged at the start  
23 of a PCR hearing. But the ones in the script were  
24 pulled from his PCR application.

25          Q.    And so based on your standard practice,



1 | if new allegations arose at the start of or during  
2 | the hearing, you would indicate this on your  
3 | outline?

4 |           A.     Yes. I outline just in my legal pad  
5 | writing down notes to follow-up with questions.

6 |           Q.     Does it appear that any additional  
7 | allegations were raised in this case?

8 |           A.     I didn't see any in my review of my  
9 | notes. I don't have a specific recollection of  
10 | this hearing given at the time between it. But  
11 | based off my notes and when I would have typically  
12 | done post-conviction relief hearings, I didn't see  
13 | any additional allegations that were raised.

14 |           Q.     Okay. If you'll turn now to page 4 of  
15 | Respondents Exhibit Number 1 which appears to be  
16 | some typed notes or typed questions and then  
17 | written responses underneath and kind of can we go  
18 | over that written portion?

19 |           MS. JAMESON: And, Your Honor, at least  
20 | for me it's a little bit hard to read some of these  
21 | and so I'm going to have Mr. Gourley interpret his  
22 | handwriting for the record if agreeable with the  
23 | Court.

24 |           THE COURT: Mr. Gourley was going to be  
25 | a doctor and then decided to go to law school.

1           A.     Got to write quick, Judge.   So page 4  
2     it starts with the how many times did you meet with  
3     your attorney; is that correct, Ms. Jameson?

4           Q.     Yes.   And can you tell the Court what,  
5     where, whose questions these would be for?   Whose  
6     testimony is this reflective of?

7           A.     So what I -- again, what I typically  
8     did, my standard practice was to write kind of  
9     boiler plate questions that we'd always ask every  
10    PCR applicant and every defense counsel and any  
11    additional witnesses that we anticipated being  
12    called, I would have some scripted questions just  
13    to kind of get started.

14                   This first page or page 4 of State's  
15    Exhibit Number 1 is the questions that I would  
16    typically ask a PCR applicant.   So how many times  
17    did you meet with your attorney before going to  
18    trial?   I had one time, one time.   Do you recall  
19    reviewing discovery with your attorney?   I would  
20    assume -- I had written down alibi witnesses.   And  
21    then alibi witnesses were based off my review of  
22    the notes of discussion during the PCR hearing.

23                   Did you recall discussing any possible  
24    defenses with your attorney?   I have Charles Smalls  
25    and Tommy somebody later on in my notes.   I guess

1 Tommy is identified as Tommy Parker having reviewed  
2 my notes and actually talking with Ms. Caudy. The  
3 Charles Smalls and Tommy Parker were the alibi  
4 witnesses that were alleged to have been  
5 investigated or discussed during the course of Ms.  
6 Brown's representation of Mr. Hickson.

7 And then, did you give your attorney  
8 any leads or potential witnesses to investigate?  
9 He said, no. I do have a note down again on the  
10 bottom of this page about David Kearse's  
11 testifying. I don't have any specific independent  
12 recollection about any significance of that  
13 information.

14 Q. You mentioned that this is kind of your  
15 script for questions that you want to cover with  
16 the applicant. Is there a separate area where you  
17 would take notes of direct examination or cross  
18 examination from PCR counsel?

19 A. Yes. So I would also script out  
20 questions for PCR counsel that I would ask.  
21 Depending on Ms. Zmroczek calling Ms. Brown or if I  
22 called Ms. Brown, I don't have a recollection of  
23 who called her, but I would always have questions  
24 that I would ask her as well.

25 Q. Before we get to there, sorry, maybe I

1 did not phrase myself clearly. Do you have  
2 handwritten notes or anywhere else where you would  
3 take notes of the questions that Ms. Zmroczek was  
4 asking her client or witnesses independent from  
5 your pre-prepared questions?

6 A. Yes. So we'd always have a legal pad  
7 and we'd take handwritten notes of any questions  
8 that were asked by either Ms. Zmroczek or any  
9 additional questions I would ask as a result of  
10 questions being asked. So we'd always carry a  
11 legal pad and take handwritten notes as well.

12 Q. And the back three pages of  
13 Respondent's Exhibit Number 1, pages 6, 7 -- excuse  
14 me, 7, 8, and 9, does that appear to be the  
15 handwritten notes you would have taken  
16 contemporaneous during the hearing?

17 A. Yes, that is my handwriting.

18 Q. Okay. And page number 7 which does not  
19 have any sort of heading on it, but the first thing  
20 written on there appears to be only met with TC one  
21 time?

22 A. Right.

23 Q. Are these the notes that you would have  
24 taken during the direct of Mr. Hickson?

25 A. Yes.

1           Q.     Okay.  If you could kind of walk us  
2     through those a little bit.

3           A.     Yeah.  So at the start as you stated, I  
4     only met with TC one time.  TC being shorthand for  
5     "trial counsel."  And, again, these would be the  
6     questions and of the responses that Mr. Hickson was  
7     giving Ms. Zmroczek during, I guess, her direct  
8     examination of him.

9                     Talked about defenses at that time.  
10    Alibi witnesses advised not to put alibi.  Alibi  
11    were not credible.  Alibi gave off, I would assume,  
12    off, I'm not quite sure, statements there at trial.  
13    Routzong, Mr. Routzong I believe was Mr. Hickson's  
14    brother's counsel and codefendant or cocounsel in  
15    this case.  He had affidavits.  No mention of  
16    alibis because no one testified for him.

17                    And then I have a note here on expert  
18    of dogs and fingerprints.  Underneath that, I have  
19    Charles Small and Tommy Parker.  Then I have  
20    defendant and codefendant had the same defense  
21    involved, and I'm sorry, Judge, I don't know what  
22    that word is.  Off something.  And didn't testify  
23    because of her.  I would assume that was a  
24    discussion.  Again, I'm speculating, but I would  
25    assume that's a discussion between Ms. Brown and

1 Mr. Hickson as whether or not he would be  
2 testifying at trial.

3 Q. Okay. Does this appear to be all of  
4 the notes you took regarding Mr. Hickson's direct  
5 and cross examination?

6 A. Yes. In every PCR hearing I would take  
7 contemporaneous notes. Obviously, we have to wrote  
8 a proposed final Order or Order of Dismissal  
9 following the hearing. Ninety-five percent of the  
10 time we would never order the transcript, so it  
11 really was important to take contemporaneous notes.  
12 So, you know, obviously back in the day it was a  
13 little bit more fresh in my memory at the time that  
14 we would be writing proposed orders, so shorthand  
15 was the way to go.

16 Q. And you would be taking these notes  
17 while you were questioning the witnesses or  
18 listening to opposing counsel question witnesses;  
19 correct?

20 A. Yes.

21 Q. Okay. Other than Mr. Hickson  
22 testifying, do you recall whether Ms. Perkins Brown  
23 testified?

24 A. She did.

25 Q. Do you have any of your pre-typed

1 | questions that we are discussing that you would  
2 | draft before for her?

3 |         A.     Yes.

4 |         Q.     Okay.  And, specifically, is that page  
5 | 5 and 6 of Respondent's Exhibit Number 1?

6 |         A.     It is.

7 |         Q.     And if you could kind of walk us  
8 | through those notes.

9 |         A.     All right.  So I would have asked Ms.  
10 | Brown how long she had been practicing law which  
11 | was from 1998.  Whether she was appointed or  
12 | retained, and I had circled appointed.  I asked her  
13 | how many times did she meet with the applicant  
14 | prior to his trial.  She said she met with him on  
15 | two occasions.  That he was not in jail.  He did  
16 | post bond on October 14th of 2009.

17 |                 The original file she had -- I have  
18 | something under here originally file opened  
19 | unrelated charges and that JS represented him at  
20 | the bond hearing.  And later learned that, I think  
21 | Ms. Caudy refreshed my recollection that it was  
22 | Jerry Screen represented him at some point in time.  
23 | I have dates down that she met with him on April  
24 | 21st of 2010 and in September.  They were office  
25 | visits.  She did not file.  I don't have anything,

1 I have an X here that did not file Rule 5 for  
2 *Brady*. She did not have one in her file at the  
3 time. She did -- I have check marked that she did  
4 review the discovery with him. Prior to, that they  
5 discussed the evidence, the State's witness -- the  
6 evidence against him. They discussed alibi  
7 witnesses. With one of these witnesses was Tommy  
8 Parker which was led to believe that the  
9 surveillance pics -- pictures from Walmart would  
10 have negated alibi testimony. Did have disk of,  
11 again, I'm sorry, I can read that word. Did have  
12 disk of alibi testimony.

13 For "trial strategy," I have TS. Heard  
14 from last. Trial strategy was to npt put any  
15 evidence in and save for last closing argument.  
16 Would you briefly describe the State's evidence  
17 against the applicant? Contradiction and witness  
18 statements, there were no eyewitnesss. Codefendant  
19 implicated him and another individual. There was  
20 some snitch testimony somewhat corroborative from  
21 the other witnesses.

22 I asked what kind of investigation she  
23 did. She said she had gone through the case and  
24 having conversations with cocounsel. She had ample  
25 time to prepare for trial. And then I also have my



1 handwritten notes from Ms. Brown's either direct or  
2 cross examination of by Ms. Zmroczek.

3 Q. Okay. And is that page 8 and 9 of  
4 Respondent's Exhibit Number 1?

5 A. It is.

6 Q. Okay. And if you'll briefly kind of  
7 review and interpret those for the Court in the  
8 record, please.

9 A. So at the beginning I have Kelly Brown  
10 - met two times available at anytime. Did not have  
11 a private investigator. There were three  
12 codefendants. She's aware of those statements  
13 provided by Artrell and Javier. The alibi  
14 witnesses negated the Walmart video. She did not  
15 have it in her file. Will tell you that -- will  
16 tell you this course of trial. I have page 124  
17 down, so what I'll typically do is you can see down  
18 the right side of the page there's a line there,  
19 it's any questions that we'd need to ask or  
20 follow-up, I'd always put an asterisk by it and  
21 would write out the question that we needed to ask.

22 I didn't do that at any point in time  
23 here, but I have page 124. I'm not sure what the  
24 significance of that is. I went back and reviewed  
25 my notes that I took of the trial transcript prior

1 to the PCR hearing and I can't tell you what  
2 significance that is again today.

3 Better trial strategy to put witnesses  
4 in. I think that would probably be the question  
5 that Ms. Zmroczek would have asked her. Ms. Brown  
6 says, could have been better trial strategy. Still  
7 at better trial strategy or better strategy to go  
8 last argument. Then there's a discussion on the  
9 true and just verdict. Off to the left. Don't  
10 recall if alibi witnesses were there or ready to  
11 go. Again, going back to I assume the judge's jury  
12 charge of the seek the truth facts.

13 Then there's something on a comment,  
14 comment to have off record in page 28 which goes  
15 back to, I guess, voir dire during the jury  
16 selection. And then I have underneath that, jury  
17 charge and possible happened.

18 See if I have anything else. And then  
19 going on to the next page, I have a bank robbery.  
20 Bases were covered. Again, I have page 42 of the  
21 trial transcript, observation. On going back to  
22 page 42 of the trial transcript in my notes dealt  
23 with some sort of State witness, Tanya Key, who I  
24 guess was at the bank at the time it was being  
25 robbed. I'm not quite sure.

1 I have Screen represented Artrell at  
2 the bond. Don't know if Screen ever made a motion  
3 to be relieved. Credibility of State witnesses,  
4 there were several inconsistencies. Trial strategy  
5 to not call them. Meeting with hit man. Meeting  
6 two times. Two investigators employed there. I  
7 assume they had two investigators at the public  
8 defender's office and testimony caught off guard,  
9 but I don't have any context for that.

10 Q. Thank you for reviewing those. To the  
11 best of your recollection, do the notes accurately  
12 reflect the witnesses who testified at the hearing?

13 A. I don't have any specific recollection  
14 of the witnesses' testimony. I will say that I  
15 wrote down notes contemporaneously with what they  
16 were testifying to, that was always my standard  
17 practice. But I don't have any independent  
18 recollection of anybody's testimony from that  
19 hearing.

20 Q. If there were any other witnesses who  
21 testified, what was your standard practice if it  
22 was witnesses you hadn't prepared for? Clearly you  
23 had prepared for the applicant and trial counsel to  
24 testify, if there had been any other witnesses or  
25 surprise witnesses, how did you typically handle

1 | that in your role?

2 |           A.     So if there would have been any  
3 | additional witnesses, I would have taken notes. So  
4 | we would have obviously had to incorporate their  
5 | testimony from direct and cross examination into  
6 | the proposed Order of Dismissal if the application  
7 | was denied.

8 |           Additionally, I would have had the  
9 | notes. I would have had questions handwritten out  
10 | to ask them. And they would probably have been a  
11 | little bit more detailed in the notes I would have  
12 | taken because I wouldn't have prepared my script.  
13 | So I've been trying to think of some questions to  
14 | ask as well on the fly.

15 |           Q.     Do you recall whether any other  
16 | witnesses were there and present?

17 |           A.     I don't recall any other witnesses  
18 | testifying. Again, I don't have the specific  
19 | recollection of this hearing, but I feel confident  
20 | in saying under oath that had there been additional  
21 | witnesses testifying, I would have taken notes on  
22 | them.

23 |           Q.     I believe we covered this before, but  
24 | based on your notes and in your review of the  
25 | record we have, the issues that were raised and the

1 application and are indicated on page 1, 2, and 3  
2 of your call of the case from Respondent's Number 1  
3 are the issues that were raised at the PCR hearing?

4 A. Yeah. Again, my typical practice  
5 during the PCR hearing would have been if any  
6 additional issues would have been raised at the  
7 start of the hearing or during the course of the  
8 hearing by the applicant, we obviously want to  
9 incorporate that in the Order of Dismissal or  
10 purposed Order of Dismissal to make sure everything  
11 is preserved for appellate review. So I would have  
12 certainly asterisked any kind of additional  
13 allegations and asked additional questions on those  
14 allegations that were raised outside of what was  
15 already pled in the application.

16 Q. Have you had an opportunity to review  
17 the Order of Dismissal from this hearing?

18 A. Yes.

19 Q. Did you draft the Order of Dismissal in  
20 this hearing?

21 A. No. That's not my -- I did not.

22 Q. Why not? Since your typical practice  
23 was you do the hearing and then you draft the  
24 order, can you explain for the record why you did  
25 not do so here?

1           A.     So Ms. Coleman, I guess, who is now Ms.  
2     Hunter she was taking over the Second and Third  
3     Circuit, I was transitioning out of post-conviction  
4     relief division at this time into the Internet  
5     Crimes Against Children Division, so I was juggling  
6     both of those jobs and responsibilities was a  
7     little bit much, so Ms. Coleman since she was  
8     taking over the two circuits was responsible for  
9     drafting the order of dismissals. She had my  
10    notes. Obviously, I was accessible to her if she  
11    had any questions. And she -- based off of reading  
12    the Order of Dismissal she -- that's just not my  
13    style of writing, so I would assume that she was  
14    the one who wrote the Order of Dismissal or  
15    proposed Order of Dismissal for Judge Dickson's  
16    review.

17           Q.     One thing I neglected to ask earlier.  
18     Did Judge Dickson -- do you recall whether Judge  
19     Dickson ruled at the conclusion of the  
20     post-conviction relief hearing on the record?

21           A.     I don't have a specific recollection of  
22     that, but it was typically Judge Dickson's  
23     procedure to take everything under advisement and  
24     then issue a ruling at a later date.

25           Q.     Do you recall whether you were notified

1 by his chambers of any sort of ruling at a later  
2 date?

3 A. You sent me the email from Judge  
4 Dickson which refreshed my recollection that he did  
5 at a later date rule and denied Mr. Hickson's  
6 post-conviction relief application. But absent  
7 having refreshed my recollection, I didn't have any  
8 sort of independent memory of that.

9 Q. And to the best of your recollection,  
10 you were transitioning to another unit at the  
11 Attorney General's Office and were not ultimately  
12 responsible for drafting and submitting that  
13 proposed Order of Dismissal in this case; correct?

14 A. That's correct.

15 Q. Okay. Is there anything else unique  
16 about this hearing or that stands out that would be  
17 helpful for the Court in attempting to reconstruct  
18 this record?

19 A. No, nothing that I can think of that  
20 would help the Court.

21 MS. JAMESON: No further questions at  
22 this time, Your Honor.

23 THE COURT: All right. Ms. Caudy, any  
24 questions of this witness?

25 MS. CAUDY: Yes, Your Honor.

1 CROSS EXAMINATION BY MS. CAUDY:

2 Q. I'd like to kind of pick up where we  
3 left off in regards to your Respondent's Exhibit  
4 Number 1 which is the email chain between Judge  
5 Dickson's clerk and it looks like you as well as  
6 Julie Coleman. You said that it wasn't your style  
7 of writing the Order of Dismissal?

8 A. Yes.

9 Q. Okay. And the email chain makes clear  
10 that, again, you were no longer with the  
11 post-conviction relief division of the AG's office,  
12 is that correct?

13 A. That's correct.

14 Q. Okay. Do you have that exhibit in  
15 front of you by chance?

16 A. Ms. Jameson sent it to me, I can pull  
17 it up if you give me a minute.

18 Q. That would be great if you could.

19 A. All right. Give me one second. All  
20 right. I've got it up.

21 Q. Okay. It looks like you responded to  
22 Ms. Smith on October 14th at 2:18 p.m. and you said  
23 that you had left the PCR division, that, you know,  
24 you cc' d Julie Coleman and she took over the  
25 circuit, basically just letting Ms. Coleman know of



1 the contact from Judge Dickson's clerk; is that  
2 correct?

3 A. That's correct.

4 Q. Okay. And then Judge Dickson's clerk  
5 responded a few minutes later and said, thank you  
6 for the update and she looked forward to hearing  
7 from Ms. Coleman?

8 A. Yes.

9 Q. That was at 2:24 p.m. And then that  
10 same day on October 14th at 4:27 p.m., did Ms.  
11 Coleman respond?

12 A. I don't -- yes, she did. Sorry.

13 Q. So basically within two and a half  
14 hours she had given Judge Dickson a proposed Order  
15 of Dismissal?

16 A. Yes.

17 Q. Okay. And you indicated earlier that  
18 you had reviewed the Order of Dismissal?

19 A. I did.

20 Q. Okay. Based on your review of the  
21 Order of Dismissal in comparison to Judge  
22 Dickson's, the clerk's email on October -- I'm  
23 sorry, on April 8, 2016 at 3:13 p.m., based on that  
24 email in which he rules that he's going to deny Mr.  
25 Hickson's post-conviction relief, he includes in

1 | that email -- or his clerk includes in that email  
2 | his conclusions of law on the seven allegations  
3 | that are ruled upon in the Order of Dismissal; is  
4 | that correct?

5 |           A.     Give me one second.  Yes.

6 |           Q.     And does it appear based on that email  
7 | from Judge Dickson's law clerk, in comparison to  
8 | the proposed Order of Dismissal submitted by Julie  
9 | Coleman in October of 2016 that she merrily copied  
10 | and pasted Judge Dickson's conclusions of law and  
11 | put them into the Order of Dismissal?

12 |           A.     It does.

13 |           Q.     Okay.  Because Ms. Coleman, she was not  
14 | present at the PCR hearing, was she?

15 |           A.     I don't have a specific recollection  
16 | whether she was or wasn't.  I will say if she was  
17 | we would have probably had notes from her, so I  
18 | would be inclined to say, no.

19 |           Q.     Okay.  So she prepared a proposed Order  
20 | of Dismissal based on your notes and Judge  
21 | Dickson's law clerk's email?

22 |           A.     Yes.

23 |           Q.     Okay.  Is there any testimony or  
24 | summary of testimony that appears in the email from  
25 | Judge Dickson's law clerk from April of 2016?

1           A.     It doesn't appear so, no.

2           Q.     Okay.  So it's -- his email only -- I'm  
3     sorry, the law clerk's email only contains  
4     conclusions of law?

5           A.     Essentially, yes.

6           Q.     Okay.  And in your review of the Order  
7     of Dismissal, is there any summary of the testimony  
8     that was elicited during the PCR hearing?

9           A.     No.

10          Q.     Okay.  So that Order of Dismissal it  
11     includes the procedural history similar to what was  
12     included in the State's return to the  
13     post-conviction relief application as well as the  
14     conclusions of law that were written by Judge  
15     Dickson in that email; is that correct?

16          A.     Yes.  Yep, you are correct.

17          Q.     Okay.  Now going back to the actual PCR  
18     hearing, you said that you had a script that you  
19     would prepare in advance to have the various  
20     witnesses who were going to testify at the hearing;  
21     is that correct?

22          A.     That is correct.

23          Q.     Okay.  Do you recall whether Ms.  
24     Zmroczek presented the testimony of Mr. Hickson  
25     first before Ms. Kelley brown testified?

1           A.    I don't have a specific recollection to  
2   that, no.

3           Q.    Okay.  But typically in your  
4   experience, the applicant would go first.  I guess  
5   to clarify, do you recall whether you called Ms.  
6   Brown as a witness or whether Ms. Zmroczek called  
7   Ms. Brown as a witness?

8           A.    I don't have an independent  
9   recollection of who called who.  Typically Ms.  
10   Zmroczek would always call the applicant first to  
11   allege any allegations and then we would always  
12   follow-up with defense counsel to discuss the  
13   allegations that the applicant was alleging.  But  
14   it varied from counsel to counsel as to who called  
15   defense counsel up in the stand.  Sometimes I  
16   would, sometimes PCR counsel would.  But I don't  
17   have an independent recollection of who call Ms.  
18   Brown.

19          Q.    Okay.  Or who testified first whether  
20   it was Mr. Hickson or Ms. Brown?

21          A.    I don't, no, ma'am.

22          Q.    Did you only ask Mr. Hickson the four  
23   questions that appear?  I guess it's on page 4 of  
24   Respondent's Exhibit Number 1?

25          A.    Yes.

1           Q.    Are there only four questions you asked  
2 him or would you have asked him follow-up  
3 questions?

4           A.    I probably would have asked him some  
5 follow-up questions. I only say that because I  
6 have the David Kearse testifying which wasn't part  
7 of my script. I don't know. Obviously, he stated  
8 something about David Kearse testifying for me to  
9 write it down, but I don't know what question I  
10 would have asked him to elicit that response. But,  
11 no, I didn't have any additional questions outside  
12 of potentially that one question. I --

13          Q.    Would you have --

14          A.    Go ahead. Sorry.

15          Q.    Sorry.

16          A.    No, you're all right.

17          Q.    Would you have questioned Mr. Hickson  
18 essentially to follow-up on questions that Ms.  
19 Zmroczek may have questioned him about on direct?  
20 Would you have tried to follow-up on some of his  
21 responses during your cross examination?

22          A.    I could have. I don't have an  
23 independent recollection of whether I did or did  
24 not. If I would have followed up with questions, I  
25 would have taken notes. I don't see any. Usually

1 | what I would -- my typical practice would have been  
2 | to draw a line under the questions or the testimony  
3 | that he would have presented to indicate, all  
4 | right, he's done with say direct examination and  
5 | then take any handwritten notes for cross  
6 | examination that I would have done. Which I don't  
7 | have any. Nothing indicates to me that I see any  
8 | follow-up outside of my standard script questions.

9 |       Q.     So if you would have asked him  
10 | additional questions, your notes from his responses  
11 | would have appeared on page 4 of Respondent's  
12 | Exhibit Number 1 or would they have appeared on  
13 | your legal pad? Do you recall?

14 |       A.     More likely than not on my legal pad.  
15 | As I indicated on direct examination, if there were  
16 | any questions that I felt needed to be brought out  
17 | during cross examination, I would have typically  
18 | written them on the right hand of that piece of  
19 | paper. I always drew a line down the side to sit  
20 | there and put a star and say, all right, we need to  
21 | follow-up on this question or that question. So  
22 | those would typically be where my cross examination  
23 | questions would have been generated from.

24 |       Q.     Okay. On page 7 of Respondent's  
25 | Exhibit Number 1, it looks like your notes from Ms.

1 Zmroczek's examination of Mr. Hickson. A few lines  
2 down it says, alibi not credible. Do you recall  
3 the specifics of that? Who said they weren't  
4 credible? Whether Mr. Hickson said they weren't  
5 credible? Whether Ms. Brown had told Mr. Hickson  
6 they weren't credible? I mean, do you know where  
7 that credibility statement came from?

8 A. I don't. I mean, I can speculate on  
9 it, but I don't have an independent recollection of  
10 it.

11 Q. Okay. Below that it says, alibi gave  
12 off in statements. Can you decipher what it says  
13 below that line? Something at --

14 A. There at trial.

15 Q. Okay. So you don't recall whether Mr.  
16 Hickson testified that his alibi witnesses were  
17 present at the trial?

18 A. I don't.

19 Q. Okay. It state's that Mr. Routzong  
20 took affidavits. Do you recall whether any  
21 affidavits were presented during the evidentiary  
22 hearing, the PCR hearing?

23 A. I don't have any indications that any  
24 exhibits or evidence was introduced at the PCR  
25 applicant -- PCR application hearing. But I don't

1 have a specific recollection as to whether anything  
2 was introduced or not. But it had -- my typical  
3 practice would have been had anything been  
4 introduced, we would have entered -- I would have  
5 taken notes on it, made a notation as to State's  
6 Exhibit Number 1 or Defense Exhibit Number 1, such  
7 and such.

8 Q. Okay. If the clerk of court's office  
9 has exhibits from the PCR hearing, would you  
10 conclude that they were, you know, properly  
11 admitted during the hearing?

12 A. Yeah, absolutely.

13 Q. Okay. So if the clerk of court's  
14 office has two exhibits, essentially statements  
15 from a Tommy Parker and a Charles, I want to say  
16 their names properly, I'm the one who told you  
17 originally, but if they were --

18 A. Charles Smalls.

19 Q. Yeah, Charles Smalls and Tommy Parker.  
20 If there were statements that were marked and  
21 admitted during the course of the hearing, you're  
22 saying you would have had notes reflecting that?

23 A. I should have. It was my typical  
24 practice to write down State's Exhibit or Defense  
25 Exhibit Number 1 or Number 2 and what they were to



1 be able to incorporate it into the proposed Order  
2 of Dismissal if appropriate.

3 Q. Given that you don't have notes about  
4 any exhibits, I assume you don't have any  
5 recollection about when exhibits may have been  
6 admitted, whether it was through Mr. Hickson or  
7 through Ms. Brown?

8 A. No.

9 Q. Okay. You don't recall -- we may have  
10 been through this. Do you recall whether you  
11 called Ms. Brown as a witness or whether Ms.  
12 Zmroczek called Ms. Brown as a witness?

13 A. I don't have any independent  
14 recollection of who called who.

15 Q. Okay. Now the script that appears on  
16 page 5 of Respondent's Exhibit Number 1, your  
17 questioning of Ms. Brown, would those have been the  
18 only questions that you asked Ms. Brown or would  
19 you have followed up not only on her responses  
20 during your examination of her as a witness, but as  
21 well as what Ms. Zmroczek may have elicited from  
22 her during questioning?

23 A. I don't have any independent  
24 recollection of any additional questions that I  
25 would have asked. Again, that being said, my

1 typical practice if any additional questions were  
2 asked as a result of Ms. Zmroczek's direct or cross  
3 examination of Ms. Brown, I would have written them  
4 off to the side on the right hand side of the legal  
5 pad. The information that's incorporated in my  
6 script could have resulted from additional  
7 questions that were asked outside of the questions  
8 that were written down in my script. Obviously,  
9 you know, if you're in the flow of things and  
10 you're going to follow-up, you know, with  
11 questions, but what questions I may or may not have  
12 asked Ms. Brown, I don't know.

13 Q. Okay. If Ms. Zmroczek had elicited  
14 testimony from Ms. Brown on the allegations that  
15 were alleged in the application, would you have  
16 tried to refute that testimony while you were or,  
17 you know, kind of refute those allegations while  
18 you were questioning Ms. Brown, you know, follow-up  
19 on the questions that Ms. Zmroczek was asking her?

20 A. Yeah, absolutely.

21 Q. So you normally took really thorough  
22 notes that included all of the testimony and all of  
23 the allegations, it kind of seems that's what  
24 you're indicating?

25 A. Yes.

1           Q.    Your notes would be very thorough in  
2 order to help draft that Order of Dismissal?

3           A.    Yes.

4           Q.    Okay.

5           MS. CAUDY:  I think that's all I have,  
6 Your Honor.

7           THE COURT:  Anything on redirect?

8           MS. JAMESON:  No, Your Honor.

9           THE COURT:  All right.  Mr. Gourley,  
10 I'm sorry to take you off the stand now.

11          MR. GOURLEY:  I appreciate it, Judge.  
12 It's good to see you.

13          THE COURT:  Good seeing you.  Thank  
14 you.  All right.  Is the State ready to call its  
15 next witness?

16          MS. JAMESON:  The State has no  
17 additional witnesses to call.  And I neglect, I  
18 think I forgot to ask for Ms. Brown to be excused  
19 before and Mr. Gourley if they would like to be.

20          THE COURT:  Ms. Caudy, any objection?

21          MS. CAUDY:  I do.  I was hoping to  
22 recall Ms. Brown just briefly to ask one question.

23          THE COURT:  Okay.  All right.  Is it  
24 okay to excuse Mr. Gourley?

25          MS. CAUDY:  Yes, Your Honor.

1 THE COURT: Okay. Thank you, sir.  
2 Appreciate it.

3 MR. GOURLEY: Thank y'all.

4 THE COURT: All right. Ms. Brown,  
5 you're being recalled. You realize you are still  
6 under oath, okay?

7 MS. BROWN: Yes, Your Honor.

8 THE COURT: Okay. Ms. Caudy?

9 RECALL CROSS EXAMINATION BY MS. CAUDY:

10 Q. Ms. Brown, do you remember whether any  
11 exhibits were marked and admitted during the course  
12 of your testimony?

13 A. I do not remember.

14 MS. CAUDY: That's all, Your Honor.

15 THE COURT: Okay. May she be excused?

16 MS. CAUDY: Yes sir.

17 THE COURT: Well, I forgot, anything --  
18 any follow-up on that, Ms. Jameson?

19 MS. JAMESON: No, Your Honor. Thank  
20 you.

21 THE COURT: Okay. And no objection to  
22 her being excused?

23 MS. JAMESON: No, Your Honor.

24 THE COURT: Thank you, ma'am, Ms.  
25 Brown, you are excused.

1 MS. BROWN: Thank you, Judge.

2 THE COURT: All right. What's next,  
3 Ms. Jameson?

4 MS. JAMESON: The State has no  
5 additional witnesses or exhibits to introduce. I  
6 don't know if Your Honor has any notes or  
7 recollections to put on the record regarding this  
8 hearing.

9 THE COURT: Well, actually, I've got  
10 some notes. And going back to the exhibits and  
11 y'all don't have a copy of these, do you?

12 MS. JAMESON: No, Your Honor.

13 THE COURT: Okay.

14 MS. CAUDY: I have -- sorry.

15 THE COURT: I'm sorry.

16 MS. CAUDY: I have a copy of the  
17 exhibits that were admitted during the PCR hearing.  
18 They're just very poor qualities -- poor quality.

19 THE COURT: And I don't have copies of  
20 those, but my notes indicated that they proffered  
21 Applicant's Number 1 as Tommy Parker and Applicant  
22 Number 2 was Charles Smalls. And they had  
23 something to do with the alibis, but they did not  
24 come and testify. Which was -- well, but we  
25 proffered those affidavits to protect the record.

1 I don't know whether that was sufficient or not.

2 Do you want me to email these notes to y'all?

3 MS. JAMESON: That would certainly be  
4 helpful, Your Honor.

5 THE COURT: Can y'all bear with me a  
6 second and see how we can transfer those to you?

7 MS. JAMESON: Certainly, Your Honor.  
8 Thank you.

9 THE COURT: Then y'all can -- I didn't  
10 know -- well, okay. Bear with me one second while  
11 I -- Mr. Gourley's handwriting looks really good  
12 now I start looking at mine, so. No comments.  
13 Okay. My admin is scanning them right now and  
14 they're going to be emailing them to both of y'all  
15 right now. And I guess, Katherine, she needs to  
16 send a copy to you too as well, doesn't she? Okay.  
17 Let me remind her of that.

18 Is that what we did? Yeah, we'll mark  
19 those as, they would be -- would they be Exhibit 3?

20 MS. CAUDY: Or Court's Exhibit 1 if  
21 Your Honor would prefer.

22 THE COURT: Whichever. Court's Exhibit  
23 1. Okay. Now while we're waiting -- while y'all  
24 are waiting to get that, can I just mention  
25 something to you? We were trying to find -- y'all

1 | had contacted the court reporter and she had  
2 | already turned everything in. And Cher Young,  
3 | C-H-E-R Young was the court reporter and I also had  
4 | Tammie Holmes, you know, at Judicial talk to her.  
5 | She said the computer that she was using crashed.  
6 | Okay. She said that she is agreeable to having it  
7 | fixed at Court Administration's expense and would  
8 | provide the transcript if it's in there, but she  
9 | has no idea whether it's in there or not. I had  
10 | them check the oldest folder that she had and it  
11 | only went back to 2016 and Ms. Young indicated that  
12 | she was -- she tried to be very consistent in  
13 | erasing things after five years, okay. But there's  
14 | -- there is a chance that the transcript could be  
15 | on that computer and -- but she's not willing to  
16 | just turn it over because that computer also has,  
17 | you know, personal notes and emails and photographs  
18 | and things like that. But she would agree to have  
19 | Jason Collins try and see if he could fix it. Now,  
20 | he is Faith Collins -- he is a court reporter's  
21 | husband who does computer work. And Faith Collins  
22 | is in with family court assigned to the First  
23 | Circuit here. But she said she's not putting her  
24 | money in it and so y'all would have to decide  
25 | whether y'all wanted me to try. And I have not had

1 an opportunity to talk to Mr. Collins to get any  
2 kind of estimate on how much that would be to do  
3 that if it's in there. You know, because if the  
4 computer's crashed, I don't know how long. But do  
5 y'all want me to follow-up with that and then who  
6 would pay for it?

7 MS. JAMESON: The State certainly would  
8 like for us to try to do that because the record --  
9 the actual transcript is always going to be much be  
10 better than anything we can even try to reconstruct  
11 in a perfect world. So I think it would be worth  
12 it to do that.

13 THE COURT: Okay. Now, is the State  
14 willing to pay for it?

15 MS. JAMESON: I might need some  
16 clarification on that. Because you said before  
17 Court Administration's expense, so this is not  
18 something Court Administration is willing to pay  
19 for.

20 THE COURT: Okay. Well, they did not  
21 indicate that they were willing -- I mean, I have  
22 not talked to -- when I was talking with Tammie  
23 Holmes, she didn't say anything about, oh, yeah,  
24 we'll be glad to pay it. So I'm assuming they are  
25 expecting one of these two ladies' groups to pay



1     for this, you know.

2                 MS. JAMESON:  If we could get  
3     clarification on that and then -- that is not an  
4     ordinary expense we incur, so I would have to get  
5     higher up the chain of command approval for that.  
6     But that is certainly something that I would be  
7     willing to entertain and then discuss with Your  
8     Honor and Ms. Caudy.

9                 THE COURT:  Okay.  What I'll try and do  
10    is let me try and get in touch with Mr. Collins and  
11    he will then have to, I guess, probably look at the  
12    computer to give maybe us a range or something like  
13    that.  And it could be a waste of time.  Because  
14    sometimes when computers crash, they are gone.  
15    Okay.

16                MS. CAUDY:  Well, and especially given  
17    that you said that Ms. Young said that she was  
18    pretty habitual about deleting everything after the  
19    five year period.  But she only had files up to  
20    2016 where this hearing occurred in 2015.

21                THE COURT:  Right.  But, I mean, that  
22    was for her tapes, I think.  You're talking about  
23    doing that, so I don't know whether -- she said she  
24    could not remember whether she went back through  
25    the computer and actually cleaned the computer as

1 well. And I don't know. And, Katherine, didn't  
2 you talk to her as well?

3 MS. SPIRES: Yes, sir.

4 THE COURT: Okay. And you're on mute  
5 too.

6 MS. SPIRES: Sorry. Yes, sir, I did  
7 talk to her.

8 THE COURT: And she wasn't sure about  
9 if -- about whether anything would still be on the  
10 computer or not; correct, but she did try and get  
11 rid of the tapes as I recall?

12 MS. SPIRES: She said she gave  
13 everything she had to Court Administration maybe  
14 two years ago. I was pretty diligent about  
15 destroying records after five years. I have no  
16 records and what a joy that is.

17 THE COURT: Okay. All right. So after  
18 we finish this today, let's -- and we'll talk about  
19 this, I'll talk with Mr. Collins and like that  
20 because I agree it would be better -- it would be  
21 better for Mr. Hickson if we could get the actual  
22 transcript if we can put it together, okay?

23 MS. CAUDY: Yes, Your Honor.

24 THE COURT: Have y'all gotten the email  
25 yet?

1 MS. JAMESON: I have not.

2 THE COURT: Okay. It just got sent.

3 So I'll give y'all a second to see how long it  
4 takes to walk it --

5 MS. SPIRES: I got mine.

6 THE COURT: Okay.

7 MS. CAUDY: It just came, Your Honor.

8 THE COURT: Do y'all want a minute or  
9 two to look over those?

10 MS. JAMESON: Yes, please.

11 THE COURT: Okay. All right. I'm  
12 gonna go mute and off video for about five minutes  
13 or ten, you know, so y'all can look over it over,  
14 okay.

15 MS. JAMESON: Thank you.

16 THE COURT: Have you had a chance to  
17 look them over?

18 MS. JAMESON: I have, Your Honor.

19 THE COURT: And, Ms. Caudy?

20 MS. CAUDY: I have, Your Honor. Yes,  
21 sir.

22 THE COURT: My question is that's -- do  
23 I need to swear myself in?

24 EDGAR DICKSON,  
25 being first duly sworn, was examined and testified

## THE COURT - SUMMATION BY THE COURT

1 as follows:

2 MS. JAMESON: Yes, Your Honor. I think  
3 it might be helpful -- these -- I can read these a  
4 lot more clearly than I can read Mr. Gourley's  
5 notes. But if you wouldn't mind, kind of  
6 representing them a little bit for the record.

7 THE COURT: I have no independent  
8 recollection of this hearing and so I'm having to  
9 go by these notes as well. And if you want me to  
10 just start at the top of the page, page 1 starts  
11 off with Mr. Hickson's name at the top, okay. And  
12 then the second page, it's Mr. Gourley's cross  
13 examination. And the third page starts off with  
14 alibi witnesses. Fourth page has the date and  
15 testimony that video did not exist or not,  
16 something like that. And then the last page starts  
17 off with no alibi witness testified. Okay. Just  
18 so y'all will note, that's the order of the pages.

19 The one thing I just, as kind of an  
20 amusing side note to me is I think this is the  
21 first time Ms. Zmroczek ever appeared in front of  
22 me, and so I was trying to figure out how to  
23 pronounce her name and I was writing that on the  
24 upper right hand column.

25 And according to my notes, Mr. Hickson

## THE COURT - SUMMATION BY THE COURT

1 testified first and he told me a little background.  
2 I think at the time, Mr. Hickson, you were 25 and  
3 at Lieber and you had received a 28 year old  
4 sentence.

5 He testified that he was -- he had met  
6 his attorney one time. I have a note that page 326  
7 of the transcript was missing. But then I have --  
8 when you see something in brackets at a square, it  
9 says all even numbers are left out, usually that's  
10 just something that I noticed and not anything that  
11 was put in the record. Okay.

12 He testified that he had alibi  
13 witnesses who wrote statements and didn't think  
14 that she, meaning his attorney, did an  
15 investigation. The attorney needed to object to  
16 statements that were identified on page 197 of the  
17 transcript which I don't have. I don't have a copy  
18 of that in my file, so I don't know what that's.  
19 He then testified that his attorney advised him not  
20 to testify.

21 As to the alibi, he states that he was  
22 with his uncle working on cars and would not be  
23 strong enough for State and she wanted the last  
24 argument. Oh, okay. He was telling me what his  
25 attorney did not believe the alibi witnesses were

## THE COURT - SUMMATION BY THE COURT

1 strong enough and that she wanted the last  
2 argument. And then I have a question about how he  
3 was caught and underneath I have expert on  
4 fingerprints. But somewhere else in here, I don't  
5 think there was any fingerprints used at the trial,  
6 so I don't know what that means.

7 Incarcerated prior to trial. His  
8 attorney never visited him that time. But  
9 apparently out on, I'm assuming he was out on bond  
10 by the time we went to trial. And I don't have any  
11 independent memory of anything like that. He was  
12 denied appellate review. Claimed that his attorney  
13 failed to investigate the alibi witnesses, Charles  
14 Small and Tommy Parker. And when -- if y'all will  
15 remember, Mr. -- on page -- I mean, Exhibit 1 --  
16 Respondent's Exhibit 1 on page 7 of Mr. Gourley's  
17 notes, down at the bottom, and there was a note,  
18 defendant and codefendant's same defense involved  
19 and he couldn't read what that was. I think that's  
20 alibi. Because my notes indicate there that the  
21 brother had the same defense which was an alibi  
22 defense. Okay.

23 So, I think that kind of illegible  
24 notes seems to be alibi too, but I'm not sure. And  
25 he indicated -- Mr. Hickson indicated that what he

## THE COURT - SUMMATION BY THE COURT

1 | wanted from the PCR was a vacated sentence and a  
2 | new trial. On cross examination which begins at  
3 | the top of the next page, the only notes I took  
4 | were on Mr. -- from Mr. Gourley's cross examination  
5 | was, alibi witness and took no part in the crime.  
6 | And David Pierce (verbatim) implicated defendant  
7 | and brother in bank robbery. So I guess that was  
8 | the person who testified at the trial.

9 |           On redirect, Ms. Zmroczek relied on --  
10 | got him to say that he relied on his attorney about  
11 | whether to testify. And then you see in the  
12 | brackets out beside that, just that's a note to  
13 | myself, to his detriment perhaps to make me think  
14 | about that a little bit more when I was going over  
15 | this. And then Mr. Gourley didn't answer -- ask  
16 | any questions on recross. Do y'all have any  
17 | questions about that so far?

18 |           MS. JAMESON: No, Your Honor.

19 |           THE COURT: Ms. Caudy?

20 |           MS. CAUDY: No, Your Honor.

21 |           THE COURT: Okay. This is your best  
22 | chance to ask a judge what's going on, so. Okay.  
23 | Then Ms. Kelley Brown testified. She testified  
24 | that she had been practicing law since April of  
25 | 1988. She was appointed on this case. She

## THE COURT - SUMMATION BY THE COURT

1 indicated that they met on two occasions.  
2 Defendant was not in jail. Something about had  
3 files opened on two earlier charges. Jerry Screen  
4 was his attorney and that represented the Defendant  
5 at the bond hearing.

6 On April 2010, I don't know what that  
7 word is. Something to do with Mr. Screen. And  
8 then I believe she's indicating that she met with  
9 Mr. Brown on April 21st of 2010. Met -- and met  
10 prior to trial in September. You know, Rule 5 and  
11 Brady material. And she confirms that he --  
12 Mr. Hickson, he discussed the alibi. They talk to  
13 -- Ms. Kelley indicated that they talked to either  
14 she or her investigator, I don't remember who,  
15 talked to Tommy Parker, his uncle, about proposed  
16 testimony. Did not call Mr. Parker because  
17 surveillance from Walmart -- they had surveillance  
18 from Walmart that would negate the testimony and  
19 potential strength. And then so she made a  
20 judgement call between the potential strength of  
21 the alibi verses trial strategy to go last in  
22 closing.

23 She was led to believe that the State  
24 had rebuttal evidence to the alibi. And then as to  
25 the snitch testimony, I'm assuming that's



*THE COURT - SUMMATION BY THE COURT*

1 Mr. Pierce, no one but codefendants implicated the  
2 defendant. There were no eyewitnesses and no  
3 prints which goes back to the earlier statement.  
4 There's no other specific investigations by her.

5 The defense was -- her defense was just  
6 simply poking holes in the State's case. She  
7 indicated that she was prepared. Ms. Zmroczek  
8 reenforced that she only recall meeting Mr. Hickson  
9 two times. That she did not hire a private  
10 investigator and something about all three  
11 codefendants that I have no independent  
12 recollection about.

13 Then at the top of page 3 regarding  
14 alibi witnesses. There are statements done on  
15 forms by public defender's office. I have no idea  
16 why I have "can't" there. Something about saw  
17 Walmart video. Don't know. LE is usually law  
18 enforcement when I make my notes. Law enforcement  
19 testified that they did not, but I didn't finish  
20 that thought out on that page.

21 There is a reference again to page 124  
22 that I saw that Mr. Gourley had made the note also.  
23 And she said she did not -- I guess from law  
24 enforcement, did not get any surveillance from  
25 them. At that point would have -- would it have

1 | been better trial strategy. And I think that's  
2 | talking about whether or not to put him on the  
3 | stand. But she believed it was still best to get  
4 | the last argument in. And she had no recollection  
5 | of whether the alibi witnesses were ready to go.

6 |           There's also a reference to page 14 of  
7 | -- and that would be of the trial transcript.  
8 | There was a comment statement of, you know, to seek  
9 | the truth -- the jury's to seek the true facts.  
10 | And why no objection. And I think it was that  
11 | maybe the case law did not say that at the time.  
12 | And then I've got in brackets, not retroactive.  
13 | That would have been nothing that was testified to.  
14 | That was just my notes.

15 |           And then there's a comment about page  
16 | 28 referring to off the record discussions with the  
17 | judge which -- and then page 31, true and just  
18 | verdict. She didn't object to that. And in her  
19 | testimony at the time of the PCR, she's testified  
20 | she's just dealing with juveniles. This was a bank  
21 | robbery. Faces were covered. Referring to page  
22 | 42, I guess of the transcript. Don't know if there  
23 | was a motion to relieve after Screen appeared at  
24 | the bond hearing.

25 |           The -- this was -- her thoughts was

## THE COURT - SUMMATION BY THE COURT

1 | this is a credibility state -- credibility case and  
2 | there -- but there were several inconsistencies.  
3 | Again, there kind of star out to the side was for  
4 | me to look at that a little harder. And they chose  
5 | not to use, which I guess she's talking about the  
6 | alibi witnesses. And then she was crossed. They  
7 | were -- they do have two investigators. I don't  
8 | know, apparently there might have been a notary.

9 |           Ms. Caudy, y'all might know whether the  
10 | -- alibi things notarized, is that what she's  
11 | talking about?

12 |           MS. CAUDY: It is. Yes, Your Honor.

13 |           THE COURT: Okay. So I think she said  
14 | the notary was not the investigator and they were  
15 | using some forms that their PD's -- that the PD's  
16 | office had, I guess. And she did not know who  
17 | generated those statements.

18 |           And then going to page 4. Testimony  
19 | that video did not exist -- whether the video  
20 | existed or not. And I'm assuming that's talking  
21 | about the Walmart video. But she had no disk about  
22 | it labeled video. But that was a key element in  
23 | her belief and two other attorneys in the PD's  
24 | office thought the same thing. They were worried  
25 | about the -- there was some Walmart surveillance

1 that would mess with the alibi.

2 And then I have in my notes that we  
3 proffered Applicant's 1, which was Tommy Parker's  
4 affidavit and Applicant's 2 which was Charles  
5 Smalls. And then on cross, Mr. Gourley was  
6 apparently feared something about those videos.  
7 And then there was no questions on -- after that.

8 Then I have just my notes from Ms.  
9 Zmroczek's arguments. Do you want me to go over  
10 those?

11 MS. JAMESON: Yes, please.

12 THE COURT: Okay. She talked about  
13 there was an armed robbery. I don't understand  
14 fact that the file was closed. Met two times.  
15 She's referring to meetings with Ms. Brown. Vague  
16 memory. Not calling alibi witness with no video.  
17 And to not present evidence meets *Strickland*  
18 standard I guess. And she's referring to a couple  
19 of statements on page 28 and 31 about true and just  
20 verdict where Ms. Zmroczek argues that she should  
21 have -- that Ms. Brown should have objected.

22 And there was either apparently no  
23 preservation objection on page 28 regarding photo  
24 lineup. I don't know what -- there were obviously  
25 concerns about the ID and should have been granted

## THE COURT - DIRECT EXAMINATION BY MS. JAMESON

1 a new trial. And then on the last page she  
2 reminded that no alibi witnesses testified. And  
3 the photo lineup mug shots -- oh, that must be Mr.  
4 Gourley's arguments, I guess. I actually don't  
5 know what that top of the page whose arguments  
6 those were.

7 And there's a note Javier Hickson PCR,  
8 Judge Gee has it under advisement from May. That  
9 must have been referring about another case that  
10 Mr. Gourley might have just asked me about after we  
11 concluded. I don't have any idea what that means.

12 MS. CAUDY: We're speculating, I assume  
13 it's referring to his brother and codefendant  
14 Javier Hickson.

15 THE COURT: Oh, that could be. Okay.  
16 Well, that would make sense. Okay. Sorry. The  
17 mind does not remember all those things. Ms.  
18 Jameson, do you want to ask me any questions about  
19 the notes?

20 MS. JAMESON: Just a few, Your Honor.

21 DIRECT EXAMINATION BY MS. JAMESON:

22 Q. This was not Your Honor's first  
23 post-conviction relief term, was it, that you  
24 presided over?

25 A. No, ma'am. I had been on the bench at

1 | that time, I think I got on the bench in -- well,  
2 | 2009. So -- and when you first get on the bench,  
3 | since you haven't heard anything, they try and give  
4 | you as many PCR's as they can because you can't  
5 | have a conflict. Okay. So it wasn't my first, no.

6 | Q. Was your standard practice to take  
7 | notes during PCR proceedings?

8 | A. Yes, ma'am.

9 | Q. And was your standard practice for  
10 | these notes to encompass all testimony and exhibits  
11 | presented to the Court?

12 | A. Yeah, I try to. But, you know, as you  
13 | can see they're incomplete, so.

14 | Q. Do you have any recollection or reason  
15 | to believe that these notes do not encompass the  
16 | testimony and evidence presented at this hearing?

17 | A. Well, as you can see, I left out some  
18 | statements, but it's basic outline of what we --  
19 | the order in what was testified to.

20 | MS. JAMESON: No further questions.

21 | Thank you, Your Honor.

22 | THE COURT: Ms. Caudy, anything you  
23 | want to ask me?

24 | MS. CAUDY: No, Your Honor.

25 | THE COURT: Okay. All right. So what

1 -- I mean, I'm going to contact Mr. Collins still.  
2 Okay. And I'll get back with y'all to see what we  
3 can do. Okay. Is that what y'all want to do or is  
4 there something else y'all want me to address right  
5 now?

6 MS. JAMESON: No, Your Honor. I think  
7 the best course of action would be if there's a way  
8 we can potentially get that transcript, that would  
9 be the best evidence obviously of the hearing. If  
10 not, then I think we will need a ruling at that  
11 time from Your Honor as to whether or not the  
12 record has been adequately reconstructed for a  
13 meaningful appellate review.

14 THE COURT: Okay. All right. Well --  
15 okay. Let me contact Ms. Collins and -- I mean,  
16 Mr. Collins and let's see what we can do. Okay.  
17 Ms. Caudy, anything else you want me to do?

18 MS. CAUDY: Yes. Yes, Your Honor.  
19 Would you be agreeable to hearing argument now on  
20 whether the record was reconstructed to allow for a  
21 meaningful appellate review or would you prefer to  
22 hold those arguments at a later date?

23 THE COURT: I'll be glad to do it now  
24 if y'all want to do that. That way it will all be  
25 in one transcript. Okay.

1 MS. CAUDY: Yes, Your Honor. And all  
2 fresh in our minds.

3 THE COURT: Okay.

4 MS. CAUDY: I think based on what took  
5 place today it's clear that the record cannot be  
6 sufficiently reconstructed to allow for meaningful  
7 appellate review. I'll give Your Honor, I sent a  
8 few cases. *State verses Lad son* which is 373 S.C.  
9 320. *China verses parrot*, 251 S.C. 329. *Adams*  
10 *verses HR Allen Incorporated*, 397 S.C. 652. And  
11 then *Do live*, D-O-L-I-V-E is how you spell that,  
12 *verses JEE Developers* at 308 S.C. 380. Those are  
13 just some cases that discuss reconstructions and  
14 whether the record allows for meaningful appellate  
15 review.

16 For example, in *State verses Lad son*,  
17 our Supreme Court held that the record could not be  
18 sufficiently reconstructed to allow for meaningful  
19 appellate review. Because the record that was  
20 reconstructed was, you know, a summary fashion of  
21 the witnesses' testimony. It was pretty, you know,  
22 conclusory information was given. Which  
23 essentially what happened in this case, I mean,  
24 we're trying to go off of what Mr. Gourley's notes  
25 state and what Your Honor's notes state in a



1 summary fashion.

2           There's been some speculation been  
3 going on. You know Mr. Gourley couldn't remember  
4 some stuff. It was, you know, unclear to him of  
5 what some of his notes said. And the same was true  
6 with Your Honor's recollection of his notes. You  
7 know, there was some, I guess that she's talking  
8 about, those sort of statements. And even Your  
9 Honor admitted that your notes were incomplete, I  
10 think was the word that you used or kind of a basic  
11 summary of what occurred during the hearing.

12           For example, you know, the legal  
13 arguments made by counsel. I mean, Mr. Gourley had  
14 no notes regarding arguments that were made at the  
15 conclusion of the hearing. We wouldn't have even  
16 known they existed if it weren't for Your Honor's  
17 brief summary of what those arguments were.

18           There were three claims that were ruled  
19 upon in the Order of Dismissal -- I'm sorry, seven  
20 claims that were ruled upon in the Order of  
21 Dismissal. Some of them I didn't hear any  
22 testimony at all today discussed, for example,  
23 ineffective assistant counsel for failing to move  
24 to quash arrest warrants. I don't recall anyone  
25 mentioning that allegation. Either to move to

1 strike witness statements. Rendering trial, I  
2 don't recall any notes from Mr. Gourley or Your  
3 Honor about that allegation which was ruled upon in  
4 the Order of Dismissal.

5 Failure to cross examine the  
6 codefendant. I'm not sure if that's Mr. Kearse or  
7 if, I assume it's Mr. Kearse since Mr. Javier  
8 Hickson did not testify. But, again, there's  
9 numerous claims in the Order of Dismissal that were  
10 ruled upon where we didn't hear any testimony today  
11 that even mentioned them.

12 So I think it's clear based on what  
13 occurred today that that record is not -- that the  
14 record of his evidentiary hearing that occurred in  
15 September of 2015 has not been reconstructed to  
16 allow for meaningful appellate review. And the  
17 standard of review on appeal is whether there's any  
18 evidence to support the PCR judge's findings.  
19 Without that transcript, without a complete record  
20 of what the witnesses testified at the hearing,  
21 there's just no way that I can argue on appeal  
22 whether there's evidence to support Your Honor's  
23 findings or not.

24 The Order of Dismissal gives no  
25 guidance in respect to what that testimony may have

1 | been. With all due respect, the conclusions are,  
2 | you know, the claims are ruled upon in a conclusory  
3 | manner. There's no testimony cited in the Order of  
4 | Dismissal to support the rulings. There's no true  
5 | findings of fact with all due respect. The  
6 | assistant attorney general who drafted the proposed  
7 | Order of Dismissal wasn't even present at the  
8 | evidentiary hearing. From what I can tell, she did  
9 | not even consult Mr. Gourley's notes from that  
10 | hearing and tried to draft a proposed Order of  
11 | Dismissal that reflected the testimony at the  
12 | hearing.

13 |               And as clear by the fact that we're  
14 | here today, the attorney general's office did not  
15 | request a copy of that evidentiary hearing in order  
16 | to prepare the Order of Dismissal.

17 |               THE COURT: Yeah, I'm glad you getting  
18 | off of me and getting on them. Thank you. Go  
19 | ahead, Ms. Caudy.

20 |               MS. CAUDY: Sorry, Your Honor.

21 |               THE COURT: No, you're doing good.  
22 | Thank you, ma'am.

23 |               MS. CAUDY: So, again, based on the  
24 | case law in our state, the cases that I cited at  
25 | the beginning of my argument, I think it's clear

1 | that this record of the evidentiary hearing has not  
2 | been sufficiently reconstructed to allow for  
3 | meaningful appellate review and I would  
4 | respectfully ask Your Honor to make that finding  
5 | and ultimately it would be up to the Supreme Court  
6 | whether to grant him a new post-conviction relief  
7 | hearing. Thank you.

8 | THE COURT: Okay. So they won't  
9 | automatically do another one if we can't create a  
10 | meaningful record?

11 | MS. CAUDY: I think they would. I  
12 | think if you rule that the record cannot be  
13 | sufficiently reconstructed to allow for meaningful  
14 | appellate review that -- I mean, Ms. Jameson can  
15 | appeal that decision if she disagreed. If she  
16 | consents, then -- I mean, my point was that it's up  
17 | to the Supreme Court whether to grant him a new  
18 | PCR.

19 | THE COURT: Yeah, I understand it's not  
20 | my call. But that's where the case is right now;  
21 | correct?

22 | MS. CAUDY: Yes, Your Honor.

23 | THE COURT: Okay. All right. Ms.  
24 | Jameson, I'll be glad to hear from you.

25 | MS. JAMESON: Yes. Briefly, Your

1 Honor. To start off, there is no requirement that  
2 or precedent that there must be a word for word  
3 transcription of what happened at any sort of  
4 proceeding that is attempting to be reconstructed.  
5 I didn't hear Mr. Hickson's counsel cite to  
6 anything saying that there's no case law saying  
7 that it has to be word for word question answer.  
8 And that is not what we have here, but with a  
9 combination of Mr. Gourley's notes, the Court's  
10 notes, and the testimony from both Your Honor and  
11 Mr. Gourley as well as the three other witnesses  
12 who testified, we do have enough of a record for  
13 meaningful appellate review in this case.

14           It is very clear from reviewing the  
15 Order of Dismissal, the Motion to Reconsider, and  
16 Respondent's Exhibit Number 2 which is the email  
17 from Your Honor regarding the issues that were  
18 raised in the findings. We know the seven issues  
19 that were raised at the post-conviction relief  
20 hearing, so this is not a situation where we're not  
21 clear what issues were or were not raised.

22           It's not conclusory testimony that we  
23 have here. We have some direct questions. We have  
24 some direct testimony that's provided. And the  
25 State's position is that it is enough to provide

1 for meaningful appellate review of Your Honor's  
2 Order of Dismissal.

3 THE COURT: Okay. Thank you, ma'am.  
4 What I'll do is I'll see what I can do about  
5 talking with Mr. Collins so we can get a copy of  
6 the transcript. And I would -- we're supposed to  
7 get this to the Supreme Court by when?

8 MS. JAMESON: I think from the 5th,  
9 Your Honor, but I think it was having the hearing  
10 and we can probably update the Court that we have  
11 had the reconstruction hearing and we are waiting  
12 to hear back regarding possibly getting the  
13 transcript and that hopefully will be enough to  
14 appease the Court.

15 THE COURT: Okay.

16 MS. CAUDY: I would state that Your  
17 Honor is supposed to make a ruling within 15 days  
18 of the date of the hearing. Just to make you  
19 aware.

20 THE COURT: Okay. Thank you for  
21 reminding me of that. Okay. Fifteen days. Okay.  
22 All right. And what I'll do is I will send an  
23 email -- I'll send an email in response to the  
24 Order and copy y'all and let them know that we have  
25 -- we've had the hearing. Okay.

1 MS. CAUDY: Yes, Your Honor.

2 THE COURT: And what we're doing.

3 We're still trying to find the original tape.

4 Okay. Transcript. Okay. Thank y'all, ladies.

5 Thank you, Mr. Hickson.

6 MS. JAMESON: Thank you very much.

7 MS. CAUDY: Thank you.

8 (WHEREUPON, Respondent's Exhibit  
9 Numbers 1 and 2 and Court's Exhibit Number 1 was  
10 marked and entered)

11 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

)

COUNTY OF AIKEN )

I, KATHERINE A. SPIRES, Registered Professional Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Aiken County, South Carolina, via Virtual on the 28th of April, 2022.

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

June 14, 2022

s/Katherine A. Spires

Katherine A. Spires

Registered Professional Reporter



STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Artrell Hickson,

Applicant

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

2013-CP-02-1153

(Appellate Case No. 2015-002142)

**ORDER**

This matter is before this Court pursuant to the April 5, 2022 Order from the South Carolina Supreme Court remanding this case to reconstruct the record of the evidentiary hearing held on September 11, 2015 during Applicant's first post-conviction relief (PCR) action. A hearing was held on April 28, 2022 before the Honorable Edgar W. Dickson via the WebEx virtual platform. Applicant was present and represented by Appellate Defender Lara M. Caudy. Senior Assistant Deputy Attorney General Megan Harrigan Jameson represented Respondent.

At this hearing, the Court heard testimony from four witnesses: Applicant Artrell Hickson; Kelley Brown, Applicant's trial counsel; Daniel Gourley, who represented the State during Applicant's first PCR action; and Aimee Zmroczek, who represented Applicant during his first PCR action. This Court also had before it: (1) Applicant's Motion for a New Trial or, In the Alternative, an Order to Reconstruct the Record of Petitioner's Post-Conviction Relief Hearing filed February 23, 2022; (2) the State's Return to Petitioner's Motion for a New Trial or, In the Alternative, an Order to Reconstruct the Record of Petitioner's Post-Conviction Relief Hearing filed on March 4, 2022; (3) the Order of the South Carolina Supreme Court remanding this matter to this Court to reconstruct the record dated April 5, 2022; (4) the Aiken County Clerk of Court

FILED July 1 2022*Robert J. White* CMP  
C.C.P. & G.S.*Charles Griffen*  
Deputy Clerk

records; (5) Applicant's trial transcript dated September 20, 2010; (6) Applicant's direct appeal records; (7) Applicant's original PCR application filed May 21, 2013; (8) the State's Return dated July 1, 2013; (9) the Order of Dismissal from Applicant's first PCR action filed January 9, 2017; (10) Applicant's Motion to Reconsider filed January 17, 2017; (11) the State's Return to Applicant's Motion to Reconsider dated February 3, 2017; (12) the Order Denying Applicant's Motion to Reconsider dated March 14, 2017; (13) Applicant's second PCR application filed June 19, 2019; (14) Applicant's third PCR application filed March 16, 2020; (15) the State's Return and Motion to Merge PCR Applications dated August 9, 2021; and (16) the Order Granting Belated Appellate Review of Initial PCR Action Pursuant to Austin v. State filed September 10, 2021.

### **PROCEDURAL HISTORY**

An Aiken County grand jury indicted Applicant in December 2009 for armed robbery and in April 2010 for possession of a firearm during the commission of a violent crime. Applicant's case was called to trial on September 20, 2010 before the Honorable Doyet A. Early, III, and a jury. Applicant was tried jointly with his brother and codefendant, Javier Hickson. Then Solicitor J. Strom Thurmond, Jr. and Assistant Solicitor Susanna Ringler represented the state. Kelley Brown represented Applicant and Michael Routzong represented Javior Hickson. On September 22, 2010, the jury found Applicant guilty as indicted. He was sentenced to twenty-eight years for armed robbery and five years concurrent for the weapons offense.

Applicant filed a timely notice of appeal. The appeal was perfected by Jerry M. Screen. The Court of Appeals affirmed Applicant's convictions and sentence in an unpublished opinion. State v. Hickson, 2012-UP-667 (S.C. Ct. App. filed December 19, 2012).

On May 21, 2013, Applicant filed an application for post-conviction relief (PCR) alleging the following grounds for relief:

- a. The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's armed robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
- b. The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from applicant's armed robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
- c. The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
- d. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to provide written notice of the applicant's intent to offer a "Alibi Witness."
- e. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses, Charles Smalls; Tommy Parker; for the defense during applicant's criminal trial.
- f. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised.

- g. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil-vs-Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest.
- h. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence.
- i. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel failing to fully and completely cross-examine cooperating witness concerning charges that were dismissed as part of his plea agreement with the State and the minimum and maximum penalties he would have faced for those offenses.
- j. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to MOTION FOR RECONSIDERATION of his sentence where cooperating witness received a lesser sentence following his testimony against the applicant; thereby giving rise to the inference that this witness may have been lead to expect far greater potential benefit from his cooperation than the jury could reasonably have anticipated.

The state filed a return to this application on July 3, 2013. An evidentiary hearing was held on September 11, 2015 before this Court. Assistant Attorney General Daniel Gourley represented the state, and Aimee Zmroczek represented Applicant. Applicant and his trial counsel, Kelley Brown, testified at the hearing. Two exhibits were entered into evidence: Applicant's Exhibit No. 1 (Statement of Tommy Parker) and Applicant's Exhibit No. 2 (Statement of Charles Smalls). By order filed January 9, 2017, this Court denied Applicant relief.

On January 19, 2017, Applicant filed a motion to reconsider pursuant to Rule 59(e), SCRCR. The state filed a return to the motion to consider on February 6, 2017. By order filed March 17, 2017, this Court denied the motion.

Applicant's counsel failed to file a notice of appeal from the order denying him post-conviction relief. On June 19, 2019, Applicant filed a second PCR application seeking a belated appeal from the denial of his first application. On March 16, 2020, Applicant filed a third PCR application again seeking a belated appeal. The state filed a return and a motion merge the two PCR actions on August 13, 2021. An evidentiary hearing was convened on September 7, 2021 before the Honorable Courtney Clyburn-Pope. Senior Assistant Deputy Attorney General Megan Harrigan Jameson represented the state, and Nancy Fennell represented Applicant.

By order filed September 10, 2021, Judge Clyburn-Pope granted Applicant a belated appeal from the denial of his first application for post-conviction relief. In the same order, the judge also granted the state's motion to merge the two PCR actions.

Applicant timely filed a notice of appeal with the South Carolina Supreme Court. The Division of Appellate Defense undertook representation of Applicant. It was determined that a transcript of the evidentiary hearing held on September 11, 2015 during Applicant's first action for post-conviction relief could not be transcribed because more than five years had passed from the date of the hearing and the date the transcript was first requested from the court reporter. See Rule 607(i), SCACR (requiring court reporters to retain the tapes of a proceeding for five years).

On February 23, 2022, Applicant filed a Motion for a New Trial or, In the Alternative, an Order to Reconstruct the Record of Petitioner's Post-Conviction Relief Hearing with the Supreme Court. The State filed a return to this motion on March 4, 2022. By order dated April 5, 2022, the

Supreme Court remanded the matter to reconstruct the record of Applicant's September 11, 2015 evidentiary hearing.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

"South Carolina jurisprudence recognizes the trial court's authority to set the record for appeal." State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007); See China v. Parrott, 251 S.C. 329, 334, 162 S.E.2d 276, 278 (1968) (holding that where a portion of the court reporter's notes were lost, the trial judge properly considered affidavits from counsel and the court reporter in reconstructing the record); Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) (recognizing a court's power to remand for a reconstruction hearing), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 105, 610 S.E.2d 494, 501 (2005); Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) (finding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992) (holding the trial court did not err in granting property owner's request to reconstruct the record of zoning proceeding where portions of original tape of hearing were incapable of being transcribed). A reconstructed record on appeal must allow for "meaningful appellate review." Ladson, 373 S.C. at 325, 644 S.E.2d at 273-274.

This Court concludes that the record of the September 11, 2015 evidentiary hearing cannot be reconstructed to allow for meaningful appellate review. This Court has had the opportunity to review the available record and heard the witness testimony and arguments of counsel at the reconstruction 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 in reaching the conclusion



that the record cannot be sufficiently reconstructed.

The first witness presented at the reconstruction hearing was Aimee Zmroczek, who represented Applicant during his first PCR action. Zmroczek had no independent recollection of the evidentiary hearing held on September 11, 2015, nor did she recall what claims Applicant raised. However, she testified that she would have attempted to elicit testimony from the witnesses at the evidentiary hearing on each of the allegations raised in the application. Significantly, Zmroczek did not have any notes from the hearing. Kelley Brown, Applicant's trial counsel, was the second witness called at the reconstruction hearing. Brown had no independent recollection of her testimony during the September 11, 2015 evidentiary hearing. Applicant Artrell Hickson was the third witness to testify. Hickson likewise had no independent recollection of his testimony during the evidentiary hearing.

Daniel Gourley, who represented the State during Applicant's first PCR action, was the last witness to testify. Gourley also had no independent recollection of the September 11, 2015 evidentiary hearing. However, he had notes that he took during the course of the hearing. Gourley's notes were marked and admitted as Respondent's Exhibit No. 1. During his testimony, Gourley explained the content of his notes to the best of his ability. His notes included some of the questions he asked the witnesses during the evidentiary hearing as well as some of their responses. His notes also touched on some of the testimony elicited from the witnesses by Zmroczek during the hearing. However, his notes were incomplete, at times hard to decipher, and made no mention of the two exhibits that were admitted into evidence during the evidentiary hearing.

During his testimony, Gourley identified an email exchange between this Court's administrative assistant, Peggy Smith, then Assistant Attorney General Julie Coleman, and

Gourley. The email exchange, which took place on October 13, 2016, was marked and admitted as Respondent's Exhibit No. 2. In the exchange, Smith forwarded Gourley an email sent by this Court's law clerk to Gourley and Zmroczek on April 8, 2016, in which the clerk informed the parties this Court was denying Applicant's application for post-conviction relief. The clerk's email requested Gourley prepare the order of dismissal and included findings on the allegations raised in the application. Gourley informed Smith in the October 13, 2016 exchange that he no longer worked for the PCR Division at the Attorney General's Office and that Julie Coleman now represented the State. Approximately two hours later, Coleman, who was not present at the September 11, 2015 evidentiary hearing, provided Smith with a proposed order of dismissal.

This Court also had notes it took during the September 11, 2015 evidentiary hearing. The Court's notes were marked and admitted as Court's Exhibit No. 1. This Court explained the content of its notes on the record for the benefit of the parties.

This Court finds Ladson particularly helpful in resolving whether the record in the instant matter has been reconstructed to permit meaningful appellate review. Ladson was convicted of first degree burglary at the conclusion of a three day trial. Ladson, 373 S.C. at 321, 644 S.E.2d at 271. While Ladson's case was pending on appeal, he learned the court reporter could not produce the transcript. Id. Ladson moved for a new trial. Id. The state moved to remand to reconstruct the record. The Court of Appeals denied Ladson's motion and remanded the matter to the trial court to reconstruct the record. Id.

The reconstruction hearing occurred more than a year after Ladson's trial. Id. The Court of Appeals explained "the passage of time clearly dimmed the recall of the participants." Id. at 325, 644 S.E.2d at 274. After reviewing the transcript of the reconstruction hearing, the Court of Appeals emphasized, "It was clear from the outset of this hearing that reconstructing the record



from scratch, after such a substantial delay, would be an uphill struggle.” Id. at 321-322, 644 S.E.2d at 271-272. During the hearing, the State summarized the testimony of the majority of the witnesses and provided affidavits from two witnesses. Id. at 322, 644 S.E.2d at 272. The Court of Appeals determined the “information provided by the State was conclusory.” Id. Additionally, the Court of Appeals noted that the State “had completely forgotten about one witness, whose identity was determined only by reference to Ladson’s trial counsel’s notes.” Id. The parties even disputed whether Ladson testified in his own defense. Id. Finally, the Court of Appeals emphasized that the trial court and the State expressed confidence “that Ladson made timely objections at trial and moved for a directed verdict “based upon the evidence.” Id. at 323, 644 S.E.2d at 272.

On appeal, the Court of Appeals applauded the “diligent effort” by all parties to reconstruct the record. However, it emphasized that “[d]espite these good faith efforts, the reconstructed record [was] largely conclusory, with testimony, objections, and the like recalled only in summary fashion.” Id. The court explained, “It is simply unrealistic and unreasonable to think that a trial judge and counsel can—under these circumstances—reconstruct a proper record that will permit meaningful appellate review, especially in light of our issue preservation rules.” Id. at 326, 644 S.E.2d at 274. The court further explained, “The continuing dispute as to whether Ladson even testified (much less the content of his purported testimony) is but one example of the trial court and counsel groping in the dark as to what actually happened at trial.” Id.

After the reconstruction hearing, the Court of Appeals was “left with a bare bones summary of the evidence (with more remaining unknown than known) from a lengthy multi-day and fact-intensive trial that resulted in a non-parolable twenty-five year person term.” Id. at 327, 644 S.E.2d at 274. The record before the court contained only “a few gratuitous references to generic motions

and objections” without any information concerning “the context of the motions, the specific nature of the motions, and whether the challenged evidence was cumulative to other unchallenged evidence.” Id. The Court of Appeals emphasized that it refused to speculate. Id. In concluding the reconstructed record did not permit meaningful appellate review, the Court of Appeals asserted, “To hold this record is sufficient would guarantee the affirmance of Ladson’s conviction and twenty-five-year non-parolable sentence without a genuine review. . . . Moreover, it would effectively foreclose any collateral challenge through post-conviction relief or otherwise.” Id. at 327, 644 S.E.2d at 274-275. Thus, the court concluded Ladson had demonstrated “clear prejudice.” Id. at 327, 644 S.E.2d at 275.

Without question, the parties here were well prepared at the reconstruction hearing and presented the best case possible under the circumstances. Nevertheless, after carefully considering the evidence, testimony, and arguments presented during the hearing, this Court finds the record of the September 11, 2015 evidentiary hearing cannot be adequately reconstructed to allow for meaningful appellate review. None of the witnesses had any independent recollection of the evidentiary hearing, which this Court finds credible given that the hearing occurred over six years ago. Despite the parties’ good faith efforts, the reconstructed record is mostly conclusory, with the testimony from the evidentiary hearing recalled “only in summary fashion.” See Ladson, 373 S.C. at 323, 644 S.E.2d at 272. Significantly, Zmroczek credibly testified that she would have attempted to elicit testimony from the witnesses at the evidentiary hearing on each of the allegations raised in the application. However, there was no mention of several of the allegations raised in Applicant’s application, and ruled upon by this Court in the order of dismissal, during the reconstruction hearing. Consequently, this Court find the record was not reconstructed to permit meaningful appellate review of the denial of Applicant’s first application for post-conviction relief.

**CONCLUSION**

This Court finds that the record of the September 11, 2015 evidentiary hearing held during Applicant's first PCR action cannot be reconstructed to allow for meaningful appellate review.

AND IT IS SO ORDERED this 29th day of June, 2022.



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Edgar W. Dickson  
Presiding Judge  
First Judicial Circuit

Orangeburg, South Carolina



STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Aiken County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

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ARTRELL HICKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-001262

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MOTION TO VACATE THE ORDER OF DISMISSAL  
AND REMAND FOR A NEW  
POST-CONVICTION RELIEF HEARING

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Pursuant to Rule 240 of the South Carolina Appellate Court Rules (SCACR), Petitioner respectfully requests this Court vacate the Order of Dismissal denying Petitioner's first application for post-conviction relief, which was signed by the Honorable Edgar W. Dickson and filed on January 9, 2017, and remand for a new post-conviction relief hearing. By way of a written Order dated June 29, 2022, Judge Dickson found the record of the September 11, 2015 evidentiary hearing held during Petitioner's first action for post-conviction relief cannot be reconstructed.

In accordance with Rule 240(c), SCACR, Petitioner submits the following documents to support this motion: Judge Dickson's Order dated June 29, 2022 (Exhibit No. 1); Transcript of

the April 28, 2022 Reconstruction Hearing (Exhibit No. 2); Respondent's Exhibit No. 1 (Daniel Gourley Hearing Notes) from the Reconstruction Hearing (Exhibit No. 3); Respondent's Exhibit No. 2 (Email Chain) from the Reconstruction Hearing (Exhibit No. 4); Court's Exhibit No. 1 (Judge Dickson's Hearing Notes) from the Reconstruction Hearing (Exhibit No. 5); Indictment 2009-GS-02-02294 (armed robbery) and Indictment 2010-GS-02-00670 (possession of a firearm during the commission of a violent crime) (Exhibit No. 6); Petitioner's first PCR application filed May 21, 2013 (Exhibit No. 7); State's Return to Petitioner's first PCR application dated July 1, 2013 (Exhibit No. 8); Order of Dismissal filed January 9, 2017 (Exhibit No. 9); Petitioner's Motion to Reconsider filed January 17, 2017 (Exhibit No. 10); State's Return to Petitioner's Motion to Reconsider dated February 3, 2017 (Exhibit No. 11); Order Denying Petitioner's Motion to Reconsider dated March 14, 2017 (Exhibit No. 12); Applicant's Exhibits from the September 11, 2015 Hearing (Exhibit No. 13); Order Granting Motion to Merge PCR Actions and Granting Belated Appellate Review of Initial PCR Action Pursuant to Austin v. State filed September 10, 2021 (Exhibit No. 14); Email chain confirming September 11, 2015 transcript cannot be transcribed (Exhibit No. 15).

### **RELEVANT FACTS**

An Aiken County grand jury indicted Petitioner in December 2009 for armed robbery and in April 2010 for possession of a firearm during the commission of a violent crime. Petitioner's case was called to trial on September 20, 2010 before the Honorable Doyet A. Early, III, and a jury. Petitioner was tried jointly with his brother and codefendant, Javier Hickson. Then Solicitor J. Strom Thurmond, Jr. and Assistant Solicitor Susanna Ringler represented the state. Kelley Brown represented Petitioner and Michael Routzong represented Javier Hickson. On

September 22, 2010, the jury found Petitioner guilty as indicted. He was sentenced to twenty-eight years for armed robbery and five years concurrent for the weapons offense.

Petitioner filed a timely notice of appeal. The appeal was perfected by Jerry M. Screen. The Court of Appeals affirmed Petitioner's convictions and sentence in an unpublished opinion. State v. Hickson, 2012-UP-667 (S.C. Ct. App. filed December 19, 2012).

On May 21, 2013, Petitioner filed an application for post-conviction relief (PCR). The state filed a return to this application on July 3, 2013. An evidentiary hearing was held on September 11, 2015 before the Honorable Edgar W. Dickson. Assistant Attorney General Daniel Gourley represented the state, and Aimee Zmroczek represented Petitioner. Petitioner and his trial counsel, Kelley Brown, testified at the hearing. Two exhibits were entered in evidence: Applicant's Exhibit No. 1 (Statement of Tommy Parker) and Applicant's Exhibit No. 2 (Statement of Charles Smalls).

By order filed January 9, 2017, Judge Dickson denied Petitioner relief. In the order, Judge Dickson ruled upon seven separate claims of ineffective assistance of trial counsel, including (1) failure to move to quash the arrest warrants and any evidence stemming from the warrants because they were not supported by probable cause; (2) failure to call alibi witnesses at trial; (3) failure to advise Petitioner to testify at trial; (4) failure to request a pretrial hearing pursuant to Neil v. Biggers, 409 U.S. 188 (1972); (5) failure to object to two state witnesses publishing their prior written statements to the jury; (6) failure to object to comments by the trial judge about a "true and just verdict" pursuant to State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012); and (7) failure to cross-examine a codefendant about his plea deal with the state. Notably, the order did not reference any of the testimony elicited from the witnesses during the evidentiary hearing to support the findings of fact and conclusions of law.

On January 19, 2017, Petitioner filed a motion to reconsider pursuant to Rule 59(e), SCRCR. The state filed a return to the motion to consider on February 6, 2017. By order filed March 17, 2017, Judge Dickson denied the motion.

Petitioner's counsel failed to file a notice of appeal from the order denying him post-conviction relief. On June 19, 2019, Petitioner filed a second PCR application seeking a belated appeal from the denial of his first application. On March 16, 2020, Petitioner filed a third PCR application again seeking a belated appeal. The state filed a return and a motion merge the two PCR actions on August 13, 2021. An evidentiary hearing was convened on September 7, 2021 before the Honorable Courtney Clyburn-Pope. Senior Assistant Deputy Attorney General Megan Harrigan Jameson represented the state, and Nancy Fennell represented Petitioner.

By order filed September 10, 2021, Judge Clyburn-Pope granted Petitioner a belated appeal from the denial of his first application for post-conviction relief. In the same order, the judge also granted the state's motion to merge the two PCR actions.

Petitioner timely filed a notice of appeal with this Court. The Division of Appellate Defense undertook representation of Petitioner and undersigned counsel was assigned to represent Petitioner on appeal. Upon reviewing the file, undersigned counsel discovered that a transcript of the evidentiary hearing held on September 11, 2015 during Petitioner's first PCR action cannot be transcribed because more than five years had passed from the date of the hearing and the date the transcript was first requested from the court reporter. See Rule 607(i), SCACR (requiring court reporters to retain the tapes of a proceeding for five years).

On February 23, 2022, Petitioner filed a Motion for a New Trial or, In the Alternative, an Order to Reconstruct the Record of Petitioner's Post-Conviction Relief Hearing with this Court. The state filed a return to this motion on March 4, 2022. By order dated April 5, 2022,

this Court remanded the matter to reconstruct the record of the September 11, 2015 evidentiary hearing.

A reconstruction hearing was held on April 28, 2022 before Judge Dickson. Senior Assistant Deputy Attorney General Megan Harrigan Jameson represented Respondent. Undersigned counsel represented Petitioner. Four witnesses testified at the hearing: Aimee Zmroczek, who represented Petitioner during his first PCR action; Kelley Brown, Petitioner's trial counsel; Petitioner Artrell Hickson; and Daniel Gourley, who represented the state during Petitioner's first PCR action. Three exhibits were marked and admitted into evidence: Respondent's Exhibit No. 1 (Daniel Gourley's Hearing Notes); Respondent's Exhibit No. 2 (Email Chain); and Court's Exhibit No. 1 (Judge Dickson's Hearing Notes).

The first witness presented at the reconstruction hearing was Aimee Zmroczek. Zmroczek had no independent recollection of the evidentiary hearing held on September 11, 2015 nor did she recall what claims Petitioner raised. However, she testified that she would have attempted to elicit testimony from the witnesses at the evidentiary hearing on each of the allegations raised in the application. Significantly, Zmroczek did not have any notes from the hearing. Kelley Brown, Petitioner's trial counsel, was the second witness called at the reconstruction hearing. Brown had no independent recollection of her testimony during the September 11, 2015 evidentiary hearing. Petitioner Artrell Hickson was the third witness to testify. Hickson likewise had no independent recollection of his testimony during the evidentiary hearing.

Daniel Gourley, who represented the state during Petitioner's first PCR action, was the last witness to testify. Gourley also had no independent recollection of the September 11, 2015 evidentiary hearing. However, he had notes that he took during the course of the hearing.



Gourley's notes were marked and admitted as Respondent's Exhibit No. 1. During his testimony, Gourley explained the content of his notes to the best of his ability. His notes included some of the questions he asked the witnesses during the evidentiary hearing as well as some of their responses. His notes also touched on some of the testimony elicited from the witnesses by Zmroczek during the hearing. However, his notes were incomplete and at times hard to decipher. Significantly, Gourley's notes made no mention of several of the claims ruled upon in the order of dismissal or the two exhibits that were admitted into evidence during the evidentiary hearing.

Additionally, during his testimony, Gourley identified an email exchange between Judge Dickson's administrative assistant, Peggy Smith, then Assistant Attorney General Julie Coleman, and Gourley. The email exchange, which took place on October 13, 2016, was marked and admitted as Respondent's Exhibit No. 2. In the exchange, Smith forwarded Gourley an email sent by Judge Dickson's law clerk to Gourley and Zmroczek on April 8, 2016, in which the clerk informed the parties Judge Dickson was denying Petitioner's PCR application. The clerk's email requested Gourley prepare the order of dismissal and included findings on the allegations raised in the application. Gourley informed Smith that he no longer worked for the PCR Division at the Attorney General's Office and that Julie Coleman now represented the state. Approximately two hours later, Coleman, who was not present at the September 11, 2015 evidentiary hearing, provided Smith with a proposed order of dismissal.

Judge Dickson also had notes he took during the September 11, 2015 evidentiary hearing. His notes were marked and admitted as Court's Exhibit No. 1. Judge Dickson explained the content of his notes on the record for the benefit of the parties. Like Gourley's notes, Judge Dickson's notes summarized some of the testimony elicited from the witnesses, but appeared to

be incomplete and at times were hard to interpret.

By order dated June 29, 2022, Judge Dickson found the record of the September 11, 2015 evidentiary hearing could not be reconstructed.

### **DISCUSSION**

The trial court has the authority to set the record for appeal. State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). “[T]he inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal.” Id. (internal citations omitted). “Where a trial transcript has been lost or destroyed, a court may remand to have the record reconstructed.” Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); See Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) (holding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Ladson, 373 S.C. at 325, 644 S.E.2d at 273-274; Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992).

In order for the record to be reconstructed, it must be done in a manner that provides for meaningful appellate review and complies with the constitutional guarantees of procedural due process. Ladson, 373 S.C. at 325, 644 S.E.2d at 273-274; See China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Adams v. H.R. Allen, Inc., 397 S.C. 652, 726 S.E.2d 9 (Ct. App. 2012); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 418 S.E.2d 319 (Ct. App. 1992). The Court of Appeals has held that “the party challenging a reconstructed record on appeal [must] demonstrate prejudice flowing from an inadequate record.” Ladson, 373 S.C. at 325, 644 S.E.2d at 273. “A new trial is therefore appropriate if the appellant establishes that the incomplete nature of the

transcript prevents the appellate court from conducting meaningful appellate review.” Id. at 325, 644 S.E.2d at 274 (internal quotation marks omitted).

In Ladson, the appellant was convicted of first degree burglary at the conclusion of a three day trial. On appeal, he learned the court reporter could not produce a transcript of his trial. Ladson, 373 S.C. at 321, 644 S.E.2d at 271. Ladson moved for a new trial. Id. The state moved to reconstruct the record. The Court of Appeals ultimately remanded the case for reconstruction. Id. The reconstruction hearing took place more than a year after the trial. Id. The Court of Appeals noted “the passage of time clearly dimmed the recall of the participants.” Id. at 325, 644 S.E.2d at 274. After reviewing the transcript of the reconstruction hearing, the court emphasized, “It was clear from the outset of this hearing that reconstructing the record from scratch, after such a substantial delay, would be an uphill struggle.” Id. at 321-322, 644 S.E.2d at 271-272. The court concluded meaningful appellate review was not possible where the testimony of a majority of the witnesses was in summary fashion, the information provided was conclusory, the parties had forgotten about one witness altogether, and there was a dispute whether the defendant testified. Id. at 322, 644 S.E.2d at 272.

After the reconstruction hearing, the Court of Appeals asserted it was “left with a bare bones summary of the evidence (with more remaining unknown than known) from a lengthy multiday and fact intensive trial that resulted in a non-parolable twenty-five year person term.” Id. at 327, 644 S.E.2d at 274. The record before the court contained only “a few gratuitous references to generic motions and objections” without any information concerning “the context of the motions, the specific nature of the motions, and whether the challenged evidence was cumulative to other unchallenged evidence.” Id. The court refused to speculate. Id. In concluding the record was insufficient for meaningful appellate review, the court also

emphasized the record “would effectively foreclose any collateral challenge through post-conviction relief or otherwise.” Id. at 327, 644 S.E.2d at 275. Thus, the court concluded Ladson had demonstrated “clear prejudice.” Id.

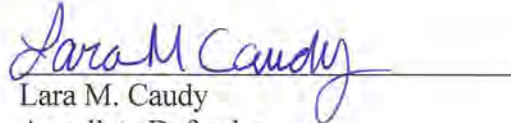
In Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983), the defendant’s convictions were set aside and a new trial had where the court reporter’s equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal. Citing Deaton, the Court of Appeals denied a request for reconstruction in State v. Serrette, 375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App. 2007), where the reason for the lack of transcript was due to the defendant’s absence for a ten year period, which the Court explained was “not a situation where the court reporter’s equipment malfunctioned at trial leading to a loss of the trial transcript.”

Unfortunately, despite a diligent effort, the parties were unable to reconstruct the record of the September 11, 2015 evidentiary hearing held during Petitioner’s first PCR action. Without a transcript of the evidentiary hearing, the record does not permit meaningful appellate review of the lower court’s findings. The standard of review on appeal in a PCR case requires a determination of whether any evidence in the record supports the PCR court’s decision. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). Significantly, the inability of the court reporter to produce a transcript is through no fault of Petitioner. Consequently, Petitioner respectfully requests this Court vacate the Order of Dismissal filed on January 9, 2017 denying Petitioner’s first PCR application and remand for a new evidentiary hearing.

Undersigned counsel has consulted with counsel for Respondent, Senior Assistant Deputy Attorney General Megan Harrigan Jameson, and is authorized to state Respondent does not oppose this motion.

WHEREFORE, Petitioner respectfully requests this Court vacate the Order of Dismissal denying Petitioner's first application for post-conviction relief, which was signed by Judge Dickson and filed on January 9, 2017, and remand for a new evidentiary hearing.

Respectfully submitted,

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

This 15th day of July, 2022

# EXHIBIT NO. 1

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Artrell Hickson,

Applicant

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

2013-CP-02-1153

(Appellate Case No. 2015-00214)

## ORDER

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Robert J. Harce, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JUL 01 2022

*Robert J. Harce*  
C.C.P. & G.S., Aiken County, S.C.  
*Charla Gifford Plouffe*  
Deputy Clerk

This matter is before this Court pursuant to the April 5, 2022 Order from the South Carolina Supreme Court remanding this case to reconstruct the record of the evidentiary hearing held on September 11, 2015 during Applicant's first post-conviction relief (PCR) action. A hearing was held on April 28, 2022 before the Honorable Edgar W. Dickson via the WebEx virtual platform. Applicant was present and represented by Appellate Defender Lara M. Caudy. Senior Assistant Deputy Attorney General Megan Harrigan Jameson represented Respondent.

At this hearing, the Court heard testimony from four witnesses: Applicant Artrell Hickson; Kelley Brown, Applicant's trial counsel; Daniel Gourley, who represented the State during Applicant's first PCR action; and Aimee Zmroczek, who represented Applicant during his first PCR action. This Court also had before it: (1) Applicant's Motion for a New Trial or, In the Alternative, an Order to Reconstruct the Record of Petitioner's Post-Conviction Relief Hearing filed February 23, 2022; (2) the State's Return to Petitioner's Motion for a New Trial or, In the Alternative, an Order to Reconstruct the Record of Petitioner's Post-Conviction Relief Hearing filed on March 4, 2022; (3) the Order of the South Carolina Supreme Court remanding this matter to this Court to reconstruct the record dated April 5, 2022; (4) the Aiken County Clerk of Court

records; (5) Applicant's trial transcript dated September 20, 2010; (6) Applicant's direct appeal records; (7) Applicant's original PCR application filed May 21, 2013; (8) the State's Return dated July 1, 2013; (9) the Order of Dismissal from Applicant's first PCR action filed January 9, 2017; (10) Applicant's Motion to Reconsider filed January 17, 2017; (11) the State's Return to Applicant's Motion to Reconsider dated February 3, 2017; (12) the Order Denying Applicant's Motion to Reconsider dated March 14, 2017; (13) Applicant's second PCR application filed June 19, 2019; (14) Applicant's third PCR application filed March 16, 2020; (15) the State's Return and Motion to Merge PCR Applications dated August 9, 2021; and (16) the Order Granting Belated Appellate Review of Initial PCR Action Pursuant to Austin v. State filed September 10, 2021.

### **PROCEDURAL HISTORY**

An Aiken County grand jury indicted Applicant in December 2009 for armed robbery and in April 2010 for possession of a firearm during the commission of a violent crime. Applicant's case was called to trial on September 20, 2010 before the Honorable Doyet A. Early, III, and a jury. Applicant was tried jointly with his brother and codefendant, Javier Hickson. Then Solicitor J. Strom Thurmond, Jr. and Assistant Solicitor Susanna Ringler represented the state. Kelley Brown represented Applicant and Michael Routzong represented Javier Hickson. On September 22, 2010, the jury found Applicant guilty as indicted. He was sentenced to twenty-eight years for armed robbery and five years concurrent for the weapons offense.

Applicant filed a timely notice of appeal. The appeal was perfected by Jerry M. Screen. The Court of Appeals affirmed Applicant's convictions and sentence in an unpublished opinion. State v. Hickson, 2012-UP-667 (S.C. Ct. App. filed December 19, 2012).

On May 21, 2013, Applicant filed an application for post-conviction relief (PCR) alleging the following grounds for relief:





- a. The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's armed robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
- b. The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from applicant's armed robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
- c. The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
- d. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to provide written notice of the applicant's intent to offer a "Alibi Witness."
- e. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses, Charles Smalls; Tommy Parker; for the defense during applicant's criminal trial.
- f. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised.

- g. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil-vs-Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest.
- h. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence.
- i. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel failing to fully and completely cross-examine cooperating witness concerning charges that were dismissed as part of his plea agreement with the State and the minimum and maximum penalties he would have faced for those offenses.
- j. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to MOTION FOR RECONSIDERATION of his sentence where cooperating witness received a lesser sentence following his testimony against the applicant; thereby giving rise to the inference that this witness may have been lead to expect far greater potential benefit from his cooperation than the jury could reasonably have anticipated.

The state filed a return to this application on July 3, 2013. An evidentiary hearing was held on September 11, 2015 before this Court. Assistant Attorney General Daniel Gourley represented the state, and Aimee Zmroczek represented Applicant. Applicant and his trial counsel, Kelley Brown, testified at the hearing. Two exhibits were entered into evidence: Applicant's Exhibit No. 1 (Statement of Tommy Parker) and Applicant's Exhibit No. 2 (Statement of Charles Smalls). By order filed January 9, 2017, this Court denied Applicant relief.

On January 19, 2017, Applicant filed a motion to reconsider pursuant to Rule 59(e), SCRCR. The state filed a return to the motion to consider on February 6, 2017. By order filed March 17, 2017, this Court denied the motion.

Applicant's counsel failed to file a notice of appeal from the order denying him post-conviction relief. On June 19, 2019, Applicant filed a second PCR application seeking a belated appeal from the denial of his first application. On March 16, 2020, Applicant filed a third PCR application again seeking a belated appeal. The state filed a return and a motion merge the two PCR actions on August 13, 2021. An evidentiary hearing was convened on September 7, 2021 before the Honorable Courtney Clyburn-Pope. Senior Assistant Deputy Attorney General Megan Harrigan Jameson represented the state, and Nancy Fennell represented Applicant.

By order filed September 10, 2021, Judge Clyburn-Pope granted Applicant a belated appeal from the denial of his first application for post-conviction relief. In the same order, the judge also granted the state's motion to merge the two PCR actions.

Applicant timely filed a notice of appeal with the South Carolina Supreme Court. The Division of Appellate Defense undertook representation of Applicant. It was determined that a transcript of the evidentiary hearing held on September 11, 2015 during Applicant's first action for post-conviction relief could not be transcribed because more than five years had passed from the date of the hearing and the date the transcript was first requested from the court reporter. See Rule 607(i), SCACR (requiring court reporters to retain the tapes of a proceeding for five years).

On February 23, 2022, Applicant filed a Motion for a New Trial or, In the Alternative, an Order to Reconstruct the Record of Petitioner's Post-Conviction Relief Hearing with the Supreme Court. The State filed a return to this motion on March 4, 2022. By order dated April 5, 2022, the



Supreme Court remanded the matter to reconstruct the record of Applicant's September 11, 2015 evidentiary hearing.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

"South Carolina jurisprudence recognizes the trial court's authority to set the record for appeal." State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007); See China v. Parrott, 251 S.C. 329, 334, 162 S.E.2d 276, 278 (1968) (holding that where a portion of the court reporter's notes were lost, the trial judge properly considered affidavits from counsel and the court reporter in reconstructing the record); Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) (recognizing a court's power to remand for a reconstruction hearing), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 105, 610 S.E.2d 494, 501 (2005); Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) (finding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992) (holding the trial court did not err in granting property owner's request to reconstruct the record of zoning proceeding where portions of original tape of hearing were incapable of being transcribed). A reconstructed record on appeal must allow for "meaningful appellate review." Ladson, 373 S.C. at 325, 644 S.E.2d at 273-274.

This Court concludes that the record of the September 11, 2015 evidentiary hearing cannot be reconstructed to allow for meaningful appellate review. This Court has had the opportunity to review the available record and heard the witness testimony and arguments of counsel at the reconstruction 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 in reaching the conclusion



that the record cannot be sufficiently reconstructed.

The first witness presented at the reconstruction hearing was Aimee Zmroczek, who represented Applicant during his first PCR action. Zmroczek had no independent recollection of the evidentiary hearing held on September 11, 2015, nor did she recall what claims Applicant raised. However, she testified that she would have attempted to elicit testimony from the witnesses at the evidentiary hearing on each of the allegations raised in the application. Significantly, Zmroczek did not have any notes from the hearing. Kelley Brown, Applicant's trial counsel, was the second witness called at the reconstruction hearing. Brown had no independent recollection of her testimony during the September 11, 2015 evidentiary hearing. Applicant Artrell Hickson was the third witness to testify. Hickson likewise had no independent recollection of his testimony during the evidentiary hearing.

Daniel Gourley, who represented the State during Applicant's first PCR action, was the last witness to testify. Gourley also had no independent recollection of the September 11, 2015 evidentiary hearing. However, he had notes that he took during the course of the hearing. Gourley's notes were marked and admitted as Respondent's Exhibit No. 1. During his testimony, Gourley explained the content of his notes to the best of his ability. His notes included some of the questions he asked the witnesses during the evidentiary hearing as well as some of their responses. His notes also touched on some of the testimony elicited from the witnesses by Zmroczek during the hearing. However, his notes were incomplete, at times hard to decipher, and made no mention of the two exhibits that were admitted into evidence during the evidentiary hearing.

During his testimony, Gourley identified an email exchange between this Court's administrative assistant, Peggy Smith, then Assistant Attorney General Julie Coleman, and

Gourley. The email exchange, which took place on October 13, 2016, was marked and admitted as Respondent's Exhibit No. 2. In the exchange, Smith forwarded Gourley an email sent by this Court's law clerk to Gourley and Zmroczek on April 8, 2016, in which the clerk informed the parties this Court was denying Applicant's application for post-conviction relief. The clerk's email requested Gourley prepare the order of dismissal and included findings on the allegations raised in the application. Gourley informed Smith in the October 13, 2016 exchange that he no longer worked for the PCR Division at the Attorney General's Office and that Julie Coleman now represented the State. Approximately two hours later, Coleman, who was not present at the September 11, 2015 evidentiary hearing, provided Smith with a proposed order of dismissal.

This Court also had notes it took during the September 11, 2015 evidentiary hearing. The Court's notes were marked and admitted as Court's Exhibit No. 1. This Court explained the content of its notes on the record for the benefit of the parties.

This Court finds Ladson particularly helpful in resolving whether the record in the instant matter has been reconstructed to permit meaningful appellate review. Ladson was convicted of first degree burglary at the conclusion of a three day trial. Ladson, 373 S.C. at 321, 644 S.E.2d at 271. While Ladson's case was pending on appeal, he learned the court reporter could not produce the transcript. Id. Ladson moved for a new trial. Id. The state moved to remand to reconstruct the record. The Court of Appeals denied Ladson's motion and remanded the matter to the trial court to reconstruct the record. Id.

The reconstruction hearing occurred more than a year after Ladson's trial. Id. The Court of Appeals explained "the passage of time clearly dimmed the recall of the participants." Id. at 325, 644 S.E.2d at 274. After reviewing the transcript of the reconstruction hearing, the Court of Appeals emphasized, "It was clear from the outset of this hearing that reconstructing the record

from scratch, after such a substantial delay, would be an uphill struggle.” Id. at 321-322, 644 S.E.2d at 271-272. During the hearing, the State summarized the testimony of the majority of the witnesses and provided affidavits from two witnesses. Id. at 322, 644 S.E.2d at 272. The Court of Appeals determined the “information provided by the State was conclusory.” Id. Additionally, the Court of Appeals noted that the State “had completely forgotten about one witness, whose identity was determined only by reference to Ladson’s trial counsel’s notes.” Id. The parties even disputed whether Ladson testified in his own defense. Id. Finally, the Court of Appeals emphasized that the trial court and the State expressed confidence “that Ladson made timely objections at trial and moved for a directed verdict “based upon the evidence.” Id. at 323, 644 S.E.2d at 272.

On appeal, the Court of Appeals applauded the “diligent effort” by all parties to reconstruct the record. However, it emphasized that “[d]espite these good faith efforts, the reconstructed record [was] largely conclusory, with testimony, objections, and the like recalled only in summary fashion.” Id. The court explained, “It is simply unrealistic and unreasonable to think that a trial judge and counsel can—under these circumstances—reconstruct a proper record that will permit meaningful appellate review, especially in light of our issue preservation rules.” Id. at 326, 644 S.E.2d at 274. The court further explained, “The continuing dispute as to whether Ladson even testified (much less the content of his purported testimony) is but one example of the trial court and counsel groping in the dark as to what actually happened at trial.” Id.

After the reconstruction hearing, the Court of Appeals was “left with a bare bones summary of the evidence (with more remaining unknown than known) from a lengthy multi-day and fact-intensive trial that resulted in a non-parolable twenty-five year person term.” Id. at 327, 644 S.E.2d at 274. The record before the court contained only “a few gratuitous references to generic motions

and objections” without any information concerning “the context of the motions, the specific nature of the motions, and whether the challenged evidence was cumulative to other unchallenged evidence.” Id. The Court of Appeals emphasized that it refused to speculate. Id. In concluding the reconstructed record did not permit meaningful appellate review, the Court of Appeals asserted, “To hold this record is sufficient would guarantee the affirmance of Ladson’s conviction and twenty-five-year non-parolable sentence without a genuine review. . . . Moreover, it would effectively foreclose any collateral challenge through post-conviction relief or otherwise.” Id. at 327, 644 S.E.2d at 274-275. Thus, the court concluded Ladson had demonstrated “clear prejudice.” Id. at 327, 644 S.E.2d at 275.

Without question, the parties here were well prepared at the reconstruction hearing and presented the best case possible under the circumstances. Nevertheless, after carefully considering the evidence, testimony, and arguments presented during the hearing, this Court finds the record of the September 11, 2015 evidentiary hearing cannot be adequately reconstructed to allow for meaningful appellate review. None of the witnesses had any independent recollection of the evidentiary hearing, which this Court finds credible given that the hearing occurred over six years ago. Despite the parties’ good faith efforts, the reconstructed record is mostly conclusory, with the testimony from the evidentiary hearing recalled “only in summary fashion.” See Ladson, 373 S.C. at 323, 644 S.E.2d at 272. Significantly, Zmroczek credibly testified that she would have attempted to elicit testimony from the witnesses at the evidentiary hearing on each of the allegations raised in the application. However, there was no mention of several of the allegations raised in Applicant’s application, and ruled upon by this Court in the order of dismissal, during the reconstruction hearing. Consequently, this Court find the record was not reconstructed to permit meaningful appellate review of the denial of Applicant’s first application for post-conviction relief.



**CONCLUSION**

This Court finds that the record of the September 11, 2015 evidentiary hearing held during Applicant's first PCR action cannot be reconstructed to allow for meaningful appellate review.

AND IT IS SO ORDERED this 29th day of June, 2022.



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Edgar W. Dickson  
Presiding Judge  
First Judicial Circuit

Orangeburg, South Carolina



# **EXHIBIT NO. 2**

1 STATE OF SOUTH CAROLINA)  
2 ) IN THE COURT OF  
3 COUNTY OF AIKEN ) GENERAL SESSIONS  
4  
5 THE STATE, )  
6 Plaintiffs, )  
7 Vs. ) CASE NO. 2013-GS-02-01153  
8 ARTRELL HICKSON, )  
9 Defendant. )

10

11

APRIL 28, 2022

12

(VIRTUAL)

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HONORABLE EDGAR W. DICKSON, JUDGE

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

16

BY: MEGAN H. JAMESON, ESQUIRE

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Attorney for the Plaintiffs

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BY: LARA M. CAUDY, ESQUIRE

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Attorney for the Defendant

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24

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25

REGISTERED PROFESSIONAL REPORTER

|    |                         |                  |              |                 |                |
|----|-------------------------|------------------|--------------|-----------------|----------------|
| 1  |                         | <u>I N D E X</u> |              |                 |                |
| 2  | <u>WITNESS</u>          | <u>DIRECT</u>    | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
| 3  | <b>AIMEE ZMROCZEK</b>   |                  |              |                 |                |
| 4  | Ms. Jameson             | 10               |              |                 |                |
| 5  | Ms. Caudy               |                  | 12           |                 |                |
| 6  | <b>KELLEY BROWN</b>     |                  |              |                 |                |
| 7  | Ms. Jameson             | 15               |              |                 |                |
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| 12 | <b>DAVID GOURLEY</b>    |                  |              |                 |                |
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1 THE COURT: Ms. Jameson, do you have  
2 this organized?

3 MS. JAMESON: I do, Your Honor. If I  
4 can put the brief procedural background on the  
5 record and Ms. Caudy and I have already been able  
6 to agree on two exhibits to introduce and kind of  
7 the procedures. So hopefully it will stream plan  
8 things a little bit for the Court.

9 THE COURT: Okay. And let me just --  
10 before we do that, let me harass Ms. Zmroczek for  
11 driving and trying to do this. Okay. But now, go  
12 ahead, Ms. Jameson.

13 MS. JAMESON: Thank you, Your Honor.  
14 Megan Jameson on behalf of the State. This is the  
15 matter of Artrell Hickson verses the State of South  
16 Carolina and we are here for a reconstruction  
17 hearing to attempt to reconstruct the record from  
18 Mr. Hickson's first PCR hearing held before Your  
19 Honor on September 11, 2015.

20 For a brief procedural background. In  
21 June of 2009, Mr. Hickson and his brother Javier  
22 were arrested following an investigation into an  
23 armed robbery of the Graniteville branch of the  
24 Security Federal Bank. In December of 2009, the  
25 Aiken County Grand Jury indicted Mr. Hickson for

1 one count of armed robbery. And then in April of  
2 2010, the Grand Jury additionally indicted  
3 Mr. Hickson and codefendants for one count of  
4 possession of firearm during the commission of a  
5 violent crime.

6 On September 20, 2010, Mr. Hickson and  
7 his brother Javier proceeded to a jury trial before  
8 Judge Early. Mr. Hickson was represented by Kelly  
9 Perkins Brown and Solicitor Thurmond and Assistant  
10 Solicitor Susanna Ringler prosecuted the case. At  
11 the conclusion of the trial, the jury convicted  
12 Mr. Hickson and his brother as indicted and Judge  
13 Early sentenced Mr. Hickson and his brother to  
14 concurrent terms of imprisonment of 28 years for  
15 the armed robbery and five years concurrently for  
16 the firearm conviction.

17 He subsequently had a direct appeal and  
18 his convictions were affirmed on appeal. He then  
19 commenced to ten week PCR action on May 21, 2013.  
20 The State made its return and requested an  
21 evidentiary hearing. As I mentioned before, an  
22 evidentiary hearing was convened before Your Honor  
23 on September 11, 2015. He was represented by  
24 Counsel Aimee Zmroczek and the State was  
25 represented by Assistant Attorney General Daniel

1 Gourley.

2 At this hearing, trial counsel  
3 testified and Mr. Hickson testified. Following the  
4 hearing, Your Honor took the matter under  
5 advisement and then subsequently denied relief. A  
6 written order was signed by Your Honor on December  
7 21, 2016 and filed on January 9th of 2017.

8 Mr. Hickson through Counsel Zmroczek  
9 filed and served a timely motion to reconsider.  
10 Respondent filed a return in opposition. And on  
11 March 14th of 2017, Your Honor summarily denied the  
12 motions for reconsideration. An order was signed  
13 on March 17 of 2017. He did not file an appeal  
14 following that denial of relief.

15 However, he did seek belated appellate  
16 review through the filing of two subsequent PCR  
17 actions seeking relief pursuant to *Austin v. State*.  
18 One filed in 2019 and one filed in 2020. The State  
19 filed a return requesting these two actions be  
20 merged into one. And we have a hearing to  
21 determine whether he was entitled to belated  
22 appellate review of the first PCR pursuant to  
23 *Austin*. That hearing was conducted in September of  
24 last year and Judge Clyburn Pope granted *Austin*  
25 relief. Mr. Hickson then initiated an appeal. And



1 he is currently represented by Appellate Defender  
2 Laura Caudy.

3 Mr. Hickson moved to reconstruct the  
4 record once it was discovered that the transcript  
5 from his first PCR hearing from September 11, 2015  
6 before Your Honor could not be transcribed. And on  
7 April 5th of this year, the Supreme Court issued an  
8 order remanding the matter back to Your Honor for a  
9 reconstruction hearing within 45 days and we are  
10 here today for that reconstruction hearing.

11 Before Your Honor and as part of the  
12 record, a judge's packet has been previously  
13 provided to the Court with the entire record for  
14 Mr. Hickson's first PCR, his second and third PCR  
15 proceedings, and his current appeal.

16 And at this time, there are two  
17 exhibits that I believe we either like to jointly  
18 move in as Court's exhibits or Respondent exhibits,  
19 however the Court would prefer to do. These were  
20 provided yesterday by email to the Court. The  
21 first is a nine page document which is handwritten  
22 and typed notes from Former Assistant Attorney  
23 General Daniel Gourley that were taken during the  
24 hearing and we'll have some testimony regarding  
25 those notes from Mr. Gourley. And the second

1 document that we would like to introduce is a chain  
2 of emails starting with an email from your law  
3 clerk at the time on Friday, April 8th to Ms.  
4 Zmroczek and Mr. Gourley with Your Honor's ruling  
5 in the case followed by an exchange with Mr.  
6 Gourley. And then eventually, Ms. Coleman from our  
7 office who took over Mr. Gourley's position when he  
8 moved for the post-conviction relief unit of our  
9 office. So we would like to introduce those two  
10 documents and I'll defer to Ms. Caudy, I don't  
11 believe she has any objection to either.

12 THE COURT: Ms. Caudy, any objection?

13 MS. CAUDY: No Judge.

14 THE COURT: How do -- you want to  
15 designate those as Court's exhibits or how did  
16 y'all want to have them marked?

17 MS. JAMESON: However Your Honor would  
18 prefer, we can either do them as Respondent's or  
19 Court's exhibits.

20 THE COURT: Well, if there's no  
21 objection, let's do them as Respondent's. Okay.  
22 And were those exhibits forwarded -- they probably  
23 haven't been, they've not been forwarded to  
24 Katherine the court reporter, have they?

25 MS. JAMESON: No, and I can do that

1 right after this hearing if that's agreeable with  
2 the Court and our court reporter.

3 THE COURT: And, Ms. Caudy, is that  
4 agreeable with you? We'll have them marked as  
5 Respondent's -- you said they're two exhibits? So  
6 that would be Respondent's 1 and 2?

7 MS. JAMESON: Yes, Your Honor.  
8 Respondent's 1 is nine pages of notes from Mr.  
9 Gourley. And Respondent's Exhibit 2 is an email  
10 chain that is four pages in total.

11 THE COURT: Okay. All right. Okay.  
12 Those are in evidence. And what now, Ms. Jameson?  
13 Do you have this organized?

14 MS. JAMESON: I do, Your Honor. We  
15 discussed, although it is technically Mr. Hickson's  
16 motion just for ease of everyone that the State  
17 would call witnesses. So if agreeable with the  
18 Court, at this time, we'll call Ms. Zmroczek first  
19 so we could hopefully get her taken care of.

20 THE COURT: I want to make sure Ms.  
21 Zmroczek is not driving right now.

22 MS. ZMROCZEK: I am not driving, Your  
23 Honor. As you can see, I'm not even in the  
24 driver's seat. I cut my leg, Your Honor, of  
25 course, you know me, and I had 22 stitches or

1 | excuse me, 22 staples.

2 |           THE COURT: Okay. I'm sorry. Ms.  
3 | Zmroczek, you're at your office and you want to go  
4 | inside or are you good from there?

5 |           MS. ZMROCZEK: I'm good.

6 |           THE COURT: Okay.

7 |                   AIMEE ZMROCZEK,  
8 | being first duly sworn, was examined and testified  
9 | as follows:

10 |           THE COURT: All right. Thank you,  
11 | ma'am. Now, Ms. Jameson, do you want -- since you  
12 | called her, I'll let you go first. Ms. Jameson,  
13 | are you going to ask her questions?

14 |           MS. JAMESON: Yeah, I did. Was I muted  
15 | before?

16 |           THE COURT: You were muted. I didn't  
17 | know.

18 |           MS. JAMESON: Sorry, Your Honor.

19 |           THE COURT: The fun thing about doing  
20 | this like this, we can't often hear each other.  
21 | Okay. Go ahead.

22 | DIRECT EXAMINATION BY MS. JAMESON:

23 |           Q. Ms. Zmroczek, where are you currently  
24 | employed?

25 |           A. Still at AJZ Law Firm.

1 Q. Are you a solo practitioner?

2 A. I am.

3 Q. Okay. Did you ever represent

4 Mr. Artrell Hickson?

5 A. I did.

6 Q. In what capacity did you represent him?

7 A. I was appointed to his PCR.

8 Q. Do you recall approximately when you  
9 represented Mr. Hickson?

10 A. I don't recall much of anything from  
11 this case, unfortunately.

12 Q. Did you represent him at his 2015 PCR  
13 hearing that we're here to reconstruct?

14 A. Yes. I was going to say sometime  
15 around 2013. I thought so, yeah, 2015 the hearing  
16 would be, yes.

17 Q. Do you have any notes from this  
18 hearing?

19 A. I don't. I actually went from archives  
20 and had my file pulled. I do have notes, but not  
21 from the hearing. All my notes are in preparation  
22 for the hearing, but not from the hearing.

23 Q. Do you have any independent  
24 recollection of this hearing?

25 A. I have no independent recollection.

1 I'm so sorry.

2 Q. Do you recall what witnesses testified?

3 A. I believe that Ms. Brown did testify.  
4 I do remember her. I can't remember or not if my  
5 client testified, but I do remember that she did.

6 Q. Have you had an opportunity to review  
7 the order of dismissal that Judge Dickson issued in  
8 this case?

9 A. I did. I did, yes.

10 Q. Do you believe this accurately reflects  
11 the issues that were presented at the PCR hearing?

12 A. It's just -- it's impossible for me to  
13 say. I feel like there were a lot of issues in  
14 this case. I went back and looked at the order  
15 verses the -- verses the application and I'm just  
16 -- I'm just -- I'm not comfortable saying yes or  
17 no, I just don't know.

18 Q. All right. Thank you.

19 MS. JAMESON: The State has no  
20 additional questions for Ms. Zmroczek.

21 THE COURT: All right. Ms. Caudy, any  
22 questions?

23 MS. CAUDY: Yes, Your Honor.

24 CROSS EXAMINATION BY MS. CAUDY:

25 Q. Ms. Zmroczek, how long have you been

1 doing PCR?

2           A.     So, when I first started my own company  
3 in 2010, that's when they started the contract  
4 system, and so I signed up for that. I'm no longer  
5 on it now. Thank you, Judge Dickson. Just  
6 kidding. But I am no longer on it now. I have  
7 enough just personal, you know, outside business so  
8 that I don't do the contracts anymore. But when I  
9 was on it, I was on SBP contracts, PCR's, and  
10 criminal contracts, so I was helping them with a  
11 lot of stuff which meant a lot of appointments.  
12 So, a lot.

13           Q.     And given that you don't recall the  
14 specific PCR hearing, I just want to ask you one  
15 question about what you would typically do in  
16 preparation for a hearing and during and actual  
17 hearing. Would you normally attempt to elicit  
18 testimony from the trial attorney about the  
19 allegations listed in the PCR location or the  
20 amended PCR conviction?

21           A.     Yes.

22           Q.     So typically you would want to  
23 establish testimony to either support or refute  
24 your allegations?

25           A.     True.

1           Q.     So, in this case, it looks like there  
2 was seven claims that were ruled upon in an Order  
3 of Dismissal and seven claims that you alleged in  
4 the Motion to Reconsider that was filed on January  
5 19, 2017. So would you have attempted to elicit  
6 testimony from trial counsel on each of those seven  
7 allegations?

8           A.     Yes.

9           MS. CAUDY: That's all I have, Your  
10 Honor.

11          THE COURT: Okay. All right. Ms.  
12 Jameson, anything on redirect?

13          MS. JAMESON: No additional questions  
14 and we'd ask that Ms. Zmroczek be excused.

15          THE COURT: Ms. Zmroczek, you're  
16 excused. Good seeing you. I hope your leg gets  
17 better.

18          MS. ZMROCZEK: Thank you. I hope I get  
19 invited to the party.

20          THE COURT: Okay. Ms. Jameson, are you  
21 ready to call on your next witness?

22          MS. JAMESON: Yes, Your Honor. At this  
23 time the State would call Mr. Hickson's former  
24 trial counsel, Kelly Perkins Brown.

25          THE COURT: Ms. Brown, how are you?



1 MS. BROWN: I'm good, Judge. How are  
2 you?

3 THE COURT: I'm doing well. I need to  
4 swear you in, please, ma'am.

5 KELLEY BROWN,  
6 being first duly sworn, was examined and testified  
7 as follows:

8 THE COURT: All right. Ms. Jameson,  
9 Ms. Brown is your witness.

10 MS. JAMESON: Thank you, Your Honor.

11 DIRECT EXAMINATION BY MS. JAMESON:

12 Q. Ms. Brown, where do you currently  
13 practice law?

14 A. I'm an attorney with the Second Circuit  
15 Public Defender's Office.

16 Q. And in that capacity, did you have an  
17 opportunity to represent Mr. Hickson?

18 A. Yes.

19 Q. Do you recall approximately when you  
20 represented Mr. Hickson?

21 A. I don't recall and did not look up when  
22 I began my representation, but I represented him  
23 through his trial in 2010.

24 Q. And he was convicted at the conclusion  
25 of that trial; correct?

1           A.     That's correct.

2           Q.     Were you present at his September 11,  
3 2015 post-conviction relief hearing?

4           A.     Yes, I was.

5           Q.     Did you testify?

6           A.     I did.

7           Q.     Do you have any notes from this  
8 hearing?

9           A.     I do not.

10          Q.     Is this the first time you've been  
11 called as a witness in a post-conviction relief  
12 proceeding?

13          A.     No, it was not.

14          Q.     When you are a witness at a PCR  
15 hearing, do you typically take notes?

16          A.     No, I do not generally take notes as a  
17 witness. At a hearing, I'm prepared. I bring my  
18 file to the hearing. I'm prepared to testify as to  
19 my representation. But as I am not a party to the  
20 action, I do not make it a practice to take notes.

21          Q.     And, again, here you did not take  
22 notes; correct?

23          A.     That's correct.

24          Q.     Do you have any independent  
25 recollection of this hearing?

1           A.    I do not.

2           Q.    You don't recall any of the issues that  
3 were raised independent from the record you  
4 reviewed?

5           A.    No.  As I have my file I have the  
6 order.  I reviewed the Order of Dismissal, so --  
7 and I had prior to reviewing the Order of  
8 Dismissal, I had zero recollection of the issues in  
9 this case.  So I cannot testify of any certainty  
10 that I have specific recollection of that hearing.

11          Q.    And do you have any recollection of  
12 issues that were raised that are not encompassed in  
13 that Order of Dismissal you've reviewed?

14          A.    No.

15          Q.    Do you recall who else testified at the  
16 hearing?

17          A.    I believe the only testimony came from  
18 myself and from Mr. Hickson.

19                MS. JAMESON:  No further questions at  
20 this time, Your Honor.

21                THE COURT:  All right.  Ms. Caudy,  
22 anything on cross?

23                MS. CAUDY:  I have no questions, Your  
24 Honor.  Ms. Jameson covered it all.

25                THE COURT:  All right.  Thank you, Ms.

1 Brown. May she be excused?

2 MS. JAMESON: Yes, Your Honor. Thank  
3 you.

4 THE COURT: All right. Ms. Jameson,  
5 who is your next witness? Are you prepared to call  
6 your next witness?

7 MS. JAMESON: Yes, Your Honor. The  
8 State would call Mr. Hickson.

9 THE COURT: All right. Mr. Hickson,  
10 can you hear me?

11 MR. HICKSON: Yes, sir.

12 ARTRELL HICKSON,  
13 being first duly sworn, was examined and testified  
14 as follows:

15 THE COURT: All right. Thank you, sir.  
16 Mr. Hickson, if you wouldn't mind, if you'd just  
17 answer any questions that you're asked, okay? All  
18 right. Ms. Jameson?

19 MS. JAMESON: Thank you, Your Honor.

20 DIRECT EXAMINATION BY MS. JAMESON:

21 Q. Good morning, Mr. Hickson. Were you  
22 present at your first PCR hearing on September 11,  
23 2015?

24 A. Yes, ma'am.

25 Q. Did you testify at that hearing?

1 A. Yes, ma'am.

2 Q. Do you recall who else testified?

3 A. Ms. Kelley, Ms. Brown.

4 Q. Were there any other witnesses called?

5 A. No, ma'am.

6 Q. So it was just yourself and Ms. Brown;  
7 correct?

8 A. Yes, ma'am.

9 Q. Okay. And you were represented by Ms.  
10 Aimee Zmroczek who testified earlier today?

11 A. Yes, ma'am.

12 Q. Okay. Do you have any notes from this  
13 hearing?

14 A. No.

15 Q. Do you have any memory of this hearing  
16 and what specific issues were raised?

17 A. Honestly, no.

18 Q. Have you had an opportunity to review  
19 the Order of Dismissal that Judge Dickson issued  
20 following the hearing?

21 A. Yes.

22 Q. Does it cover the issues that you  
23 recall being raised in your application and at the  
24 hearing?

25 A. Yes.

1           Q.    Are there any issues you can recall  
2   raising to the Court that are not in that Order of  
3   Dismissal?

4           A.    I can't remember.

5           Q.    Is there anything else you recall about  
6   that hearing that you'd like to tell the Court?

7           A.    No, ma'am.  It's been --

8           Q.    Thank you very -- oh, sorry.  Go ahead.

9           A.    It's been so long.  It's been so long  
10   ago, I don't remember.

11          Q.    I understand, Mr. Hickson.  Thank you  
12   very much.

13          A.    You're welcome.

14                THE COURT:  All right.  Ms. Caudy,  
15   anything on cross?

16                MS. CAUDY:  Just one, Your Honor.

17   CROSS EXAMINATION BY MS. CAUDY:

18          Q.    Mr. Hickson, do you recall whether any  
19   exhibits were marked and admitted into evidence  
20   during the course of the hearing?

21          A.    I can't recall.

22          Q.    Okay.

23                MS. CAUDY:  That's all, Your Honor.

24                THE COURT:  Okay.  Anything on  
25   redirect, Ms. Jameson?

1 MS. JAMESON: No, Your Honor. Thank  
2 you.

3 THE COURT: All right. Thank you,  
4 Mr. Hickson. All right. Is the State prepared to  
5 call its next witness?

6 MS. JAMESON: Yes. The final witness  
7 the State will call is Daniel Gourley.

8 DANIEL GOURLEY,  
9 being first duly sworn, was examined and testified  
10 as follows:

11 THE COURT: Thank you, sir. Ms.  
12 Jameson, he is your witness.

13 MS. JAMESON: Thank you, Your Honor.  
14 DIRECT EXAMINATION BY MS. JAMESON:

15 Q. Good morning, Mr. Gourley. You served  
16 as an assistant attorney general at the South  
17 Carolina Attorney General's Office; correct?

18 A. I did.

19 Q. What timeframe were you employed by the  
20 AG's office?

21 A. From 2012 to around 2015.

22 Q. And during those years at the AG's  
23 office, did you work in the post-conviction relief  
24 division?

25 A. I did.

1           Q.    How long were you in the  
2 post-conviction relief division?

3           A.    From about 2012 to 2015, so roughly  
4 three, three and a half years.

5           Q.    Do you recall what circuits you handled  
6 when you were at the AG's office?

7           A.    I was assigned to the Second Circuit  
8 and the Third Circuit.

9           Q.    In this capacity, did you represent the  
10 State at post-conviction relief hearings arising  
11 out of the Second Circuit?

12          A.    Yes.

13          Q.    Did you represent the State in the  
14 post-conviction relief hearing for Artrell Hickson?

15          A.    Yes.

16          Q.    So you were counsel for the State at  
17 the September 11, 2015 hearing?

18          A.    Yes.

19          Q.    Can you describe your standard process  
20 for preparing for a post-conviction relief hearing?

21          A.    Certainly. So I would have reviewed  
22 the trial transcript and take notes of any issues  
23 that I saw in my review and just kind of outlined  
24 just some basic understanding of the trial  
25 transcript. I also speak with defense counsel and



1 review the alligations in the post-conviction  
2 relief application. That could be in person or  
3 over the phone.

4 Q. Do you prepare any outline or notes to  
5 use at the hearing?

6 A. I did. I always did some boiler plate  
7 questions that we would always ask every PCR  
8 applicant and defense counsel in a PCR hearing just  
9 to kind of have foundational questions to ask. And  
10 then, of course, any additional questions that may  
11 arise from the direct or cross examination  
12 questions that were asked during the hearing.

13 Q. Would that include any sort of  
14 procedural history or call of the case?

15 A. Yes. I would always just kind of do  
16 our standard script so that we could get the ball  
17 rolling. Just a PCR application number, who the  
18 witnesses were going to be, who PCR counsel was,  
19 procedural history of the case. When the  
20 post-conviction relief was filed, the allegations  
21 alleged, and then when the State did its return.

22 Q. And have you had an opportunity to look  
23 at any notes that you may have taken in preparation  
24 for and during this hearing?

25 A. Yes.

1           Q.    Have you been -- you were previously  
2 provided with a copy of Respondent's Exhibit Number  
3 1, nine pages of notes; correct?

4           A.    I was.

5           Q.    Okay. Do these appear to be notes that  
6 you took in preparation for and during the hearing?

7           A.    Yes, that's absolutely my handwriting.

8           Q.    And the first three pages which are  
9 typed pages, is this the kind of outline call of  
10 the case with the allegations that you just  
11 discussed?

12          A.    It is.

13          Q.    Does that include the specific  
14 allegations that were being raised by Mr. Hickson  
15 and through his counsel Ms. Zmroczek at the  
16 hearing?

17          A.    Yes. So those allegations are in that  
18 script are the allegations that were pled in the  
19 post-conviction relief application. Any additional  
20 allegations that were raised, I would have written  
21 down in my notes if those were raised during the  
22 course of the PCR hearing or alleged at the start  
23 of a PCR hearing. But the ones in the script were  
24 pulled from his PCR application.

25          Q.    And so based on your standard practice,

1 if new allegations arose at the start of or during  
2 the hearing, you would indicate this on your  
3 outline?

4 A. Yes. I outline just in my legal pad  
5 writing down notes to follow-up with questions.

6 Q. Does it appear that any additional  
7 allegations were raised in this case?

8 A. I didn't see any in my review of my  
9 notes. I don't have a specific recollection of  
10 this hearing given at the time between it. But  
11 based off my notes and when I would have typically  
12 done post-conviction relief hearings, I didn't see  
13 any additional allegations that were raised.

14 Q. Okay. If you'll turn now to page 4 of  
15 Respondents Exhibit Number 1 which appears to be  
16 some typed notes or typed questions and then  
17 written responses underneath and kind of can we go  
18 over that written portion?

19 MS. JAMESON: And, Your Honor, at least  
20 for me it's a little bit hard to read some of these  
21 and so I'm going to have Mr. Gourley interpret his  
22 handwriting for the record if agreeable with the  
23 Court.

24 THE COURT: Mr. Gourley was going to be  
25 a doctor and then decided to go to law school.

1           A.     Got to write quick, Judge. So page 4  
2 it starts with the how many times did you meet with  
3 your attorney; is that correct, Ms. Jameson?

4           Q.     Yes. And can you tell the Court what,  
5 where, whose questions these would be for? Whose  
6 testimony is this reflective of?

7           A.     So what I -- again, what I typically  
8 did, my standard practice was to write kind of  
9 boiler plate questions that we'd always ask every  
10 PCR applicant and every defense counsel and any  
11 additional witnesses that we anticipated being  
12 called, I would have some scripted questions just  
13 to kind of get started.

14                     This first page or page 4 of State's  
15 Exhibit Number 1 is the questions that I would  
16 typically ask a PCR applicant. So how many times  
17 did you meet with your attorney before going to  
18 trial? I had one time, one time. Do you recall  
19 reviewing discovery with your attorney? I would  
20 assume -- I had written down alibi witnesses. And  
21 then alibi witnesses were based off my review of  
22 the notes of discussion during the PCR hearing.

23                     Did you recall discussing any possible  
24 defenses with your attorney? I have Charles Smalls  
25 and Tommy somebody later on in my notes. I guess

1 Tommy is identified as Tommy Parker having reviewed  
2 my notes and actually talking with Ms. Caudy. The  
3 Charles Smalls and Tommy Parker were the alibi  
4 witnesses that were alleged to have been  
5 investigated or discussed during the course of Ms.  
6 Brown's representation of Mr. Hickson.

7 And then, did you give your attorney  
8 any leads or potential witnesses to investigate?  
9 He said, no. I do have a note down again on the  
10 bottom of this page about David Kearse's  
11 testifying. I don't have any specific independent  
12 recollection about any significance of that  
13 information.

14 Q. You mentioned that this is kind of your  
15 script for questions that you want to cover with  
16 the applicant. Is there a separate area where you  
17 would take notes of direct examination or cross  
18 examination from PCR counsel?

19 A. Yes. So I would also script out  
20 questions for PCR counsel that I would ask.  
21 Depending on Ms. Zmroczek calling Ms. Brown or if I  
22 called Ms. Brown, I don't have a recollection of  
23 who called her, but I would always have questions  
24 that I would ask her as well.

25 Q. Before we get to there, sorry, maybe I

1 did not phrase myself clearly. Do you have  
2 handwritten notes or anywhere else where you would  
3 take notes of the questions that Ms. Zmroczek was  
4 asking her client or witnesses independent from  
5 your pre-prepared questions?

6 A. Yes. So we'd always have a legal pad  
7 and we'd take handwritten notes of any questions  
8 that were asked by either Ms. Zmroczek or any  
9 additional questions I would ask as a result of  
10 questions being asked. So we'd always carry a  
11 legal pad and take handwritten notes as well.

12 Q. And the back three pages of  
13 Respondent's Exhibit Number 1, pages 6, 7 -- excuse  
14 me, 7, 8, and 9, does that appear to be the  
15 handwritten notes you would have taken  
16 contemporaneous during the hearing?

17 A. Yes, that is my handwriting.

18 Q. Okay. And page number 7 which does not  
19 have any sort of heading on it, but the first thing  
20 written on there appears to be only met with TC one  
21 time?

22 A. Right.

23 Q. Are these the notes that you would have  
24 taken during the direct of Mr. Hickson?

25 A. Yes.

1           Q.    Okay.  If you could kind of walk us  
2   through those a little bit.

3           A.    Yeah.  So at the start as you stated, I  
4   only met with TC one time.  TC being shorthand for  
5   "trial counsel."  And, again, these would be the  
6   questions and of the responses that Mr. Hickson was  
7   giving Ms. Zmroczek during, I guess, her direct  
8   examination of him.

9                    Talked about defenses at that time.  
10   Alibi witnesses advised not to put alibi.  Alibi  
11   were not credible.  Alibi gave off, I would assume,  
12   off, I'm not quite sure, statements there at trial.  
13   Routzong, Mr. Routzong I believe was Mr. Hickson's  
14   brother's counsel and codefendant or cocounsel in  
15   this case.  He had affidavits.  No mention of  
16   alibis because no one testified for him.

17                   And then I have a note here on expert  
18   of dogs and fingerprints.  Underneath that, I have  
19   Charles Small and Tommy Parker.  Then I have  
20   defendant and codefendant had the same defense  
21   involved, and I'm sorry, Judge, I don't know what  
22   that word is.  Off something.  And didn't testify  
23   because of her.  I would assume that was a  
24   discussion.  Again, I'm speculating, but I would  
25   assume that's a discussion between Ms. Brown and

1 Mr. Hickson as whether or not he would be  
2 testifying at trial.

3 Q. Okay. Does this appear to be all of  
4 the notes you took regarding Mr. Hickson's direct  
5 and cross examination?

6 A. Yes. In every PCR hearing I would take  
7 contemporaneous notes. Obviously, we have to wrote  
8 a proposed final Order or Order of Dismissal  
9 following the hearing. Ninety-five percent of the  
10 time we would never order the transcript, so it  
11 really was important to take contemporaneous notes.  
12 So, you know, obviously back in the day it was a  
13 little bit more fresh in my memory at the time that  
14 we would be writing proposed orders, so shorthand  
15 was the way to go.

16 Q. And you would be taking these notes  
17 while you were questioning the witnesses or  
18 listening to opposing counsel question witnesses;  
19 correct?

20 A. Yes.

21 Q. Okay. Other than Mr. Hickson  
22 testifying, do you recall whether Ms. Perkins Brown  
23 testified?

24 A. She did.

25 Q. Do you have any of your pre-typed



1 questions that we are discussing that you would  
2 draft before for her?

3 A. Yes.

4 Q. Okay. And, specifically, is that page  
5 5 and 6 of Respondent's Exhibit Number 1?

6 A. It is.

7 Q. And if you could kind of walk us  
8 through those notes.

9 A. All right. So I would have asked Ms.  
10 Brown how long she had been practicing law which  
11 was from 1998. Whether she was appointed or  
12 retained, and I had circled appointed. I asked her  
13 how many times did she meet with the applicant  
14 prior to his trial. She said she met with him on  
15 two occasions. That he was not in jail. He did  
16 post bond on October 14th of 2009.

17 The original file she had -- I have  
18 something under here originally file opened  
19 unrelated charges and that JS represented him at  
20 the bond hearing. And later learned that, I think  
21 Ms. Caudy refreshed my recollection that it was  
22 Jerry Screen represented him at some point in time.  
23 I have dates down that she met with him on April  
24 21st of 2010 and in September. They were office  
25 visits. She did not file. I don't have anything,

1 I have an X here that did not file Rule 5 for  
2 Brady. She did not have one in her file at the  
3 time. She did -- I have check marked that she did  
4 review the discovery with him. Prior to, that they  
5 discussed the evidence, the State's witness -- the  
6 evidence against him. They discussed alibi  
7 witnesses. With one of these witnesses was Tommy  
8 Parker which was led to believe that the  
9 surveillance pics -- pictures from Walmart would  
10 have negated alibi testimony. Did have disk of,  
11 again, I'm sorry, I can read that word. Did have  
12 disk of alibi testimony.

13 For "trial strategy," I have TS. Heard  
14 from last. Trial strategy was to npt put any  
15 evidence in and save for last closing argument.  
16 Would you briefly describe the State's evidence  
17 against the applicant? Contradiction and witness  
18 statements, there were no eyewitnesss. Codefendant  
19 implicated him and another individual. There was  
20 some snitch testimony somewhat corroborative from  
21 the other witnesses.

22 I asked what kind of investigation she  
23 did. She said she had gone through the case and  
24 having conversations with cocounsel. She had ample  
25 time to prepare for trial. And then I also have my

1 handwritten notes from Ms. Brown's either direct or  
2 cross examination of by Ms. Zmroczek.

3 Q. Okay. And is that page 8 and 9 of  
4 Respondent's Exhibit Number 1?

5 A. It is.

6 Q. Okay. And if you'll briefly kind of  
7 review and interpret those for the Court in the  
8 record, please.

9 A. So at the beginning I have Kelly Brown  
10 - met two times available at anytime. Did not have  
11 a private investigator. There were three  
12 codefendants. She's aware of those statements  
13 provided by Artrell and Javier. The alibi  
14 witnesses negated the Walmart video. She did not  
15 have it in her file. Will tell you that -- will  
16 tell you this course of trial. I have page 124  
17 down, so what I'll typically do is you can see down  
18 the right side of the page there's a line there,  
19 it's any questions that we'd need to ask or  
20 follow-up, I'd always put an asterisk by it and  
21 would write out the question that we needed to ask.

22 I didn't do that at any point in time  
23 here, but I have page 124. I'm not sure what the  
24 significance of that is. I went back and reviewed  
25 my notes that I took of the trial transcript prior

1 to the PCR hearing and I can't tell you what  
2 significance that is again today.

3 Better trial strategy to put witnesses  
4 in. I think that would probably be the question  
5 that Ms. Zmroczek would have asked her. Ms. Brown  
6 says, could have been better trial strategy. Still  
7 at better trial strategy or better strategy to go  
8 last argument. Then there's a discussion on the  
9 true and just verdict. Off to the left. Don't  
10 recall if alibi witnesses were there or ready to  
11 go. Again, going back to I assume the judge's jury  
12 charge of the seek the truth facts.

13 Then there's something on a comment,  
14 comment to have off record in page 28 which goes  
15 back to, I guess, voir dire during the jury  
16 selection. And then I have underneath that, jury  
17 charge and possible happened.

18 See if I have anything else. And then  
19 going on to the next page, I have a bank robbery.  
20 Bases were covered. Again, I have page 42 of the  
21 trial transcript, observation. On going back to  
22 page 42 of the trial transcript in my notes dealt  
23 with some sort of State witness, Tanya Key, who I  
24 guess was at the bank at the time it was being  
25 robbed. I'm not quite sure.

1 I have Screen represented Artrell at  
2 the bond. Don't know if Screen ever made a motion  
3 to be relieved. Credibility of State witnesses,  
4 there were several inconsistencies. Trial strategy  
5 to not call them. Meeting with hit man. Meeting  
6 two times. Two investigators employed there. I  
7 assume they had two investigators at the public  
8 defender's office and testimony caught off guard,  
9 but I don't have any context for that.

10 Q. Thank you for reviewing those. To the  
11 best of your recollection, do the notes accurately  
12 reflect the witnesses who testified at the hearing?

13 A. I don't have any specific recollection  
14 of the witnesses' testimony. I will say that I  
15 wrote down notes contemporaneously with what they  
16 were testifying to, that was always my standard  
17 practice. But I don't have any independent  
18 recollection of anybody's testimony from that  
19 hearing.

20 Q. If there were any other witnesses who  
21 testified, what was your standard practice if it  
22 was witnesses you hadn't prepared for? Clearly you  
23 had prepared for the applicant and trial counsel to  
24 testify, if there had been any other witnesses or  
25 surprise witnesses, how did you typically handle

1 that in your role?

2 A. So if there would have been any  
3 additional witnesses, I would have taken notes. So  
4 we would have obviously had to incorporate their  
5 testimony from direct and cross examination into  
6 the proposed Order of Dismissal if the application  
7 was denied.

8 Additionally, I would have had the  
9 notes. I would have had questions handwritten out  
10 to ask them. And they would probably have been a  
11 little bit more detailed in the notes I would have  
12 taken because I wouldn't have prepared my script.  
13 So I've been trying to think of some questions to  
14 ask as well on the fly.

15 Q. Do you recall whether any other  
16 witnesses were there and present?

17 A. I don't recall any other witnesses  
18 testifying. Again, I don't have the specific  
19 recollection of this hearing, but I feel confident  
20 in saying under oath that had there been additional  
21 witnesses testifying, I would have taken notes on  
22 them.

23 Q. I believe we covered this before, but  
24 based on your notes and in your review of the  
25 record we have, the issues that were raised and the

1 application and are indicated on page 1, 2, and 3  
2 of your call of the case from Respondent's Number 1  
3 are the issues that were raised at the PCR hearing?

4 A. Yeah. Again, my typical practice  
5 during the PCR hearing would have been if any  
6 additional issues would have been raised at the  
7 start of the hearing or during the course of the  
8 hearing by the applicant, we obviously want to  
9 incorporate that in the Order of Dismissal or  
10 purposed Order of Dismissal to make sure everything  
11 is preserved for appellate review. So I would have  
12 certainly asterisked any kind of additional  
13 allegations and asked additional questions on those  
14 allegations that were raised outside of what was  
15 already pled in the application.

16 Q. Have you had an opportunity to review  
17 the Order of Dismissal from this hearing?

18 A. Yes.

19 Q. Did you draft the Order of Dismissal in  
20 this hearing?

21 A. No. That's not my -- I did not.

22 Q. Why not? Since your typical practice  
23 was you do the hearing and then you draft the  
24 order, can you explain for the record why you did  
25 not do so here?

1           A.     So Ms. Coleman, I guess, who is now Ms.  
2     Hunter she was taking over the Second and Third  
3     Circuit, I was transitioning out of post-conviction  
4     relief division at this time into the Internet  
5     Crimes Against Children Division, so I was juggling  
6     both of those jobs and responsibilities was a  
7     little bit much, so Ms. Coleman since she was  
8     taking over the two circuits was responsible for  
9     drafting the order of dismissals. She had my  
10    notes. Obviously, I was accessible to her if she  
11    had any questions. And she -- based off of reading  
12    the Order of Dismissal she -- that's just not my  
13    style of writing, so I would assume that she was  
14    the one who wrote the Order of Dismissal or  
15    proposed Order of Dismissal for Judge Dickson's  
16    review.

17           Q.     One thing I neglected to ask earlier.  
18     Did Judge Dickson -- do you recall whether Judge  
19     Dickson ruled at the conclusion of the  
20     post-conviction relief hearing on the record?

21           A.     I don't have a specific recollection of  
22     that, but it was typically Judge Dickson's  
23     procedure to take everything under advisement and  
24     then issue a ruling at a later date.

25           Q.     Do you recall whether you were notified



1 by his chambers of any sort of ruling at a later  
2 date?

3 A. You sent me the email from Judge  
4 Dickson which refreshed my recollection that he did  
5 at a later date rule and denied Mr. Hickson's  
6 post-conviction relief application. But absent  
7 having refreshed my recollection, I didn't have any  
8 sort of independent memory of that.

9 Q. And to the best of your recollection,  
10 you were transitioning to another unit at the  
11 Attorney General's Office and were not ultimately  
12 responsible for drafting and submitting that  
13 proposed Order of Dismissal in this case; correct?

14 A. That's correct.

15 Q. Okay. Is there anything else unique  
16 about this hearing or that stands out that would be  
17 helpful for the Court in attempting to reconstruct  
18 this record?

19 A. No, nothing that I can think of that  
20 would help the Court.

21 MS. JAMESON: No further questions at  
22 this time, Your Honor.

23 THE COURT: All right. Ms. Caudy, any  
24 questions of this witness?

25 MS. CAUDY: Yes, Your Honor.

1 CROSS EXAMINATION BY MS. CAUDY:

2 Q. I'd like to kind of pick up where we  
3 left off in regards to your Respondent's Exhibit  
4 Number 1 which is the email chain between Judge  
5 Dickson's clerk and it looks like you as well as  
6 Julie Coleman. You said that it wasn't your style  
7 of writing the Order of Dismissal?

8 A. Yes.

9 Q. Okay. And the email chain makes clear  
10 that, again, you were no longer with the  
11 post-conviction relief division of the AG's office,  
12 is that correct?

13 A. That's correct.

14 Q. Okay. Do you have that exhibit in  
15 front of you by chance?

16 A. Ms. Jameson sent it to me, I can pull  
17 it up if you give me a minute.

18 Q. That would be great if you could.

19 A. All right. Give me one second. All  
20 right. I've got it up.

21 Q. Okay. It looks like you responded to  
22 Ms. Smith on October 14th at 2:18 p.m. and you said  
23 that you had left the PCR division, that, you know,  
24 you cc' d Julie Coleman and she took over the  
25 circuit, basically just letting Ms. Coleman know of

1 the contact from Judge Dickson's clerk; is that  
2 correct?

3 A. That's correct.

4 Q. Okay. And then Judge Dickson's clerk  
5 responded a few minutes later and said, thank you  
6 for the update and she looked forward to hearing  
7 from Ms. Coleman?

8 A. Yes.

9 Q. That was at 2:24 p.m. And then that  
10 same day on October 14th at 4:27 p.m., did Ms.  
11 Coleman respond?

12 A. I don't -- yes, she did. Sorry.

13 Q. So basically within two and a half  
14 hours she had given Judge Dickson a proposed Order  
15 of Dismissal?

16 A. Yes.

17 Q. Okay. And you indicated earlier that  
18 you had reviewed the Order of Dismissal?

19 A. I did.

20 Q. Okay. Based on your review of the  
21 Order of Dismissal in comparison to Judge  
22 Dickson's, the clerk's email on October -- I'm  
23 sorry, on April 8, 2016 at 3:13 p.m., based on that  
24 email in which he rules that he's going to deny Mr.  
25 Hickson's post-conviction relief, he includes in

1 that email -- or his clerk includes in that email  
2 his conclusions of law on the seven allegations  
3 that are ruled upon in the Order of Dismissal; is  
4 that correct?

5 A. Give me one second. Yes.

6 Q. And does it appear based on that email  
7 from Judge Dickson's law clerk, in comparison to  
8 the proposed Order of Dismissal submitted by Julie  
9 Coleman in October of 2016 that she merrily copied  
10 and pasted Judge Dickson's conclusions of law and  
11 put them into the Order of Dismissal?

12 A. It does.

13 Q. Okay. Because Ms. Coleman, she was not  
14 present at the PCR hearing, was she?

15 A. I don't have a specific recollection  
16 whether she was or wasn't. I will say if she was  
17 we would have probably had notes from her, so I  
18 would be inclined to say, no.

19 Q. Okay. So she prepared a proposed Order  
20 of Dismissal based on your notes and Judge  
21 Dickson's law clerk's email?

22 A. Yes.

23 Q. Okay. Is there any testimony or  
24 summary of testimony that appears in the email from  
25 Judge Dickson's law clerk from April of 2016?

1           A.    It doesn't appear so, no.

2           Q.    Okay.  So it's -- his email only -- I'm  
3   sorry, the law clerk's email only contains  
4   conclusions of law?

5           A.    Essentially, yes.

6           Q.    Okay.  And in your review of the Order  
7   of Dismissal, is there any summary of the testimony  
8   that was elicited during the PCR hearing?

9           A.    No.

10          Q.    Okay.  So that Order of Dismissal it  
11   includes the procedural history similar to what was  
12   included in the State's return to the  
13   post-conviction relief application as well as the  
14   conclusions of law that were written by Judge  
15   Dickson in that email; is that correct?

16          A.    Yes.  Yep, you are correct.

17          Q.    Okay.  Now going back to the actual PCR  
18   hearing, you said that you had a script that you  
19   would prepare in advance to have the various  
20   witnesses who were going to testify at the hearing;  
21   is that correct?

22          A.    That is correct.

23          Q.    Okay.  Do you recall whether Ms.  
24   Zmroczek presented the testimony of Mr. Hickson  
25   first before Ms. Kelley brown testified?

1           A.    I don't have a specific recollection to  
2   that, no.

3           Q.    Okay.  But typically in your  
4   experience, the applicant would go first.  I guess  
5   to clarify, do you recall whether you called Ms.  
6   Brown as a witness or whether Ms. Zmroczek called  
7   Ms. Brown as a witness?

8           A.    I don't have an independent  
9   recollection of who called who.  Typically Ms.  
10   Zmroczek would always call the applicant first to  
11   allege any allegations and then we would always  
12   follow-up with defense counsel to discuss the  
13   allegations that the applicant was alleging.  But  
14   it varied from counsel to counsel as to who called  
15   defense counsel up in the stand.  Sometimes I  
16   would, sometimes PCR counsel would.  But I don't  
17   have an independent recollection of who call Ms.  
18   Brown.

19          Q.    Okay.  Or who testified first whether  
20   it was Mr. Hickson or Ms. Brown?

21          A.    I don't, no, ma'am.

22          Q.    Did you only ask Mr. Hickson the four  
23   questions that appear?  I guess it's on page 4 of  
24   Respondent's Exhibit Number 1?

25          A.    Yes.

1           Q.    Are there only four questions you asked  
2 him or would you have asked him follow-up  
3 questions?

4           A.    I probably would have asked him some  
5 follow-up questions. I only say that because I  
6 have the David Kearse testifying which wasn't part  
7 of my script. I don't know. Obviously, he stated  
8 something about David Kearse testifying for me to  
9 write it down, but I don't know what question I  
10 would have asked him to elicit that response. But,  
11 no, I didn't have any additional questions outside  
12 of potentially that one question. I --

13          Q.    Would you have --

14          A.    Go ahead. Sorry.

15          Q.    Sorry.

16          A.    No, you're all right.

17          Q.    Would you have questioned Mr. Hickson  
18 essentially to follow-up on questions that Ms.  
19 Zmroczek may have questioned him about on direct?  
20 Would you have tried to follow-up on some of his  
21 responses during your cross examination?

22          A.    I could have. I don't have an  
23 independent recollection of whether I did or did  
24 not. If I would have followed up with questions, I  
25 would have taken notes. I don't see any. Usually

1 | what I would -- my typical practice would have been  
2 | to draw a line under the questions or the testimony  
3 | that he would have presented to indicate, all  
4 | right, he's done with say direct examination and  
5 | then take any handwritten notes for cross  
6 | examination that I would have done. Which I don't  
7 | have any. Nothing indicates to me that I see any  
8 | follow-up outside of my standard script questions.

9 |       Q.    So if you would have asked him  
10 | additional questions, your notes from his responses  
11 | would have appeared on page 4 of Respondent's  
12 | Exhibit Number 1 or would they have appeared on  
13 | your legal pad? Do you recall?

14 |       A.    More likely than not on my legal pad.  
15 | As I indicated on direct examination, if there were  
16 | any questions that I felt needed to be brought out  
17 | during cross examination, I would have typically  
18 | written them on the right hand of that piece of  
19 | paper. I always drew a line down the side to sit  
20 | there and put a star and say, all right, we need to  
21 | follow-up on this question or that question. So  
22 | those would typically be where my cross examination  
23 | questions would have been generated from.

24 |       Q.    Okay. On page 7 of Respondent's  
25 | Exhibit Number 1, it looks like your notes from Ms..



1 Zmroczek's examination of Mr. Hickson. A few lines  
2 down it says, alibi not credible. Do you recall  
3 the specifics of that? Who said they weren't  
4 credible? Whether Mr. Hickson said they weren't  
5 credible? Whether Ms. Brown had told Mr. Hickson  
6 they weren't credible? I mean, do you know where  
7 that credibility statement came from?

8 A. I don't. I mean, I can speculate on  
9 it, but I don't have an independent recollection of  
10 it.

11 Q. Okay. Below that it says, alibi gave  
12 off in statements. Can you decipher what it says  
13 below that line? Something at --

14 A. There at trial.

15 Q. Okay. So you don't recall whether Mr.  
16 Hickson testified that his alibi witnesses were  
17 present at the trial?

18 A. I don't.

19 Q. Okay. It state's that Mr. Routzong  
20 took affidavits. Do you recall whether any  
21 affidavits were presented during the evidentiary  
22 hearing, the PCR hearing?

23 A. I don't have any indications that any  
24 exhibits or evidence was introduced at the PCR  
25 applicant -- PCR application hearing. But I don't

1 have a specific recollection as to whether anything  
2 was introduced or not. But it had -- my typical  
3 practice would have been had anything been  
4 introduced, we would have entered -- I would have  
5 taken notes on it, made a notation as to State's  
6 Exhibit Number 1 or Defense Exhibit Number 1, such  
7 and such.

8 Q. Okay. If the clerk of court's office  
9 has exhibits from the PCR hearing, would you  
10 conclude that they were, you know, properly  
11 admitted during the hearing?

12 A. Yeah, absolutely.

13 Q. Okay. So if the clerk of court's  
14 office has two exhibits, essentially statements  
15 from a Tommy Parker and a Charles, I want to say  
16 their names properly, I'm the one who told you  
17 originally, but if they were --

18 A. Charles Smalls.

19 Q. Yeah, Charles Smalls and Tommy Parker.  
20 If there were statements that were marked and  
21 admitted during the course of the hearing, you're  
22 saying you would have had notes reflecting that?

23 A. I should have. It was my typical  
24 practice to write down State's Exhibit or Defense  
25 Exhibit Number 1 or Number 2 and what they were to

1 be able to incorporate it into the proposed Order  
2 of Dismissal if appropriate.

3 Q. Given that you don't have notes about  
4 any exhibits, I assume you don't have any  
5 recollection about when exhibits may have been  
6 admitted, whether it was through Mr. Hickson or  
7 through Ms. Brown?

8 A. No.

9 Q. Okay. You don't recall -- we may have  
10 been through this. Do you recall whether you  
11 called Ms. Brown as a witness or whether Ms.  
12 Zmroczek called Ms. Brown as a witness?

13 A. I don't have any independent  
14 recollection of who called who.

15 Q. Okay. Now the script that appears on  
16 page 5 of Respondent's Exhibit Number 1, your  
17 questioning of Ms. Brown, would those have been the  
18 only questions that you asked Ms. Brown or would  
19 you have followed up not only on her responses  
20 during your examination of her as a witness, but as  
21 well as what Ms. Zmroczek may have elicited from  
22 her during questioning?

23 A. I don't have any independent  
24 recollection of any additional questions that I  
25 would have asked. Again, that being said, my

1 typical practice if any additional questions were  
2 asked as a result of Ms. Zmroczek's direct or cross  
3 examination of Ms. Brown, I would have written them  
4 off to the side on the right hand side of the legal  
5 pad. The information that's incorporated in my  
6 script could have resulted from additional  
7 questions that were asked outside of the questions  
8 that were written down in my script. Obviously,  
9 you know, if you're in the flow of things and  
10 you're going to follow-up, you know, with  
11 questions, but what questions I may or may not have  
12 asked Ms. Brown, I don't know.

13 Q. Okay. If Ms. Zmroczek had elicited  
14 testimony from Ms. Brown on the allegations that  
15 were alleged in the application, would you have  
16 tried to refute that testimony while you were or,  
17 you know, kind of refute those allegations while  
18 you were questioning Ms. Brown, you know, follow-up  
19 on the questions that Ms. Zmroczek was asking her?

20 A. Yeah, absolutely.

21 Q. So you normally took really thorough  
22 notes that included all of the testimony and all of  
23 the allegations, it kind of seems that's what  
24 you're indicating?

25 A. Yes.

1 Q. Your notes would be very thorough in  
2 order to help draft that Order of Dismissal?

3 A. Yes.

4 Q. Okay.

5 MS. CAUDY: I think that's all I have,  
6 Your Honor.

7 THE COURT: Anything on redirect?

8 MS. JAMESON: No, Your Honor.

9 THE COURT: All right. Mr. Gourley,  
10 I'm sorry to take you off the stand now.

11 MR. GOURLEY: I appreciate it, Judge.  
12 It's good to see you.

13 THE COURT: Good seeing you. Thank  
14 you. All right. Is the State ready to call its  
15 next witness?

16 MS. JAMESON: The State has no  
17 additional witnesses to call. And I neglect, I  
18 think I forgot to ask for Ms. Brown to be excused  
19 before and Mr. Gourley if they would like to be.

20 THE COURT: Ms. Caudy, any objection?

21 MS. CAUDY: I do. I was hoping to  
22 recall Ms. Brown just briefly to ask one question.

23 THE COURT: Okay. All right. Is it  
24 okay to excuse Mr. Gourley?

25 MS. CAUDY: Yes, Your Honor.

1 THE COURT: Okay. Thank you, sir.  
2 Appreciate it.

3 MR. GOURLEY: Thank y'all.

4 THE COURT: All right. Ms. Brown,  
5 you're being recalled. You realize you are still  
6 under oath, okay?

7 MS. BROWN: Yes, Your Honor.

8 THE COURT: Okay. Ms. Caudy?

9 RECALL CROSS EXAMINATION BY MS. CAUDY:

10 Q. Ms. Brown, do you remember whether any  
11 exhibits were marked and admitted during the course  
12 of your testimony?

13 A. I do not remember.

14 MS. CAUDY: That's all, Your Honor.

15 THE COURT: Okay. May she be excused?

16 MS. CAUDY: Yes sir.

17 THE COURT: Well, I forgot, anything --  
18 any follow-up on that, Ms. Jameson?

19 MS. JAMESON: No, Your Honor. Thank  
20 you.

21 THE COURT: Okay. And no objection to  
22 her being excused?

23 MS. JAMESON: No, Your Honor.

24 THE COURT: Thank you, ma'am, Ms.  
25 Brown, you are excused.

1 MS. BROWN: Thank you, Judge.

2 THE COURT: All right. What's next,  
3 Ms. Jameson?

4 MS. JAMESON: The State has no  
5 additional witnesses or exhibits to introduce. I  
6 don't know if Your Honor has any notes or  
7 recollections to put on the record regarding this  
8 hearing.

9 THE COURT: Well, actually, I've got  
10 some notes. And going back to the exhibits and  
11 y'all don't have a copy of these, do you?

12 MS. JAMESON: No, Your Honor.

13 THE COURT: Okay.

14 MS. CAUDY: I have -- sorry.

15 THE COURT: I'm sorry.

16 MS. CAUDY: I have a copy of the  
17 exhibits that were admitted during the PCR hearing.  
18 They're just very poor qualities -- poor quality.

19 THE COURT: And I don't have copies of  
20 those, but my notes indicated that they proffered  
21 Applicant's Number 1 as Tommy Parker and Applicant  
22 Number 2 was Charles Smalls. And they had  
23 something to do with the alibis, but they did not  
24 come and testify. Which was -- well, but we  
25 proffered those affidavits to protect the record.

1 I don't know whether that was sufficient or not.

2 Do you want me to email these notes to y'all?

3 MS. JAMESON: That would certainly be  
4 helpful, Your Honor.

5 THE COURT: Can y'all bear with me a  
6 second and see how we can transfer those to you?

7 MS. JAMESON: Certainly, Your Honor.  
8 Thank you.

9 THE COURT: Then y'all can -- I didn't  
10 know -- well, okay. Bear with me one second while  
11 I -- Mr. Gourley's handwriting looks really good  
12 now I start looking at mine, so. No comments.  
13 Okay. My admin is scanning them right now and  
14 they're going to be emailing them to both of y'all  
15 right now. And I guess, Katherine, she needs to  
16 send a copy to you too as well, doesn't she? Okay.  
17 Let me remind her of that.

18 Is that what we did? Yeah, we'll mark  
19 those as, they would be -- would they be Exhibit 3?

20 MS. CAUDY: Or Court's Exhibit 1 if  
21 Your Honor would prefer.

22 THE COURT: Whichever. Court's Exhibit  
23 1. Okay. Now while we're waiting -- while y'all  
24 are waiting to get that, can I just mention  
25 something to you? We were trying to find -- y'all



1 had contacted the court reporter and she had  
2 already turned everything in. And Cher Young,  
3 C-H-E-R Young was the court reporter and I also had  
4 Tammie Holmes, you know, at Judicial talk to her.  
5 She said the computer that she was using crashed.  
6 Okay. She said that she is agreeable to having it  
7 fixed at Court Administration's expense and would  
8 provide the transcript if it's in there, but she  
9 has no idea whether it's in there or not. I had  
10 them check the oldest folder that she had and it  
11 only went back to 2016 and Ms. Young indicated that  
12 she was -- she tried to be very consistent in  
13 erasing things after five years, okay. But there's  
14 -- there is a chance that the transcript could be  
15 on that computer and -- but she's not willing to  
16 just turn it over because that computer also has,  
17 you know, personal notes and emails and photographs  
18 and things like that. But she would agree to have  
19 Jason Collins try and see if he could fix it. Now,  
20 he is Faith Collins -- he is a court reporter's  
21 husband who does computer work. And Faith Collins  
22 is in with family court assigned to the First  
23 Circuit here. But she said she's not putting her  
24 money in it and so y'all would have to decide  
25 whether y'all wanted me to try. And I have not had

1 an opportunity to talk to Mr. Collins to get any  
2 kind of estimate on how much that would be to do  
3 that if it's in there. You know, because if the  
4 computer's crashed, I don't know how long. But do  
5 y'all want me to follow-up with that and then who  
6 would pay for it?

7 MS. JAMESON: The State certainly would  
8 like for us to try to do that because the record --  
9 the actual transcript is always going to be much be  
10 better than anything we can even try to reconstruct  
11 in a perfect world. So I think it would be worth  
12 it to do that.

13 THE COURT: Okay. Now, is the State  
14 willing to pay for it?

15 MS. JAMESON: I might need some  
16 clarification on that. Because you said before  
17 Court Administration's expense, so this is not  
18 something Court Administration is willing to pay  
19 for.

20 THE COURT: Okay. Well, they did not  
21 indicate that they were willing -- I mean, I have  
22 not talked to -- when I was talking with Tammie  
23 Holmes, she didn't say anything about, oh, yeah,  
24 we'll be glad to pay it. So I'm assuming they are  
25 expecting one of these two ladies' groups to pay

1 for this, you know.

2 MS. JAMESON: If we could get  
3 clarification on that and then -- that is not an  
4 ordinary expense we incur, so I would have to get  
5 higher up the chain of command approval for that.  
6 But that is certainly something that I would be  
7 willing to entertain and then discuss with Your  
8 Honor and Ms. Caudy.

9 THE COURT: Okay. What I'll try and do  
10 is let me try and get in touch with Mr. Collins and  
11 he will then have to, I guess, probably look at the  
12 computer to give maybe us a range or something like  
13 that. And it could be a waste of time. Because  
14 sometimes when computers crash, they are gone.  
15 Okay.

16 MS. CAUDY: Well, and especially given  
17 that you said that Ms. Young said that she was  
18 pretty habitual about deleting everything after the  
19 five year period. But she only had files up to  
20 2016 where this hearing occurred in 2015.

21 THE COURT: Right. But, I mean, that  
22 was for her tapes, I think. You're talking about  
23 doing that, so I don't know whether -- she said she  
24 could not remember whether she went back through  
25 the computer and actually cleaned the computer as

1 well. And I don't know. And, Katherine, didn't  
2 you talk to her as well?

3 MS. SPIRES: Yes, sir.

4 THE COURT: Okay. And you're on mute  
5 too.

6 MS. SPIRES: Sorry. Yes, sir, I did  
7 talk to her.

8 THE COURT: And she wasn't sure about  
9 if -- about whether anything would still be on the  
10 computer or not; correct, but she did try and get  
11 rid of the tapes as I recall?

12 MS. SPIRES: She said she gave  
13 everything she had to Court Administration maybe  
14 two years ago. I was pretty diligent about  
15 destroying records after five years. I have no  
16 records and what a joy that is.

17 THE COURT: Okay. All right. So after  
18 we finish this today, let's -- and we'll talk about  
19 this, I'll talk with Mr. Collins and like that  
20 because I agree it would be better -- it would be  
21 better for Mr. Hickson if we could get the actual  
22 transcript if we can put it together, okay?

23 MS. CAUDY: Yes, Your Honor.

24 THE COURT: Have y'all gotten the email  
25 yet?

1 MS. JAMESON: I have not.

2 THE COURT: Okay. It just got sent.

3 So I'll give y'all a second to see how long it  
4 takes to walk it --

5 MS. SPIRES: I got mine.

6 THE COURT: Okay.

7 MS. CAUDY: It just came, Your Honor.

8 THE COURT: Do y'all want a minute or  
9 two to look over those?

10 MS. JAMESON: Yes, please.

11 THE COURT: Okay. All right. I'm  
12 gonna go mute and off video for about five minutes  
13 or ten, you know, so y'all can look over it over,  
14 okay.

15 MS. JAMESON: Thank you.

16 THE COURT: Have you had a chance to  
17 look them over?

18 MS. JAMESON: I have, Your Honor.

19 THE COURT: And, Ms. Caudy?

20 MS. CAUDY: I have, Your Honor. Yes,  
21 sir.

22 THE COURT: My question is that's -- do  
23 I need to swear myself in?

24 EDGAR DICKSON,

25 being first duly sworn, was examined and testified

*THE COURT - SUMMATION BY THE COURT*

1 as follows:

2 MS. JAMESON: Yes, Your Honor. I think  
3 it might be helpful -- these -- I can read these a  
4 lot more clearly than I can read Mr. Gourley's  
5 notes. But if you wouldn't mind, kind of  
6 representing them a little bit for the record.

7 THE COURT: I have no independent  
8 recollection of this hearing and so I'm having to  
9 go by these notes as well. And if you want me to  
10 just start at the top of the page, page 1 starts  
11 off with Mr. Hickson's name at the top, okay. And  
12 then the second page, it's Mr. Gourley's cross  
13 examination. And the third page starts off with  
14 alibi witnesses. Fourth page has the date and  
15 testimony that video did not exist or not,  
16 something like that. And then the last page starts  
17 off with no alibi witness testified. Okay. Just  
18 so y'all will note, that's the order of the pages.

19 The one thing I just, as kind of an  
20 amusing side note to me is I think this is the  
21 first time Ms. Zmroczek ever appeared in front of  
22 me, and so I was trying to figure out how to  
23 pronounce her name and I was writing that on the  
24 upper right hand column.

25 And according to my notes, Mr. Hickson

*THE COURT - SUMMATION BY THE COURT*

1 testified first and he told me a little background.  
2 I think at the time, Mr. Hickson, you were 25 and  
3 at Lieber and you had received a 28 year old  
4 sentence.

5 He testified that he was -- he had met  
6 his attorney one time. I have a note that page 326  
7 of the transcript was missing. But then I have --  
8 when you see something in brackets at a square, it  
9 says all even numbers are left out, usually that's  
10 just something that I noticed and not anything that  
11 was put in the record. Okay.

12 He testified that he had alibi  
13 witnesses who wrote statements and didn't think  
14 that she, meaning his attorney, did an  
15 investigation. The attorney needed to object to  
16 statements that were identified on page 197 of the  
17 transcript which I don't have. I don't have a copy  
18 of that in my file, so I don't know what that's.  
19 He then testified that his attorney advised him not  
20 to testify.

21 As to the alibi, he states that he was  
22 with his uncle working on cars and would not be  
23 strong enough for State and she wanted the last  
24 argument. Oh, okay. He was telling me what his  
25 attorney did not believe the alibi witnesses were

## THE COURT - SUMMATION BY THE COURT

1 strong enough and that she wanted the last  
2 argument. And then I have a question about how he  
3 was caught and underneath I have expert on  
4 fingerprints. But somewhere else in here, I don't  
5 think there was any fingerprints used at the trial,  
6 so I don't know what that means.

7           Incarcerated prior to trial. His  
8 attorney never visited him that time. But  
9 apparently out on, I'm assuming he was out on bond  
10 by the time we went to trial. And I don't have any  
11 independent memory of anything like that. He was  
12 denied appellate review. Claimed that his attorney  
13 failed to investigate the alibi witnesses, Charles  
14 Small and Tommy Parker. And when -- if y'all will  
15 remember, Mr. -- on page -- I mean, Exhibit 1 --  
16 Respondent's Exhibit 1 on page 7 of Mr. Gourley's  
17 notes, down at the bottom, and there was a note,  
18 defendant and codefendant's same defense involved  
19 and he couldn't read what that was. I think that's  
20 alibi. Because my notes indicate there that the  
21 brother had the same defense which was an alibi  
22 defense. Okay.

23           So, I think that kind of illegible  
24 notes seems to be alibi too, but I'm not sure. And  
25 he indicated -- Mr. Hickson indicated that what he



## THE COURT - SUMMATION BY THE COURT

1 wanted from the PCR was a vacated sentence and a  
2 new trial. On cross examination which begins at  
3 the top of the next page, the only notes I took  
4 were on Mr. -- from Mr. Gourley's cross examination  
5 was, alibi witness and took no part in the crime.  
6 And David Pierce (verbatim) implicated defendant  
7 and brother in bank robbery. So I guess that was  
8 the person who testified at the trial.

9 On redirect, Ms. Zmroczek relied on --  
10 got him to say that he relied on his attorney about  
11 whether to testify. And then you see in the  
12 brackets out beside that, just that's a note to  
13 myself, to his detriment perhaps to make me think  
14 about that a little bit more when I was going over  
15 this. And then Mr. Gourley didn't answer -- ask  
16 any questions on recross. Do y'all have any  
17 questions about that so far?

18 MS. JAMESON: No, Your Honor.

19 THE COURT: Ms. Caudy?

20 MS. CAUDY: No, Your Honor.

21 THE COURT: Okay. This is your best  
22 chance to ask a judge what's going on, so. Okay.  
23 Then Ms. Kelley Brown testified. She testified  
24 that she had been practicing law since April of  
25 1988. She was appointed on this case. She

## THE COURT - SUMMATION BY THE COURT

1 indicated that they met on two occasions.  
2 Defendant was not in jail. Something about had  
3 files opened on two earlier charges. Jerry Screen  
4 was his attorney and that represented the Defendant  
5 at the bond hearing.

6 On April 2010, I don't know what that  
7 word is. Something to do with Mr. Screen. And  
8 then I believe she's indicating that she met with  
9 Mr. Brown on April 21st of 2010. Met -- and met  
10 prior to trial in September. You know, Rule 5 and  
11 *Brady* material. And she confirms that he --  
12 Mr. Hickson, he discussed the alibi. They talk to  
13 -- Ms. Kelley indicated that they talked to either  
14 she or her investigator, I don't remember who,  
15 talked to Tommy Parker, his uncle, about proposed  
16 testimony. Did not call Mr. Parker because  
17 surveillance from Walmart -- they had surveillance  
18 from Walmart that would negate the testimony and  
19 potential strength. And then so she made a  
20 judgement call between the potential strength of  
21 the alibi verses trial strategy to go last in  
22 closing.

23 She was led to believe that the State  
24 had rebuttal evidence to the alibi. And then as to  
25 the snitch testimony, I'm assuming that's

## THE COURT - SUMMATION BY THE COURT

1 Mr. Pierce, no one but codefendants implicated the  
2 defendant. There were no eyewitnesses and no  
3 prints which goes back to the earlier statement.  
4 There's no other specific investigations by her.

5 The defense was -- her defense was just  
6 simply poking holes in the State's case. She  
7 indicated that she was prepared. Ms. Zmroczek  
8 reenforced that she only recall meeting Mr. Hickson  
9 two times. That she did not hire a private  
10 investigator and something about all three  
11 codefendants that I have no independent  
12 recollection about.

13 Then at the top of page 3 regarding  
14 alibi witnesses. There are statements done on  
15 forms by public defender's office. I have no idea  
16 why I have "can't" there. Something about saw  
17 Walmart video. Don't know. LE is usually law  
18 enforcement when I make my notes. Law enforcement  
19 testified that they did not, but I didn't finish  
20 that thought out on that page.

21 There is a reference again to page 124  
22 that I saw that Mr. Gourley had made the note also.  
23 And she said she did not -- I guess from law  
24 enforcement, did not get any surveillance from  
25 them. At that point would have -- would it have

*THE COURT - SUMMATION BY THE COURT*

1 | been better trial strategy. And I think that's  
2 | talking about whether or not to put him on the  
3 | stand. But she believed it was still best to get  
4 | the last argument in. And she had no recollection  
5 | of whether the alibi witnesses were ready to go.

6 |           There's also a reference to page 14 of  
7 | -- and that would be of the trial transcript.  
8 | There was a comment statement of, you know, to seek  
9 | the truth -- the jury's to seek the true facts.  
10 | And why no objection. And I think it was that  
11 | maybe the case law did not say that at the time.  
12 | And then I've got in brackets, not retroactive.  
13 | That would have been nothing that was testified to.  
14 | That was just my notes.

15 |           And then there's a comment about page  
16 | 28 referring to off the record discussions with the  
17 | judge which -- and then page 31, true and just  
18 | verdict. She didn't object to that. And in her  
19 | testimony at the time of the PCR, she's testified  
20 | she's just dealing with juveniles. This was a bank  
21 | robbery. Faces were covered. Referring to page  
22 | 42, I guess of the transcript. Don't know if there  
23 | was a motion to relieve after Screen appeared at  
24 | the bond hearing.

25 |           The -- this was -- her thoughts was

## THE COURT - SUMMATION BY THE COURT

1 this is a credibility state -- credibility case and  
2 there -- but there were several inconsistencies.  
3 Again, there kind of star out to the side was for  
4 me to look at that a little harder. And they chose  
5 not to use, which I guess she's talking about the  
6 alibi witnesses. And then she was crossed. They  
7 were -- they do have two investigators. I don't  
8 know, apparently there might have been a notary.

9 Ms. Caudy, y'all might know whether the  
10 -- alibi things notarized, is that what she's  
11 talking about?

12 MS. CAUDY: It is. Yes, Your Honor.

13 THE COURT: Okay. So I think she said  
14 the notary was not the investigator and they were  
15 using some forms that their PD's -- that the PD's  
16 office had, I guess. And she did not know who  
17 generated those statements.

18 And then going to page 4. Testimony  
19 that video did not exist -- whether the video  
20 existed or not. And I'm assuming that's talking  
21 about the Walmart video. But she had no disk about  
22 it labeled video. But that was a key element in  
23 her belief and two other attorneys in the PD's  
24 office thought the same thing. They were worried  
25 about the -- there was some Walmart surveillance

## THE COURT - SUMMATION BY THE COURT

1 that would mess with the alibi.

2 And then I have in my notes that we  
3 proffered Applicant's 1, which was Tommy Parker's  
4 affidavit and Applicant's 2 which was Charles  
5 Smalls. And then on cross, Mr. Gourley was  
6 apparently feared something about those videos.  
7 And then there was no questions on -- after that.

8 Then I have just my notes from Ms.  
9 Zmroczek's arguments. Do you want me to go over  
10 those?

11 MS. JAMESON: Yes, please.

12 THE COURT: Okay. She talked about  
13 there was an armed robbery. I don't understand  
14 fact that the file was closed. Met two times.  
15 She's referring to meetings with Ms. Brown. Vague  
16 memory. Not calling alibi witness with no video.  
17 And to not present evidence meets *Strickland*  
18 standard I guess. And she's referring to a couple  
19 of statements on page 28 and 31 about true and just  
20 verdict where Ms. Zmroczek argues that she should  
21 have -- that Ms. Brown should have objected.

22 And there was either apparently no  
23 preservation objection on page 28 regarding photo  
24 lineup. I don't know what -- there were obviously  
25 concerns about the ID and should have been granted

## THE COURT - DIRECT EXAMINATION BY MS. JAMESON

1 a new trial. And then on the last page she  
2 reminded that no alibi witnesses testified. And  
3 the photo lineup mug shots -- oh, that must be Mr.  
4 Gourley's arguments, I guess. I actually don't  
5 know what that top of the page whose arguments  
6 those were.

7 And there's a note Javier Hickson PCR,  
8 Judge Gee has it under advisement from May. That  
9 must have been referring about another case that  
10 Mr. Gourley might have just asked me about after we  
11 concluded. I don't have any idea what that means.

12 MS. CAUDY: We're speculating, I assume  
13 it's referring to his brother and codefendant  
14 Javier Hickson.

15 THE COURT: Oh, that could be. Okay.  
16 Well, that would make sense. Okay. Sorry. The  
17 mind does not remember all those things. Ms.  
18 Jameson, do you want to ask me any questions about  
19 the notes?

20 MS. JAMESON: Just a few, Your Honor.

21 DIRECT EXAMINATION BY MS. JAMESON:

22 Q. This was not Your Honor's first  
23 post-conviction relief term, was it, that you  
24 presided over?

25 A. No, ma'am. I had been on the bench at

*THE COURT - DIRECT EXAMINATION BY MS. JAMESON*

1 that time, I think I got on the bench in -- well,  
2 2009. So -- and when you first get on the bench,  
3 since you haven't heard anything, they try and give  
4 you as many PCR's as they can because you can't  
5 have a conflict. Okay. So it wasn't my first, no.

6 Q. Was your standard practice to take  
7 notes during PCR proceedings?

8 A. Yes, ma'am.

9 Q. And was your standard practice for  
10 these notes to encompass all testimony and exhibits  
11 presented to the Court?

12 A. Yeah, I try to. But, you know, as you  
13 can see they're incomplete, so.

14 Q. Do you have any recollection or reason  
15 to believe that these notes do not encompass the  
16 testimony and evidence presented at this hearing?

17 A. Well, as you can see, I left out some  
18 statements, but it's basic outline of what we --  
19 the order in what was testified to.

20 MS. JAMESON: No further questions.  
21 Thank you, Your Honor.

22 THE COURT: Ms. Caudy, anything you  
23 want to ask me?

24 MS. CAUDY: No, Your Honor.

25 THE COURT: Okay. All right. So what



1 -- I mean, I'm going to contact Mr. Collins still.  
2 Okay. And I'll get back with y'all to see what we  
3 can do. Okay. Is that what y'all want to do or is  
4 there something else y'all want me to address right  
5 now?

6 MS. JAMESON: No, Your Honor. I think  
7 the best course of action would be if there's a way  
8 we can potentially get that transcript, that would  
9 be the best evidence obviously of the hearing. If  
10 not, then I think we will need a ruling at that  
11 time from Your Honor as to whether or not the  
12 record has been adequately reconstructed for a  
13 meaningful appellate review.

14 THE COURT: Okay. All right. Well --  
15 okay. Let me contact Ms. Collins and -- I mean,  
16 Mr. Collins and let's see what we can do. Okay.  
17 Ms. Caudy, anything else you want me to do?

18 MS. CAUDY: Yes. Yes, Your Honor.  
19 Would you be agreeable to hearing argument now on  
20 whether the record was reconstructed to allow for a  
21 meaningful appellate review or would you prefer to  
22 hold those arguments at a later date?

23 THE COURT: I'll be glad to do it now  
24 if y'all want to do that. That way it will all be  
25 in one transcript. Okay.

1 MS. CAUDY: Yes, Your Honor. And all  
2 fresh in our minds.

3 THE COURT: Okay.

4 MS. CAUDY: I think based on what took  
5 place today it's clear that the record cannot be  
6 sufficiently reconstructed to allow for meaningful  
7 appellate review. I'll give Your Honor, I sent a  
8 few cases. *State verses Lad son* which is 373 S.C.  
9 320. *China verses parrot*, 251 S.C. 329. *Adams*  
10 *verses HR Allen Incorporated*, 397 S.C. 652. And  
11 then *Do live*, D-O-L-I-V-E is how you spell that,  
12 *verses JEE Developers* at 308 S.C. 380. Those are  
13 just some cases that discuss reconstructions and  
14 whether the record allows for meaningful appellate  
15 review.

16 For example, in *State verses Lad son*,  
17 our Supreme Court held that the record could not be  
18 sufficiently reconstructed to allow for meaningful  
19 appellate review. Because the record that was  
20 reconstructed was, you know, a summary fashion of  
21 the witnesses' testimony. It was pretty, you know,  
22 conclusory information was given. Which  
23 essentially what happened in this case, I mean,  
24 we're trying to go off of what Mr. Gourley's notes  
25 state and what Your Honor's notes state in a

1 summary fashion.

2           There's been some speculation been  
3 going on. You know Mr. Gourley couldn't remember  
4 some stuff. It was, you know, unclear to him of  
5 what some of his notes said. And the same was true  
6 with Your Honor's recollection of his notes. You  
7 know, there was some, I guess that she's talking  
8 about, those sort of statements. And even Your  
9 Honor admitted that your notes were incomplete, I  
10 think was the word that you used or kind of a basic  
11 summary of what occurred during the hearing.

12           For example, you know, the legal  
13 arguments made by counsel. I mean, Mr. Gourley had  
14 no notes regarding arguments that were made at the  
15 conclusion of the hearing. We wouldn't have even  
16 known they existed if it weren't for Your Honor's  
17 brief summary of what those arguments were.

18           There were three claims that were ruled  
19 upon in the Order of Dismissal -- I'm sorry, seven  
20 claims that were ruled upon in the Order of  
21 Dismissal. Some of them I didn't hear any  
22 testimony at all today discussed, for example,  
23 ineffective assistant counsel for failing to move  
24 to quash arrest warrants. I don't recall anyone  
25 mentioning that allegation. Either to move to

1 strike witness statements. Rendering trial, I  
2 don't recall any notes from Mr. Gourley or Your  
3 Honor about that allegation which was ruled upon in  
4 the Order of Dismissal.

5 Failure to cross examine the  
6 codefendant. I'm not sure if that's Mr. Kearse or  
7 if, I assume it's Mr. Kearse since Mr. Javier  
8 Hickson did not testify. But, again, there's  
9 numerous claims in the Order of Dismissal that were  
10 ruled upon where we didn't hear any testimony today  
11 that even mentioned them.

12 So I think it's clear based on what  
13 occurred today that that record is not -- that the  
14 record of his evidentiary hearing that occurred in  
15 September of 2015 has not been reconstructed to  
16 allow for meaningful appellate review. And the  
17 standard of review on appeal is whether there's any  
18 evidence to support the PCR judge's findings.  
19 Without that transcript, without a complete record  
20 of what the witnesses testified at the hearing,  
21 there's just no way that I can argue on appeal  
22 whether there's evidence to support Your Honor's  
23 findings or not.

24 The Order of Dismissal gives no  
25 guidance in respect to what that testimony may have

1 | been. With all due respect, the conclusions are,  
2 | you know, the claims are ruled upon in a conclusory  
3 | manner. There's no testimony cited in the Order of  
4 | Dismissal to support the rulings. There's no true  
5 | findings of fact with all due respect. The  
6 | assistant attorney general who drafted the proposed  
7 | Order of Dismissal wasn't even present at the  
8 | evidentiary hearing. From what I can tell, she did  
9 | not even consult Mr. Gourley's notes from that  
10 | hearing and tried to draft a proposed Order of  
11 | Dismissal that reflected the testimony at the  
12 | hearing.

13 |               And as clear by the fact that we're  
14 | here today, the attorney general's office did not  
15 | request a copy of that evidentiary hearing in order  
16 | to prepare the Order of Dismissal.

17 |               THE COURT: Yeah, I'm glad you getting  
18 | off of me and getting on them. Thank you. Go  
19 | ahead, Ms. Caudy.

20 |               MS. CAUDY: Sorry, Your Honor.

21 |               THE COURT: No, you're doing good.  
22 | Thank you, ma'am.

23 |               MS. CAUDY: So, again, based on the  
24 | case law in our state, the cases that I cited at  
25 | the beginning of my argument, I think it's clear

1 that this record of the evidentiary hearing has not  
2 been sufficiently reconstructed to allow for  
3 meaningful appellate review and I would  
4 respectfully ask Your Honor to make that finding  
5 and ultimately it would be up to the Supreme Court  
6 whether to grant him a new post-conviction relief  
7 hearing. Thank you.

8 THE COURT: Okay. So they won't  
9 automatically do another one if we can't create a  
10 meaningful record?

11 MS. CAUDY: I think they would. I  
12 think if you rule that the record cannot be  
13 sufficiently reconstructed to allow for meaningful  
14 appellate review that -- I mean, Ms. Jameson can  
15 appeal that decision if she disagreed. If she  
16 consents, then -- I mean, my point was that it's up  
17 to the Supreme Court whether to grant him a new  
18 PCR.

19 THE COURT: Yeah, I understand it's not  
20 my call. But that's where the case is right now;  
21 correct?

22 MS. CAUDY: Yes, Your Honor.

23 THE COURT: Okay. All right. Ms.  
24 Jameson, I'll be glad to hear from you.

25 MS. JAMESON: Yes. Briefly, Your

1 Honor. To start off, there is no requirement that  
2 or precedent that there must be a word for word  
3 transcription of what happened at any sort of  
4 proceeding that is attempting to be reconstructed.  
5 I didn't hear Mr. Hickson's counsel cite to  
6 anything saying that there's no case law saying  
7 that it has to be word for word question answer.  
8 And that is not what we have here, but with a  
9 combination of Mr. Gourley's notes, the Court's  
10 notes, and the testimony from both Your Honor and  
11 Mr. Gourley as well as the three other witnesses  
12 who testified, we do have enough of a record for  
13 meaningful appellate review in this case.

14           It is very clear from reviewing the  
15 Order of Dismissal, the Motion to Reconsider, and  
16 Respondent's Exhibit Number 2 which is the email  
17 from Your Honor regarding the issues that were  
18 raised in the findings. We know the seven issues  
19 that were raised at the post-conviction relief  
20 hearing, so this is not a situation where we're not  
21 clear what issues were or were not raised.

22           It's not conclusory testimony that we  
23 have here. We have some direct questions. We have  
24 some direct testimony that's provided. And the  
25 State's position is that it is enough to provide

1 for meaningful appellate review of Your Honor's  
2 Order of Dismissal.

3 THE COURT: Okay. Thank you, ma'am.  
4 What I'll do is I'll see what I can do about  
5 talking with Mr. Collins so we can get a copy of  
6 the transcript. And I would -- we're supposed to  
7 get this to the Supreme Court by when?

8 MS. JAMESON: I think from the 5th,  
9 Your Honor, but I think it was having the hearing  
10 and we can probably update the Court that we have  
11 had the reconstruction hearing and we are waiting  
12 to hear back regarding possibly getting the  
13 transcript and that hopefully will be enough to  
14 appease the Court.

15 THE COURT: Okay.

16 MS. CAUDY: I would state that Your  
17 Honor is supposed to make a ruling within 15 days  
18 of the date of the hearing. Just to make you  
19 aware.

20 THE COURT: Okay. Thank you for  
21 reminding me of that. Okay. Fifteen days. Okay.  
22 All right. And what I'll do is I will send an  
23 email -- I'll send an email in response to the  
24 Order and copy y'all and let them know that we have  
25 -- we've had the hearing. Okay.



1 MS. CAUDY: Yes, Your Honor.

2 THE COURT: And what we're doing.  
3 We're still trying to find the original tape.  
4 Okay. Transcript. Okay. Thank y'all, ladies.  
5 Thank you, Mr. Hickson.

6 MS. JAMESON: Thank you very much.

7 MS. CAUDY: Thank you.

8 (WHEREUPON, Respondent's Exhibit  
9 Numbers 1 and 2 and Court's Exhibit Number 1 was  
10 marked and entered)

11 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -

12

13

14

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

)

COUNTY OF AIKEN

)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Aiken County, South Carolina, via Virtual on the 28th of April, 2022.

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

June 14, 2022

s/Katherine A. Spires

Katherine A. Spires

Registered Professional Reporter

# **EXHIBIT NO. 3**

Artrell Hickson (2013-CP-02-1153)

Witness: Kelly Brown

PCR Counsel: Aimee Z.

-May it please the court? This is Artrell Hickson versus the State of South Carolina, docket number 2013-CP-02-1153. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the December 2009 term of the Aiken County Grand Jury for Armed Robbery (2009-GS-02-2294) and at the April 2010 term of the Aiken County Grand Jury for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime (2010-GS-02-0670). Kelley Brown, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. On September 22, 2010 Applicant was found guilty. Judge Early sentenced Applicant to twenty-eight years imprisonment for Armed Robbery and five years imprisonment for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime with all sentences to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Jerry M. Screen, Esquire. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Hickson, Op. No. 2012- UP- 667 (Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

Applicant filed a timely application for post-conviction relief on May 21, 2013 alleging that he was being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of trial counsel.
  - a. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's

arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.

- b. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
- c. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
- d. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses Crystal Harris, Charles Smalls, and Tommy Parker, for the defense during applicant's criminal trial."
- e. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised."
- f. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil -vs- Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest."
- g. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as

guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence."

The state filed its July 1, 2013. He is represented in this matter by Aimee Z.

How many times did you meet with your attorney before going to trial?

①

Do you recall reviewing discovery with your attorney?

- also w/

Do you recall discussing possible defenses with your attorney?

Charles Smith & Thomas

Did you give your attorney any leads or potential witnesses to investigate?

0

- David Keane & family

How long have you been practicing law?

Do you recall when you were <sup>1998</sup> appointed/retained in this case?

How many times did you meet with the Applicant prior to his trial?

April 2000  
July 1998

- met @ two occasions →

- not in jail → did post bond Oct 14, 2000

- originally file over 2000 and days

- Did the Applicant cooperate during the course of your representation?

to J.S. rep. 3rd  
hearing

Did you file any Brady or Rule 5 motions?

X → none  
not here

Did you review the discovery material with the Applicant?

discussed evidence  
against state  
alibi w's

Prior to trial, did you discuss with the Applicant the elements of the charges and what the state was required to prove?



Did you discuss the Applicant's version of the facts?

→ w/ one of three  
w's → Tommy  
parker.

Did you discuss possible defenses with the Applicant?

→ led to believe  
surveillance pro  
from walmart  
which would  
have negated  
alibi testimony

→ Would you briefly describe the state's evidence against the Applicant?

Contradiction  
in w's statements (A - B) implicated him + Anderson  
individual → sketch testimony somewhat  
corroborated from other w's.

- Did the Applicant ever give you any potential witnesses or leads for investigation purposes?

→ did have  
dtr of strength  
of alibi testimony

What kind of investigation did you do?

So y thought core + heavy  
convict w/ corroborated.

the strength  
f.s. heard from  
cost



Did you have ample time to prepare for trial?

What was the trial strategy in Applicant's case?

- only met w/ t.c 1 time
- failed about  $\Delta$  @ the time
- alibi: W's
  - advised not to put alibi
  - alibi  $\rightarrow$  not credible
- alibi gave off + statements
  - Thye @ the
- Bouzong
  - took affidavit
- no mention of alibi b/c no one testified for him.

- Expert of Dgs + fingerprints

Charles ~~Smith~~ + Tommy Jones

- $\Delta$  + Co.  $\Delta$   $\rightarrow$  same defense
  - involved car

- ~~Outside scope of cross~~
  - Alibi Kirby b/c of her

Kelly Brown

- met 2 times
  - ↳ available @ anytime
- didnt hire priv investigator
- 3-co-A
- aware of those statements
  - provided Artrell + Javer
- alibi w/ Negated Wal-Mart video

ps 124

- dont have it in my file
- will tell you the course of the

better T.S. to put W's

↳ could have been better T.S.

- still @ better strategy to go ~~best~~ argument M.

True  
+ rush  
verdict

- Dont recall if alibi w/ Jure ready to go.
- Judge "seek the truth" facts

- common + half off record
- Jury Charge.
- possible treppered

ps 28

- Bank robbery
  - fares card
- Pg 42 of the transcript.
  - observer
- Screen rep Artrell @ bond
  - ~~Need~~ don't know if screen made known to be (cheat).
- Credibility of State W's
  - several inconsistencies.
    - ↳ T.S. to not call them
  - meeting w/ hickman
    - meeting 2
    - ~~As Investigator~~ 2 invs. employed three.
- testimony caught off guard
  - 1

# **EXHIBIT NO. 4**

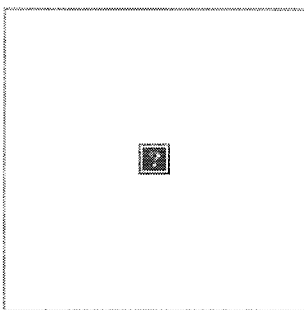
**From:** Julie Coleman  
**To:** "Dickson, Edgar W. Secretary (Peggy Smith)"; "ajzlawfirm@gmail.com"  
**Cc:** Dickson, Edgar W. Law Clerk (John Dodds)  
**Subject:** RE: Artrell Hickson v. State of South Carolina; 2013-CP-02-01153  
**Date:** Friday, October 14, 2016 4:26:00 PM  
**Attachments:** Proposed Order of Dismissal- Artrell Hickson (01136720xD2C78).DOCX  
image001.jpg

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Ms. Smith,

Attached is a proposed Order of Dismissal in Word format for Artrell Hickson.  
 I will place a hard copy in the mail on Monday, as well.

Thank you, and have a great weekend!



**Julie A. Coleman**  
**Assistant Attorney General**

**S.C. Attorney General's Office**  
 Rembert C. Dennis Building  
 Post Office Box 11549  
 Columbia, South Carolina 29211

**Office: (803) 734-3737**  
**jcoleman@scag.gov**

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**From:** Dickson, Edgar W. Secretary (Peggy Smith) [mailto:edicksonsc@sccourts.org]  
**Sent:** Friday, October 14, 2016 2:24 PM  
**To:** Daniel Gourley; 'ajzlawfirm@gmail.com'  
**Cc:** Dickson, Edgar W. Law Clerk (John Dodds); Julie Coleman  
**Subject:** RE: Artrell Hickson v. State of South Carolina; 2013-CP-02-01153

Thank you for the update, Mr. Gourley. I will look to hear from Ms. Coleman.

Sincerely,

*Peggy T. Smith*

Administrative Assistant  
 Judge Edgar W. Dickson  
 P. O. Box 1949  
 Orangeburg, S. C. 29116  
 (803) 535-2187 phone  
 (803) 535-2188 fax

---

**From:** Daniel Gourley [<mailto:DGourley@scag.gov>]  
**Sent:** Friday, October 14, 2016 2:18 PM  
**To:** Dickson, Edgar W. Secretary (Peggy Smith); 'ajzlawfirm@gmail.com'  
**Cc:** Dickson, Edgar W. Law Clerk (John Dodds)  
**Subject:** RE: Artrell Hickson v. State of South Carolina; 2013-CP-02-01153

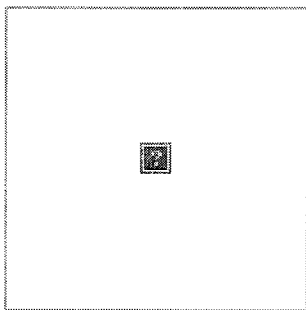
Ms. Smith,

I apologize for the delay in responding. I actually eft PCR back in April. I have cc'd Julie Coleman, who took over the circuits. She should be able to give you an update on the status of the order. Please let me know if I can be of any further assistance!

Hope you have a wonderful weekend!

Best,

Daniel



**Daniel F. Gourley**  
**Assistant Attorney General**

**SC Attorney General's Office**  
Rembert C. Dennis Building  
1000 Assembly St.  
Columbia, SC 29201

**Office: (803)734-9006**  
**[dgourley@scag.gov](mailto:dgourley@scag.gov)**

---

**From:** Dickson, Edgar W. Secretary (Peggy Smith) [<mailto:edicksonsc@sccourts.org>]  
**Sent:** Thursday, October 13, 2016 12:24 PM  
**To:** Daniel Gourley; 'ajzlawfirm@gmail.com'  
**Cc:** Dickson, Edgar W. Law Clerk (John Dodds)  
**Subject:** RE: Artrell Hickson v. State of South Carolina; 2013-CP-02-01153

Dear Mr. Gourley,

I am just checking on the status of your Order in the above referenced PCR. Below is the email Jenny Pittman (Judge Dickson's former Law Clerk) sent to you in April.

Sincerely,

*Peggy T. Smith*

Administrative Assistant  
Judge Edgar W. Dickson  
P. O. Box 1949  
Orangeburg, S. C. 29116  
(803) 535-2187 phone  
(803) 535-2188 fax

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**From:** Dickson, Edgar W. Law Clerk (Jenny Pittman)  
**Sent:** Friday, April 08, 2016 3:13 PM  
**To:** Daniel Gourley; 'ajzlawfirm@gmail.com'  
**Cc:** Dickson, Edgar W. Secretary (Peggy Smith)  
**Subject:** Artrell Hickson v. State of South Carolina; 2013-CP-02-01153

Good afternoon:

This letter is in reference to the hearing held before Judge Dickson on September 11<sup>th</sup>, 2015 in Aiken County.

After due deliberation, review of the memoranda, case law, exhibits and arguments of counsel, Judge Dickson is denying the application for post-conviction relief.

Applicant claims that due to his attorney's sub-standard performance, he has been denied his constitutionally protected right to counsel. In deciding a claim of ineffective assistance of counsel, the focus is on "the fundamental fairness of the proceeding whose result is being challenged." *Strickland v. Washington*, 466 U.S. 668 (1984). Applicant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* The burden of proof is on the applicant to prove the allegations raised in his application. *Brown v. State*, 340 S.C. 590, 593, 533 S.E.2d 308, 309 (2000).

The Court finds that Applicant was not deprived of effective assistance of counsel. Defense counsel's decisions and conduct were appropriate under the circumstances, and did not fall below professional norms of reasonableness. Applicant failed to present his alibi witnesses at the PCR hearing, therefore he cannot claim ineffective assistance of counsel for failing to call said witnesses at the trial. *See Dempsey v. State*, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (an applicant cannot show prejudice due to the failure of trial counsel to call alleged alibi witnesses at trial if the applicant does not present said witnesses at the PCR hearing on his behalf). Trial counsel did object to Ms. Bryant reading her statement into the record and was overruled, so Applicant cannot claim ineffective assistance of counsel for failing to object. However, this Court feels that pursuant to the Rule of Completeness it was proper for Ms. Bryant to read her statement to clarify what was elicited under cross examination. As for Ms. Oakman's statement, while trial counsel did not object, this Court feels that it was proper under the Rule of Completeness due to the information that was elicited under cross examination. Applicant also raised the issue of the trial judge's instructions to the jury, specifically the comment made about a "true and just verdict." Trial counsel was not ineffective for failing to object to the trial judge's jury instructions as the instructions were not objectionable, the use of the phrase "fair and impartial" does not rise to the level of the improper charge in *State v. Daniels* where the jury was instructed to reach a verdict that was just and fair "to all parties." *State v. Daniels*, 401 S.C. 251, 255, 737 S.E.2d 473, 475 (2012). Applicant's argument that trial counsel was ineffective for failing to cross-examine his Co-Defendant about his plea deal is



meritless, trial counsel asked if he was testifying to help himself out and Co-Defendant Kearse admitted as such. Applicant's argument that trial counsel was ineffective for failing to request a *Neil v. Biggers* hearing is also meritless. This was an armed robbery where the three suspects covered their faces, law enforcement did not present the Victims with any photo lineups to identify, nor did the Victims ever identify the suspects. Applicant's final argument concerned the waiver of his right to testify. The trial judge fully discussed Applicant's right to testify on the record, allowed him additional time to speak with his attorney, and Applicant stated that he wished to remain silent. Applicant was aware that this right was his alone to waive and not his trial counsel's decision. For these reasons, Applicant's motion for PCR is denied.

Mr. Gourley, Judge Dickson asks that you prepare the Order. When it has been prepared, please send a copy to opposing counsel and mail or hand deliver the Order to this office with a self-addressed, stamped envelope for its prompt return.

If you have any questions or concerns, please contact this office by email or by phone at (803) 535-2187.

With Kind Regards,  
Jenny

Jenny R. Pittman  
Law Clerk, Hon. Edgar W. Dickson  
First Judicial Circuit  
P.O. Box 1949  
Orangeburg, SC 29116  
803-535-2187 (phone)  
803-535-2188 (fax)

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

EXHIBIT NO. 5

77 Feb 11/15

David
Sondy

Atwell
Hickson

DECIDE

Zim Also check
Zm

Atwell Hickson testified

25

@ Lecher

28 year sentence

met with atty 1x

[murray p. 326 of T] All even # are left out

had alibi witness who wrote statements
don't think she did any investigation

Attorney needed to object to a statement on

p 197

Attorney advised he can not testify.

Alibi — He was with his uncle & was in car
would not be strong enough for state & the court
the last argument

How was he caught?
Fingerprint

incarcerated prior to trial — atty never visited
out on

Demanded appellate review

Attorney failed to investigate alibi witness: Charles Smalls
& Tommy ~~Red~~ Parker

Brother had same defense — alibi

wants a vacated sentence and new trial

Story alibi witness + took no part in their crime
 cross David Pierce implicated Δ + brother in bank robbery

re-direct Relied on Δ ally about testimony [to his detriment, perhaps]

re-cross no Q

Kelly Brown testified —

since April 1998

appointed

met on 2 occasions

Δ was not in jail

had father opened on 2 earlier charges

Jerry Screen, atty, had represent Δ at Bond hearing
 in April 2010, discussed Screen
 met 4/21/10

" Δ prior to trial in Sept —

Rule 5 & Brady material

he discussed alibi — talked to Tommy Parker, his uncle,
 about proposed testimony — did not call " b/c surveillance
 from Wal Mart that would negate testimony
 + potential strength v. trial strategy to go last @ closing

Led to believe State had rebuttal evidence to alibi

Snitch testimony — no one but co-defs implicated Δ

no eye witnesses

no prints

no other specific investigation

defense — poking holes in State case

was prepared

cross
 Zimorchuk

only recall meeting two times — he

did not hire PI

all 3 co-defs

Witnesses -

These are statements done on forms by P.D. office
can't

testified that

~~Don't~~ saw Wal Mart video? don't know
~~under~~

L.E. testified that they did not

T p. 124 - ^{LE} I did not get any surveillance from them

at that point would have been better trial strategy?

Still better to get last argument

no recollection of whether alibi witnesses were ready to go

p14 - jury is to seek true facts - why no objection
case law no to say that [not retroactive]

^{AD}
p. 28 ref. to off. the record discussion w/ Judge

p. 31 "true & just verdict" did not object

Now she just deals with juveniles

This was a bank robbery - fees were covered
p. 42

~~Don't~~ don't know if there was a motion to release after
Screen appeared at Bond hearing

*

Credibility case but several inconsistencies

Chose not use

we do have 2 investigators

notary was not the investigator - recognized forms

Don't know who requested those statements

9/11/15

775

testimony that video did not exist - or not
have no disc labeled video

that was a key element in her belief - 2 other attys
in PD. thought same thing

Proposed A#1 - Tommy Baker

A#2 - Charles Smalley

~~Cross~~
~~Examination~~

learned that video or photo

no Qs.

Argument

Zmorchak

① AR

fact that file was closed
met. 2x

vague memory

~~like~~ ~~not~~ not calling alibi witness when no video
to not present meets Strickland 5th

Several statements

p. 28 + 31 - "true + just verdict"

~~per~~

~~should have~~
she objected

preservation of objection

p. 28 regarding photo leaving was not make problem

obvious concern about ID

granted a new trial

776

no alibi witnesses ~~found at state~~ testified
photo line-up - my shots - + did not abuse discretion.

not been able to locate those the alibi -

Gavin Heclum - PCR - Judge Heclum at under
advisement from May

EXHIBIT NO. 6

WITNESSES

Aiken County Sheriff

J. Sanders

Law Enforcement Case #: 09-035912

SMR

ARREST WARRANT NUMBER

M020089

FILED *December 10* 2009

[Signature]
Deputy Clerk
Shannon D. Rosenkrantz
Deputy Clerk

ACTION OF GRAND JURY

TRUE Bill

[Signature]

Foreperson of Grand Jury
Date: December 10, 2009

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009GS0202294

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

DECEMBER TERM 2009

**THE STATE
vs.**

ARTRELL JABAR HICKSON

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

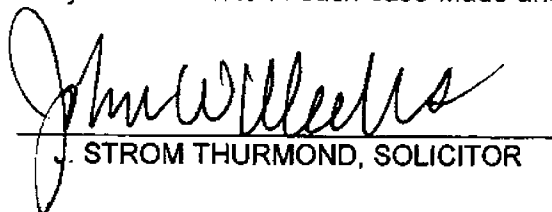
INDICTMENT FOR
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on December 14, 2009, the Grand Jurors of Aiken County present upon their oath:

That **ARTRELL JABAR HICKSON**, along with others, did in Aiken County, South Carolina on or about June 25, 2009, while armed with a deadly weapon or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, feloniously take from the persons or presence of Gabrielle Hastings and Amanda Wood by means of force or intimidation goods or monies of Security Federal Bank, such goods or monies being described as follows: Four Thousand Nine Hundred Two and No/100 dollars (\$4,902.00), all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

J. Sanders

Law Enforcement Case #: 09-035912

SMR

ARREST WARRANT NUMBER

M020088

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: April 15, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS0200670

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

APRIL TERM 2010

**THE STATE
vs.**

ARTRELL JABAR HICKSON

CDR #: 0549

Indictment for

**POSSESSION OF FIREARM DURING
COMMISSION OF OR ATTEMPT TO
COMMIT A VIOLENT CRIME**

§ 16-23-0490

J. STROM THURMOND, SOLICITOR

April 15, 2010
[Signature]
C.C.P. & G.S.
[Signature]
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN) INDICTMENT FOR
) POSSESSION OF FIREARM DURING
) COMMISSION OF OR ATTEMPT TO COMMIT
) A VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on April 19, 2010, the Grand Jurors of Aiken County present upon their oath:

That ARTRELL JABAR HICKSON did in Aiken County on or about June 25, 2009, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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


J. STROM THURMOND, SOLICITOR

EXHIBIT NO. 7

FORM 5

m020089

m020088

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)

County of Aiken)Artrell Hickson #343019)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Corr Inst. 990 wisocky Hwy
Bishopville SC 29010
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) Javier Hickson and David
Kearse
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-02-2294 Arm Robbery
 - (b) 2010-GS-02-670 Poss. weapon during the commission of
a violent crime.

2015 JUL 13 783
2009 GS 02 2294
2010 GS 02 670
FILED
CLERK OF COURT
Aiken County
Deputy Clerk
Trial Judge
Trial Atty.: Michael Hines
Court Reporter: J. S. Dwyer
Sec: PCR Petitioner
General Sessions
Appointed Atty.
Solicitor
Atty. Gen.

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Sept 22, 2010 ~~28 years~~ 5 years concurrent
- (b) Sept 22, 2010 28 years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes, I did
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State of South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Dec 19, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished opinion No 2012-up-667
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance trial counsel (see attachment
- (b) ineffective assistance trial counsel (see attachment
- (c) ineffective assistance trial counsel (see attachment
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attachment
- (b) See attachment
- (c) See attachment
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? ~~YES~~ NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? ~~YES~~ NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? ~~YES~~ NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. 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

STATE OF SOUTH CAROLINA }
 COUNTY OF AIKEN }

IN THE COURT OF COMMON PLEAS
 FOR THE SECOND JUDICIAL CIRCUIT

Artrell Hickson[#]

Applicant,

- - vs - -

THE STATE OF SOUTH CAROLINA,

Respondent.

CIVIL ACTION NO:

(To be assigned by Clerk)

ATTACHMENT TO APPLICANT'S
 POST-CONVICTION RELIEF
 APPLICATION

GROUND'S FOR RELIEF WITH SUPPORTING FACTS

10(a) - 10(j) through 11(a) - 11(j)

10(a):... The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina Law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.

11(a):.. Affiant J.D. Sanders affidavit in support of the arm robbery arrest warrant stated: upon information and belief, that on June 25, 2009, in the city/county of Aiken, one Artrell Hickson, along with others while armed with handguns did enter the Security Federal Bank, located at 50 Canal Street in Graniteville, Aiken County, demanding money and did force the tellers at gun point to hand over an amount of cash, all of which constitute the crime of arm robbery and is in violation of section 16-11-330 of the S.C. Code of Laws, as amended.

ARM ROBBERY - WARRANT NO: M-020089 .

Affiant J.D. Sanders affidavit in support of the possession of a weapon during the commission of a violate crime arrest warrant stated: upon information and belief that on June 25, 2009 in the city/county of Aiken, one Artrell Hickson did knowingly and willfully along with others while armed with handguns did enter the Security Federal bank, located at 50 Canal Street in Graniteville, Aiken County demanding money and did force the tellers at gun point to hand over an amount of cash; all of which constitutes the crime of possession of a weapon during the commission of a violent crime and is in violation of section 16-23-490 of the S.C. Code of Laws, as amended.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME -

WARRANT NO: M-020088.

10(b):... The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina Law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavits in support of each warrant was conclusory and insufficient to establish probable cause.

11(b):... Affiant J.D. Sanders affidavit in support of the arm robbery arrest warrant stated: upon information and belief that on June 25, 2009 in the city/county of Aiken, one Artrell Hickson along with others while armed with handguns did enter the Security Federal Bank located at 50 Canal Street in Graniteville, Aiken County demanding money and did force the tellers at gun point to hand over an amount of cash, all of which constitute the crime of arm robbery and is in violation of section 16-11-330 of the S.C. Code of Laws, as amended.

ARMED ROBBERY - WARRANT NO: M-020089

Affiant J.D. Sanders affidavit in support of the possession of a weapon during the commission of a violent crime arrest warrant stated: upon information and belief that on June 25, 2009, in the city/county of Aiken, one Artrell Hickson did knowingly and willfully along with others while armed with handguns did enter the Security Federal Bank located at 50 Canal Street in Graniteville, Aiken County demanding money and did force the tellers at gun point to hand over an amount of cash; all of which constitutes the crime of possession of a weapon during the commission of a violent crime and is in violation of section 16-23-490 of the S.C. Code of Laws, as amended.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME -

WARRANT No: M-020088 .

Sabrina Oakman	(Voluntary Statement)
Candice Patrice Bryant	(Voluntary Statement)
Beatrix Tamika Wright	(Voluntary Statement)
Stanley Leon Galloway	(Voluntary Statement)
Randolph "Randy" Wilson, Jr	(16 page Investigative
Report)	
Gabiela E. Hastings	(Voluntary Statement)
Amanda Wood	(Voluntary Statement)
Tonya Key	(Voluntary Statement)

Daphae Carrol (Voluntary Statement)

Investigator Greg Savell (Investigating Officer's

Summary)

Cad Incident Report

Aiken Bloodhound Tracking (Call-Out Report)

Supplementary Reports

Incident Report

Supplemental Incident Report

Bank Surveillance - 4 CD's

Aiken County Sheriff's Office (Evidence/Property Sheet)

Javier Hickson (Miranda Warning)

10(c):... The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina Law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime Indictments, because the affidavits in support of each arrest warrant was conclusory and insufficient to establish probable casue.

11(c):... ARM ROBBERY - INDICTMENT No: 2009 GS 0202294.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A

VIOLENT CRIME - INDICTMENT NO:
2010 GS 0200670.

Affiant J.D. Sanders affidavit in support of the (Arm Robbery) arrest warrant stated: upon information and belief, that on June 25, 2009 in the city/county of Aiken, one Artrell Hickson along with others while armed with handguns did enter the Security Federal Bank, located at 50 Canal Street in Graniteville, Aiken County, demanding money and did force the tellers at gun point to hand over an amount of cash, all of which constitutes the crime of arm robbery and is in violation of section 16-11-330 of the S.C. Code of Laws, as amended.

ARM ROBBERY - WARRANT No: M-020089.

Affiant J.D. Sanders affidavit in support of the (Possession of a Weapon during the Commission of a violent crime) arrest warrant stated: upon information and belief that on June 25, 2009, in the city/county of Aiken, one Artrell Hickson did knowingly and willfully along with others while armed with handguns did enter the Security Federal Bank located at 50 Canal Street, in Graniteville, Aiken County, demanding money and did force the tellers at gun point to hand over an amount of cash, all of which constitutes the crime of

possession of a weapon during the commission of a violent crime, and is in violation of section 16-23-490 of the S.C. Code of Laws, as amended.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME -
WARRANT NO: M-020088.

10(d):... The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to provide the State with a written notice of the applicant's intent to offer a "Alibi Witness."

11(d):...

10(e):... The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to call alibi witnesses, Charles Smalls; Tommy Parker; and _____, for the defense during applicant's criminal trial.

11(e):... (Crystal Harris) voluntary statement indicated that morning of the Security Federal Bank robbery, Javier was with me at 1070 Ella Circle. I took him to his grandmothers at 137 Woodland Drive Extension, because he had to work with his Uncle Pee Wee on cars. I drove to work at Walmart southside and started work 8:30 - 9:00 a.m. (morning shift). I did not see Javier the rest of the day. Around 2:00 p.m. I left work to take my daughter to a Doctor's appointment. I went by the Circle K store on 118 bypass and went home.

(Charles Smalls), statement written by Michael D. Routzong at 8:35, stated: ... Mr. Tommy Parker picked me up at my residence (71 Moody Street, Aiken S.C.). Mr. Parker and I went for coffee and then went to Mr. Parker's sister house (Ms. Beulah Hickson). We picked up Javier and Artell at approximately 9:00. The date was June 25, 2009.

After we picked up Javier we went to Mr. Parker's place of business (154 Brickley Court). We, Mr. Parker, Javier and

Artell took engines apart and cleaned the parts. We separated the bad parts from the good parts. Javier and Artrell were with me and Mr. Parker until 4:30 p.m. until the time I went home.

(Tommy Parker's) statement indicated on June 25, 2009, I picked up Javier Hickson from my sister's house (Beulah Hickson) Woodland Drive in Aiken at 9:00. Javier wanted to learn Auto Mechanics and I agreed to teach him. After I picked him up I went to 154 Brickley Court, Aiken SC. Also with me was Charles Smalls. I also picked up Artrell Hickson at the same time I picked up Javier. We, Javier, Artrell, Charles and I remained at 154 Brickley Court until 16:30 (4:30 p.m.). Javier, Artrell and I took Charles Smalls to 71 Moody Street, Aiken SC. Mr. Small's wife had an appointment and Mr. Smalls had to go home. After we dropped Mr. Smalls off we went to the BP Store for sodas and then we returned to 154 Brickley Court until 7:00 p.m. Javier Hickson and Artrell were with me the entire day.

10(f):... The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fifth and Fourteenth Amendments of the United States and South Carolina Law was violated by trial counsel failing to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony

Artrell

would be seriously compromised.

11(f):.. (Crystal Harris's) voluntary statement indicated that morning of the Security Federal Bank robbery Javier was with me at 1070 Ella Circle. I took him to his grandmothers at 137 Woodland Drive Extension because he had to work with his Uncle Pee Wee on cars. I drove to work at Walmart southside and started work 8:30 - 9:00 a.m. (morning shift). I did not see Javier the rest of the day. Around 2:00 p.m. I left work to take my daughter to a Doctor's appointment. I went by the Circle K store on 118 by-pass and went home.

(Charles Smalls) statement written by Michael D. Routzong at 8:35, stated: ... Mr. Tommy Parker picked me up at my residence (71 Moody Street, Aiken, SC.). Mr. Parker and I went for coffee and then went to Mr. Parker's sister's house (Ms. Beulah Hickson). We picked up Javier and Artrell at approximately 9:00. The date was June 25, 2009. After we picked up Javier we went to Mr. Parker's place of business (154 Brickley Court). We, Mr. Parker, Javier and Artrell took engines apart and cleaned the parts. We separated the bad parts from the good parts. Javier and Artrell were with me and Mr. Parker until 4:30 p.m. until the time I went home.

(Tommy Parker's) statement indicated on June 2009 I

picked up Javier Hickson from my sister's house (Bealah Hickson) on Walland Drive in Aiken at 9:00. Javier wanted to learn auto mechanics and I agreed to teach him. After I picked him up we went to 154 Brickley Court, Aiken, SC. Also with me was Charles Smalls. I also picked up Artrell Hickson at the same time as I picked up Javier,, Charles and I remained at 154 Brickley Court until 16:30 . At 16:30 (4:30 pm) Javier, Artrell and I took Charles Smalls to 71 Moody Street, Aiken SC. Mr. Smalls wife had an appointment and Mr. Smalls had to go home. After we dropped Mr. Smalls off we went to the BP Store for sodas and then we returned to 154 Brickley Court until 7:00 pm. Javier Hickson and Artrell were with me the entire day.

10(g):.. The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to request a NEIL -vs- BIGGERS Hearing due to the allege victim's bank employees never picked the applicant out of any type of photo array or line-up procedures prior to his arrest.

11(g):.. (Supplementary Report) indicated that bank employee (Daphne Carroll) stated she was sitting in her office when the subjects came into the bank. Carroll stated that one of the subjects told her to come out from her office and open the safe.

Carroll stated that she stayed at her desk and pushed the alarm button. Carroll stated that the subject standing at the door kept saying lets go. Carroll stated that she could not get a good look at the subjects because their faces were covered. Carroll stated that all three subjects had guns; bank employee (Amanda Wood) stated that three black male subjects entered the bank with guns. Wood stated that one of the subjects yelled open your drawers and give me the money. Wood stated that the subject pointed a gun at her while she was getting the money out of the drawer. Wood stated that another subject took money from her co-worker while the third subject stood at the door telling them to hurry up. Wood stated that the subjects said something to her manager and customer service representative and left. Wood Stated that the only thing she could remember was they were wearing dark clothing and all three had guns; bank employee (Tonya Key) stated she was sitting in her office when the three black male subjects came into the bank demanding money. Key stated that one of the subjects stood in her doorway and told her to come out and open the vault. Key stated that he was waiving a gun at her and she could not move. Key stated that they appeared to be young with their actions. I/O asked her what she meant with actions and she stated that they were acting very nervous and could not stand still; bank employee (Gariele Hastings) stated that three black male subjects came into the bank and two of the subjects came up to the tellers line demanding the money. Hastings stated that all

three subjects were carrying handguns. Hastings stated that they were unorganized running up and down the teller line saying hurry up, all of it and don't press the alarm. Hastings stated that she only gave the subject small bills out of her drawer. Hasting stated that when the subjects left they ran to the rear of the building.

10(h):... The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statements whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence.

11(h):... State's witness Sabrina Oakman's statement was marked for identification only: Q:... would reading the statement that you wrote refresh your recollection. A:... Yes. Where upon defendants Brown Exhibit No: 2 was marked for identification only. I'm showing you what's been marked for identification defendant's exhibit 2 Brown. Do you recognize what that is? TR. TR. page 161, lines 2-9.

Artrell

On re-direct examination the solicitor Mr. Thurmond advised Sabrina Oakman to read her entire statement. Q:... Ma'am how about read your statement that you gave in its entirety rather than it being parsed. Read very word. A:... On the morning the Security Federal bank in Graniteville got robbed me and David Kearse were at my place in Aiken, SC. David said he needed my car the black tahoe. I told him to be back before 11. He left for a while and came back. He said I am ready to go. He directed me to pick up Artrell Hickson at Artrell's house. I drove there and Artrell and Javier Hickson got in. I drove to David's grandma house on Camel Street, New Ellenton, SC. We stayed in the tahoe but David went inside for a minute and came back. We went to Walmart Southside. I parked by tire and lube. I drove there because Javier wanted to meet -- wanted to talk to his sister Monique and his girlfriend Crystal. Javier walked to the front parking lot out of sight and came back a few minutes later. Artrell and David were giving me directions to drive to the apartments in Graniteville. I drove them to the apartment complex, made the first left, drove to the dead end and dropped them off. I drove away and went to my grandmother's house on Plunkett Street, but never made it. My tahoe broke down on Richland Avenue at the highway 421 exit, by the car lot. A guy at the car lot helped me push it out. It was between 11 and 12 when I dropped them off. I walked to the Circle K and used the store's

phone. I called Vonda for a ride. I had Javier's cellphone. It has been on the back seat. I took it when I walked to the store. It was locked so I could not call out. Javier's phone rang and it showed bro or my brother. I answered it. It was David. David asked where you at? I told him my car broke down. He said over and over come get me. I asked where are you at? What have you done. He did not answer, but tried to describe where he was at. I could not understand. Vonda bought me money to get gas. I got gas at Circle K and drove back to the apartments in Graniteville. Monique, Crystal, Devon Jones were at the entrance to the apartment. Phillip and Jelani showed up later. People were accusing me saying I was the getaway driver. I said hell no and got scared. I drove Jelani's cadillac to Dexter Arms and Jelani drove my tahoe to Dexter Arms. I drove my tahoe to David's granmothers and learned what happened to David. In March 2009 my tahoe got hit on the driver's side by Shanta. After the robbery I put the tahoe in Kelly's Paint and Body in Aiken repairs. Her Nationwide Insurance paid for and enterprise rental car a silver Ford Focus, three days after the robbery. TR. TR. page 163, lines 7-2; TR. TR. page 164, lines 1-25 and TR. TR., page 165, lines 1-5.

The Court: clean copy please. Not one that's highlighted. Whereupon defendants (BROWN) exhibit No: 4 was marked for identification only. Q:... I am handing you whats been marked as defendant's exhibit No: 4 Brown. Do you recognize that?

A:... Yes. Q:... Is that the statement you signed on March 12, 2010. A:... yes. TR. TR. page 195, lines 4-13. The Court: time out. Walk up here and make sure it's right Mrs Brown you put it in. Mrs Brown your honor I would object. This is the statement as was presented. I would object to the statement being read in its entirety as it does contain inadmissible hearsay. The Court: well Mrs Brown you're the one who put it in the record. Overruled. Mrs Brown your honor I did not introduce it as evidence. The Court: you certainly did. Mrs. Brown, no your honor. I had it marked for identification purposes. I did not introduce it as evidence. The Court, you may read it. Mr. Routzong: I join in that objection. The Court: thank you. Candice Bryany stated on the day of the robbery at Security (TR.TR. page 197, lines 8-25) Federal. The Court: hold on. You have read it more distinct than that. On the day of the robbery at Security Federal Graniteville, Artrell Hickson, Javier Hickson and David Kearse came to my cousins, Beatrix Wright's apartment. They were in a white ford focus. A dark skinned girl was driving. She worked -- she -- it was thought that she worked at Walmart on the southside. They were talking to Beatrix's boyfriend Stanley. After a while they left. Stanley remained. Me and Beatrix took Stanley home to new Ellenton. We came back and saw the police who told us the bank had been robbed. Sabrina Oakman drove her black tahoe and asked if Stanley knew where David was. We told her we had taken him to New Ellenton. Big phil and Deven were at Kalmia apartment saying.

then boys done robbed the bank I think. I saw a white ford focus. Phil and Deven were at the entrance to Kalmia Apartments. Sabrina kept calling Artrell's cellphone because David had it because big Phil said David had the phone. Sabrina kept saying David is in a storage in the woods. Sabrina was crying and said she was here to find him and pick him up. Sabrina and Artrell

_____ Javier along with Deven. Beatrice told me that Artrell, Javier and David were trying to get Stanley to rob the bank with them. Beatrice said Stanley told me this. Artrell dated a girl at Walmart on the southside. The girl was thought to be in the white ford focus. TR. TR. page 198, lines 1-25 and TR. TR. page 199, lines 1-5.

10(i):... The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel failing to fully and completely cross-examine cooperating witness _____ concerning charges that were dismissed as part of his plea agreement with the State and the minimum and maximum penalties he would have faced for those offenses.

11(i):...

10(j):... The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of Law as guaranteed by the Fourteenth Amendment of the United States and South Carolina Law was violated by trial counsel's failure to MOTION FOR RECONSIDERATION of his sentence where cooperating witness _____ received a lesser sentence following his testimony against the applicant; thereby, giving rise to the inference that this witness may have been lead to expect far greater potential benefit from his cooperation than the jury could reasonably have anticipated.

11(j):...

(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

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

No, They Have not

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

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) First time filing PCR (See: Attachment)
 (b) First time filing PCR (See: Attachment)
 (c) First time filing PCR (See: Attachment)

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

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

N/A

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

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

i. Mrs. Brown

ii. Jerry M. Screen 1337 Gregg St.
Columbia SC 29201

iii. _____

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

i. Trial and sentencing

ii. Direct Appeal Court South Carolina

iii. _____

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

vacate sentence and conviction
Be Reverse and Remand for a New Trial

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

No, I am not.

STATE OF SOUTH CAROLINA)

County of

AIKEN

VERIFICATION

I, Artrell Hickson # 343019, 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.

Artrell Hickson

SWORN to and subscribed before me this

day of

May

16
2013

[Signature]

Notary Public

(L.S.)

My Commission Expires:

11-4-2015

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

I, Artrell Hickson # 343019, 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.

Artrell Hickson
Applicant

SWORN or affirmed to and subscribed before me this

16 day of May 2013.
Dana J. [Signature]
Notary Public

My Commission Expires: 11-4-2015

EXHIBIT NO. 8

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT
)
)
)

2013-CP-02-1153

Artrell Hickson, #343019,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

FILED 7/3 2013

Rein Hadard
K.C.P. & G.S.

1:45 *Kelley Brown*
K.C.P. & G.S.

The Respondent, making its Return to the application for post-conviction relief filed May 21, 2013, 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 Aiken County Clerk of Court. The Applicant was true bill indicted at the December 2009 term of the Aiken County Grand Jury for Armed Robbery (2009-GS-02-2294) and at the April 2010 term of the Aiken County Grand Jury for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime (2010-GS-02-0670). Kelley Brown, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. On September 22, 2010 Applicant was found guilty. Judge Early sentenced Applicant to twenty-eight years imprisonment for Armed Robbery and five years imprisonment for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime with all sentences to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Jerry M. Screen, Esquire. The South Carolina Court of Appeals affirmed the Applicant's

conviction and sentence. State v. Hickson, Op. No. 2012- UP- 667 (Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of trial counsel.
 - a. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
 - b. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
 - c. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."

- d. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses Crystal Harris, Charles Smalls, and Tommy Parker, for the defense during applicant's criminal trial.
- e. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised."
- f. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil -vs- Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest."
- g. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence."

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

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

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

V.

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

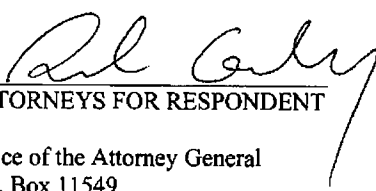
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General
Bar No. 100934

By: 
ATTORNEYS FOR RESPONDENT

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

July 1, 2013

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

2013-CP-02-1153

ARTRELL HICKSON, 343019,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

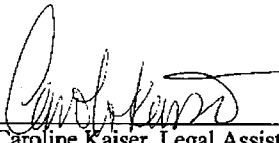
STATE OF SOUTH CAROLINA,

Respondent.

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

Aimee Zmroczek, Esquire
A.J.Z. Law Firm, LLC
1001 Washington Street, Ste. 207
Columbia, SC 29201

DATED this the 1st day of July, 2013.


Caroline Kaiser, Legal Assistant
For Respondent

FILED 7/2 200 13
Ria Hadard
K.C.P. & G.S.
1-45
Kaiser

EXHIBIT NO. 9

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Artrell Hickson, #343019,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2013-CP-02-1153

ORDER OF DISMISSAL

FILED

1.9.17

Robert L. White
Clerk of Court
Anita K. Knepper
Deputy Clerk

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 21, 2013. Respondent filed its Return on July 1, 2013, requesting an evidentiary hearing be convened on Applicant's ineffective assistance of counsel allegations. A hearing was held on September 11, 2015, at the Aiken County Courthouse. Applicant was present and represented by Aimee Zmroczek, Esquire. Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Kelley Brown, Esquire. This Court had before it the Aiken County Clerk of Court records, the appellate records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the trial transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true bill indicted at the December 2009 term of the Aiken County Grand Jury for Armed Robbery (2009-GS-02-2294) and at the April 2010 term of the Aiken County Grand Jury for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime (2010-GS-02-0670). Kelley

Brown, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. On September 22, 2010 Applicant was found guilty. Judge Early sentenced Applicant to twenty-eight years imprisonment for Armed Robbery and five years imprisonment for Possession of a Firearm During the Commission of or Attempt to Commit a Violent Crime with all sentences to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Jerry M. Screen, Esquire. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Hickson, Op. No. 2012- UP- 667 (Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

ALLEGATIONS

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

1. Ineffective assistance of trial counsel.
 - a. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
 - b. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
 - c. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United

States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."

- d. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses Crystal Harris, Charles Smalls, and Tommy Parker, for the defense during applicant's criminal trial.
- e. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised."
- f. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil -vs- Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest."
- g. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence."

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that

"counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Applicant asserts several allegations of ineffective assistance of counsel. These allegations are meritless and should be dismissed. This Court finds that Applicant was not deprived of effective assistance of counsel. Trial Counsel's decisions and conduct were appropriate under the circumstances, and did not fall below professional norms of reasonableness.

Arrest Warrants

Applicant alleges that Trial Counsel is ineffective for failing to move to quash the arrest warrants for Applicant's charges because the warrants were conclusory and insufficient to establish probable cause. Applicant further alleges that Trial Counsel was ineffective for failing to move to suppress evidence stemming from these arrest warrants and for failing to move to dismiss the charges because of the insufficient warrants. These allegations are meritless and should be denied and dismissed with prejudice.

This Court finds that Applicant has failed to present any evidence to prove that his arrest warrants were not supported by probable cause. Furthermore, this Court notes that Applicant was true bill indicted at the December 2009 term of the Aiken County Grand Jury. Applicant has failed to meet his burden of proof that Trial Counsel was ineffective in any way for failing to object to these warrants or anything stemming from the warrants, and this allegation is denied and dismissed with prejudice.

Failure to call alibi witnesses

Applicant failed to present his alibi witnesses at the PCR hearing, therefore he cannot claim ineffective assistance of counsel for failing to call said witnesses at the trial. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (an applicant cannot show prejudice due to the failure of trial counsel to call alleged alibi witnesses at trial if the applicant does not present said witnesses at the PCR hearing on his behalf). Applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Therefore, this allegation is denied and dismissed with prejudice.

Failure to advise Applicant to testify at trial

Applicant alleges that Trial Counsel was ineffective for failing to advise him to testify at trial. This allegation is meritless. The trial judge fully discussed Applicant's right to testify on the record, allowed him additional time to speak with his attorney, and Applicant stated that he wished to remain silent. Applicant was aware that this right was his alone to waive and not Trial Counsel's decision. Therefore, this allegation is denied and dismissed with prejudice.

Failure to request a Neil v. Biggers hearing

Applicant's argument that Trial Counsel was ineffective for failing to request a Neil v. Biggers hearing is also meritless. This was an armed robbery where the three suspects covered their faces, law enforcement did not present the Victims with any photo lineups to identify, nor did the Victims ever identify the suspects. This Court finds that there was no basis on which to request a Neil v. Biggers hearing, thus Trial Counsel cannot be found ineffective for this reason. Neither prong of the Strickland test is met, and this allegation is denied and dismissed with prejudice.

Failure to move to strike witnesses statements read at trial

Applicant alleges that Trial Counsel was ineffective for failing to move to strike the statements that were read before the jury at the trial. This allegation is meritless. Trial Counsel did object to the State's witness, Ms. Bryant, reading her statement into the record and was overruled, so Applicant cannot claim ineffective assistance of counsel for failing to object. This Court feels that pursuant to the Rule of Completeness it was proper for Ms. Bryant to read her statement to clarify what was elicited under cross examination.

In regard to the statement of Ms. Oakman, another of the State's witnesses, while Trial Counsel did not object, this Court feels that it was proper under the Rule of Completeness due to the information that was elicited under cross examination, and Trial Counsel did not act below the standards of professional norms. Furthermore, Applicant has failed to meet his burden in proving that he was prejudiced by Trial Counsel's actions. Thus, neither prong of the Strickland test is met, and this allegation is denied and dismissed with prejudice.

Failure to object to jury instructions

Applicant also raised the issue of the trial judge's instructions to the jury, specifically the comment made about a "true and just verdict." Trial Counsel was not ineffective for failing to object to the trial judge's jury instructions as the instructions were not objectionable. The use of the phrase "fair and impartial" does not rise to the level of the improper charge in State v. Daniels where the jury was instructed to reach a verdict that was just and fair "to all parties." State v. Daniels, 401 S.C. 251, 255, 737 S.E.2d 473, 475 (2012). Therefore, this allegation is denied and dismissed with prejudice.

Failure to cross-examine co-defendant

Applicant's argument that Trial Counsel was ineffective for failing to cross-examine his co-defendant about his plea deal is meritless. Trial Counsel asked if he was testifying to help himself out and co-defendant Kears admitted as such. Trial Counsel was not required under standards of professional norms to do anything more. Furthermore, there is nothing that could have been further elicited from his cross-examination testimony that would have changed the jury's verdict. Since this action would not have changed the outcome of the trial, it cannot be prejudicial. Neither prong of the Strickland test is met, and this allegation must be denied and dismissed with prejudice.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 21st day of December, 2016.



EDGAR W. DICKSON
Presiding Judge
Second Judicial Circuit

Orangeburg, South Carolina

EXHIBIT NO. 10

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 Artrell Hickson, #343019)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL DISTRICT

2013CP021153

MOTION TO RECONSIDER

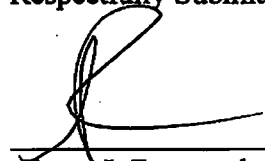
NOW COMES, Applicant, Artrell Hickson, by and through his undersigned counsel, and moves pursuant to Rule 59(e) SCRPC for an order altering or amending the court's prior order filed on January 9, 2017, denying Applicant's claim and dismissing with prejudice. While the court has ruled in the State's favor, the Applicant submits this motion to ensure that he has "enable[d] the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 546, 546 (2000). Specifically all allegations submitted in the memoranda by Applicant regarding:

1. Ineffective assistance of counsel – failing to move to quash arrest warrants;
2. Ineffective assistance of counsel – failure to call alibi witnesses;
3. Ineffective assistance of counsel – failure to advise Applicant to testify at trial;
4. Ineffective assistance of counsel – failure to request a Neil v. Biggers hearing;
5. Ineffective assistance of counsel – failure to move to strike witness statements read at trial;
6. Ineffective assistance of counsel – failure to object to jury instructions; and
7. Ineffective assistance of counsel – failure to cross-examine co-defendant.

THEREFORE, counsel requests that Order be reconsidered for the above listed specific

reasons and issues not specifically listed above but raised during the trial of this matter.

Respectfully Submitted,



Aimee J. Zmroczek, Esq. #77936
A. J. Z. Law Firm, LLC
2003 Lincoln Street
P.O. Box 11961
Columbia, SC 29211
(803) 400-1918 telephone
(803) 403-8005 fax
ajzlawfirm@gmail.com
Counsel for Applicant

Columbia, South Carolina
Dated: January 12, 2017

STATE OF SOUTH CAROLINA

)

IN THE COURT OF GENERAL SESSIONS

)

SECOND JUDICIAL CIRCUIT

COUNTY OF AIKEN

)

Artrell Hickson, #343019

)

Applicant,

)

2013CP021153

)

-vs-

)

CERTIFICATE OF SERVICE

)

State of South Carolina,

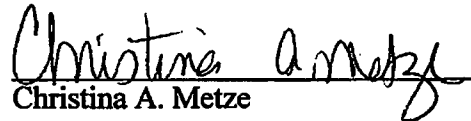
)

Respondent.

)

I certify that, on this date, I served a copy of the Motion to Reconsider dated
January 17, 2017 by depositing it in the U.S. Mail in an envelope with
 sufficient postage affixed, addressed as follows:

Daniel Gourley
 Assistant Attorney General
 SC Attorney General's Office
 PO Box 11549
 Columbia, SC 29211-1549


 Christina A. Metze

Columbia, South Carolina

Dated: 1/17/17

EXHIBIT NO. 11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
Artrell Hickson, #343019,	)	
	)	2013-CP-02-1153
Applicant,	)	
	)	
v.	)	
	)	RETURN TO APPLICANT'S
	)	MOTION TO RECONSIDER
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This Court denied Applicant's PCR application by Order filed January 9, 2017. On January 18, 2017, Respondent received Applicant's Motion to Reconsider pursuant to Rule 59(e), SCRCP.

Respondent submits that this Court's Order of Dismissal contains the proper findings of facts and conclusions of law as required by S.C. Code Ann. 17-27-80 (1976) and Rule 52(a) SCRCP. Respondent further submits that this Court thoroughly considered all relevant facts, law, and arguments, and properly ruled on and fully addressed all issues presented at the post-conviction relief evidentiary hearing. Therefore, Applicant's motion should be denied.

[signature page to follow]

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

February 3, 2017.

EXHIBIT NO. 12

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Artrell Hickson, #343019,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Case No.: 2013-CP-02-01153

**ORDER DENYING APPLICANT'S
MOTION TO RECONSIDER**

This matter comes before the Court on Applicant's Motion to Reconsider an Order of this Court pursuant to Rule 59(e), SCRCP, denying Applicant's claim and dismissing it with prejudice. After due deliberation and review of the case law and motion of counsel, this Court finds that there is nothing warranting reconsideration.

THEREFORE, Applicant's Motion to Reconsider is DENIED.

AND IT IS SO ORDERED.



Edgar W. Dickson
Presiding Judge, Second Judicial Circuit

March
~~February~~ 14, 2017
Orangeburg, South Carolina

FILED

3.17.2017

Robert J. White
C.C.P. & G.S.
Anita Knoepfle
Deputy Clerk

EXHIBIT NO. 13

RECEIPT FOR EXHIBITS

Case No. 2013-CP-02-01153
 Plaintiff: Artrell J. Hickson
 Defendant: State of SC
 Date Trial Started: 9-11-2015

Judge E. Dickson
 Plt's Atty. Aimee Imroczeck
 Def's. Atty. Daniel Gourley
 Date Trial Ended: _____

Received of Cheri Young, Court Reporter for the above case, these exhibits:
Applicant

	Clerk of Court Use
1 Statement of Tommy Parker	
2 Statement of Charles Smalls	✓
3	✓
4	
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This 11th day of September 20 15

Page 1 of 1

By [Signature]

Richland County Clerk of Court

Clerk should retain white copy in Civil cases, yellow copy in Criminal cases.

FILED September 11, 2015

[Signature]
2:00 pm



FILED September 15
2:00 pm

State of South Carolina v. Javier Hickson

Statement of: Tommy Parker

Date: 17 Aug 09

Time: 10:15

Witnessed by: Darrell Hickson

Written at the request of Mr. Parker by Michael
On June 25, 2009 I picked up Javier Hickson
from my sister's house (Beulah Hickson) on
William Drive in Aiken at 09.00. JAVIER
wanted to learn Auto mechanics and I agreed
to teach him. AFTER I picked him up we went
to [redacted] Brickley Ct, Aiken SC. ALSO with
me was Charles Smalls. I ALSO picked up
ARTRELL Hickson at the same time as I picked
up JAVIER. We (JAVIER, ARTRELL, Charles and I)
Remained at [redacted] Brickley Court until 10:30.
At 10:30 (4:30 pm) JAVIER, ARTRELL, and I
took Charles Smalls to [redacted] Moody Street Aiken
SC. Mr. Smalls wife had an appointment and
Mr. Smalls had to go home. After we dropped
Mr. Smalls off we went to the BP store
for [redacted] and then we returned to
[redacted] Brickley Court until 7:00 pm. JAVIER
and ARTRELL were with me the
entire day.

Sworn and Subscribed to before me this 1th day of August 2009

Jennifer Rutland Baur

Notary Public

My Commission expires: 10-14-18

PLAINTIFF'S
EXHIBIT

2

I am
not happy

The /over sentences of
"d"

State of South Carolina v. Javier Hickson

Statement of: Charles Small

FILED September 16, 2009

Date: 17 Aug. 09

Time: 2:15

Witnessed by:

Deetta Pharoah

written by Michael D. Routzong at my request

AT 08:35 MR. TOMMY PARKER PICKED ME UP
AT MY RESIDENCE (████ MOODY STREET Aiken, SC)
MR. PARKER AND I WENT FOR COFFEE AND THEN
WENT TO MR. PARKER'S SISTER'S HOUSE (115
Beulah Hickson). We picked up JAVIER
AND ARTRELL AT APPROXIMATELY 09:00. THE
DATE WAS JUNE 05, 2009. AFTER WE PICKED
UP JAVIER WE WENT TO MR. PARKER'S PLACE
OF BUSINESS (████ BRICKLEY COURT). WE (MR.
PARKER, JAVIER, ARTRELL) TOOK ENGINES APART
AND CLEANED THE PARTS. WE SEPARATED THE
BAD PARTS FROM THE GOOD PARTS. JAVIER
AND ARTRELL WERE WITH ME AND MR. PARKER
UNTIL 4:30 PM, UNTIL THE TIME I WENT
HOME.

Sworn and Subscribed before me this 17th day of August 2009.

Jennifer Rutland Baur
Notary Public

My Commission expires: 10-14-15

EXHIBIT NO. 14

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Robert J. Hite, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Artrell Hickson, SCD # 343019,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS 2021
) FOR THE SECOND JUDICIAL CIRCUIT

) Case Nos.: 2019-CP-02-01521 and
) 2020-CP-02-00640

) ORDER GRANTING MOTION TO MERGE
) PCR ACTIONS AND GRANTING BELATED
) APPELLATE REVIEW OF INITIAL PCR
) ACTION PURSUANT TO AUSTIN v. STATE¹

This matter is before this Court by way of two post-conviction relief (PCR) applications filed by Applicant Artrell Hickson: first, case no. 2019-CP-02-01521 filed on June 19, 2019; and second, case no. 2020-CP-02-00640 filed on March 16, 2020, both requesting belated appellate review of Applicant's initial post-conviction relief action. In response to these two applications, Respondent the State of South Carolina made a return and motion to merge these actions into one, with the 2019 case being the surviving docket number and the 2020 action being treated as an amendment to the surviving action. Respondent also requested a hearing to determine if Applicant was entitled to belated appellate review of his initial post-conviction relief action pursuant to Austin.

A hearing was convened before this Court on September 7, 2021, in this Court's virtual courtroom on the Cisco WebEx platform. Applicant was present and represented by his counsel, Nancy Fennell. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Applicant's prior post-conviction relief counsel, Aimee Zmroczek, was also present. At the start of the hearing,

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

FILED Sept. 10 2021

Robert J. Hite CNP
Clerk of Court
Charles Griffin Plaintiff
Deputy Clerk

Respondent renewed its motion to merge the two applications, which was granted upon consent of Applicant.

Following the hearing, this Court determines Applicant did not make a knowing, voluntary, and intelligent waiver of his right to appeal his initial post-conviction relief action and grants him the right to seek belated appellate review of this initial post-conviction relief action pursuant to Austin. Pursuant to S.C. Code Ann. § 17-27-80, this formal order follows:

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. In June of 2009, Applicant Artrell Hickson and his brother, Javier Hickson, were arrested following an investigation into the armed robbery of the Graniteville branch of Security Federal Bank. In December of 2009, the Aiken County grand jury indicted Applicant and his brother for one count each of armed robbery. In April of 2010, the Aiken County grand jury additionally indicted Applicant and his brother for one count each of possession of a firearm during the commission of a violent crime. On September 20, 2010, a jury trial was commenced in the Aiken County court of general sessions with the Honorable Doyet A. Early, III, circuit court judge, presiding. Applicant was represented by Kelley P. Brown, Esquire. Second Circuit Solicitor J. Strom Thurmond, Jr., and Assistant Solicitor Susanna Ringler prosecuted the case. At the conclusion of trial, the jury convicted Applicant and his brother as indicted. The trial judge sentenced Applicant and his brother to concurrent terms of imprisonment of twenty-eight years for the armed robbery convictions and five years for the firearm convictions.

Subsequently, Appellant filed a timely notice of appeal and was represented on appeal by Jerry M. Screen, Esquire. Following briefing, the South Carolina Court of Appeals affirmed

Applicant's convictions and sentences. State v. Hickson, Op. No. 2012-UP-667 (Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

First Post-Conviction Relief Action (2013-CP-02-1153)

Applicant filed his first application for post-conviction relief on May 21, 2013, alleging the following grounds for relief:

1. Ineffective assistance of trial counsel.
 - a. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO QUASH during pretrial the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause.
 - b. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
 - c. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
 - d. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses Crystal Harris, Charles Smalls, and Tommy Parker, for the defense during applicant's criminal trial.
 - e. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and

South Carolina law was violated by trial counsel's failure to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised."

- f. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to request a Neil -vs- Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest."
- g. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence."

Respondent made its return to the application and requested and evidentiary hearing be held. An evidentiary hearing was convened before the Honorable Edgar W. Dickson, circuit court judge, on September 11, 2015. Applicant was present alongside counsel Aimee Zmroczek, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. Following the hearing, Judge Dickson denied and dismissed the action in full. A written order of dismissal was signed by Judge Dickson on December 21, 2016, and filed with the Aiken County Clerk of Court on January 9, 2017. Applicant filed and served a motion to reconsider. Respondent filed a return in opposition to the motion. On March 14, 2017, Judge Dickson summarily denied the motion to reconsider, and this order was filed on March 17, 2017. Applicant did not file an appeal following the denial of relief. However, he is now seeking belated appellate review in these two subsequent actions.

CURRENT ACTIONS BEFORE THE COURT

Since the denial of his initial post-conviction relief application, Applicant has filed two more post-conviction relief actions, both of which are before this Court. Applicant filed a second post-conviction relief action (2019-CP-02-01521), on June 19, 2019, asserting his first PCR counsel Aimee Zmroczek failed to file an appeal of the denial of his initial PCR action and asserting he was entitled to belated appellate review. Then, while his second action was still pending, Applicant filed a third application (2020-CP-02-00640) on March 16, 2020, again asserting that initial PCR counsel failed to file an appeal from the denial of his initial PCR action and seeking belated appellate review.

In response, Respondent moved to merge these two actions into one, with the 2019 case being the surviving docket number and the 2020 action being treated as an amendment to the surviving action. Respondent also requested a hearing to determine if Applicant was entitled to belated appellate review of his initial post-conviction relief action pursuant to Austin. Attached to this return and before this Court are the records of the Aiken County Clerk of Court regarding Applicant's general sessions matter, the records from Applicant's direct appeal (including the record on appeal which contains a copy of Applicant's trial transcript), the records from Applicant's initial post-conviction relief matter, Applicant's records from the South Carolina Department of Corrections, and the records from the two current actions.

At the start of the evidentiary hearing, Respondent renewed its motion to merge the two applications, which was granted upon consent of Applicant. Accordingly, this Court finds these two actions are to be merged into one, with the 2019 case being the surviving docket number and the 2020 action being treated as an amendment to the surviving action, and instructs the Aiken

County Clerk of Court to file this order in both actions, and promptly close the 2020 action (2020-CP-02-00640).

At the evidentiary hearing, prior PCR counsel Zmroczek testified that she discussed an appeal with Applicant several times, including before and after the hearing. She elaborated that Applicant repeatedly stated he wanted to pursue an appeal from the denial of his post-conviction relief action. She stated that due to a miscommunication with her office staff, a notice of appeal was inadvertently not filed on Applicant's behalf.

Applicant next testified on his own behalf. He also testified he wanted to pursue an appeal from the denial of his post-conviction relief action and asked prior PCR counsel Zmroczek several times to file an appeal on his behalf. He stated he is seeking permission to pursue belated appellate review of the denial of his first post-conviction relief action pursuant to Austin.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety and listened to the testimony provided at the evidentiary hearing. After this thorough review of the record and testimony, this Court determines Applicant has established he is entitled to seek belated appellate review of the denial of his first post-conviction relief proceeding. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80.

MOTION TO MERGE APPLICATIONS GRANTED

As discussed above, Applicant has filed two nearly identical applications for post-conviction relief seeking belated appellate review of the denial of his initial post-conviction relief proceeding: a second post-conviction relief action (2019-CP-02-01521), on June 19, 2019, and then, while his second action was still pending, Applicant filed a third application (2020-CP-02-00640) on March 16, 2020.

An applicant is not generally allowed to have multiple post-conviction relief proceedings in regard to the same conviction. See Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (PCR rules "contemplate adjudication on the merits of the original petition, one bite at the apple as it were."); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981) (successive applications for post-conviction relief strongly disfavored); S.C. Code Ann. § 17-27-90 ("All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application."). Respondent moved to have the two proceedings merged and that the application for post-conviction relief filed on March 16, 2020 be considered an amendment to the application for post-conviction relief filed on June 19, 2019.

This Court grants this motion to merge the two cases, with the action filed on June 19, 2019 (docket number 2019-CP-02-01521) being the surviving case. Accordingly, this Court further orders that the application filed on March 16, 2020 (docket number 2020-CP-02-00640) be dismissed and that the filings associated therewith be considered as amendments to the 2019 application.

GRANT OF BELATED APPELLATE REVIEW

Successive applications such as the one before this court are disfavored. See S.C. Code Ann. § 17-27-90. However, Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Inherent in this allegation is a claim that former post-conviction relief counsel was ineffective. The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under [S.C. Code Ann.] § 17-27-90." Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin provides for a belated appellate review of an initial post-conviction relief action where prior post-conviction relief counsel fails to timely appeal the denial of the application. Id. at 454, 409 S.E.2d at 396; see S.C. Code Ann. § 17-27-100 (right to appeal final judgment by post-conviction relief court). But Austin "is limited to its particular factual situation." Aice, 305 S.C. at 452, 409 S.E.2d at 394.² Pursuant to Austin, an evidentiary hearing may be conducted in regards to a successive post-conviction relief application "on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review." Austin, 305 S.C. at 454, 409 S.E.2d at 396. "If the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding." Id. at 455, 409 S.E.2d at 396. Austin, therefore, allows an applicant to petition the Supreme Court for discretionary review of the dismissal of his initial post-conviction relief application, and may do so outside of the ordinary time limits for bringing such an appeal.

In the present case, Applicant asserts prior post-conviction relief counsel failed to file an appeal on his behalf. As summarized above, the evidence before this Court establishes Applicant did not make a knowing, voluntary, and intelligent waiver of his right to seek appellate review from the denial of his first post-conviction relief action. Accordingly, this Court finds Applicant is entitled petition the South Carolina Supreme Court for belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin.

² Aice was issued in conjunction with Austin, limiting the reach of Austin and holding "that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel." 305 S.C. at 454 n.1, 409 S.E.2d at 396 n.1.

CONCLUSION

Based on the foregoing, this Court finds Applicant is entitled to seek belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant's two pending PCR actions be merged, with the action filed on June 19, 2019 (docket number 2019-CP-02-01521) being the surviving case and the application filed on March 16, 2020 (docket number 2020-CP-02-00640) be dismissed and that the filings associated therewith be considered as amendments to the 2019 application;
2. Applicant remain in the custody of the South Carolina Department of Corrections; and
3. Applicant is granted the right to seek belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin.

AND IT IS SO ORDERED this 10th day of September, 2021.


 COURTNEY CLYBURN POPE
 Presiding Judge
 Second Judicial Circuit

 _____, South Carolina

EXHIBIT NO. 15

Caudy, Lara

From: Joshua Osborne <joshuaosborne@scag.gov>
Sent: Wednesday, December 29, 2021 10:42 AM
To: Flynn, Sean
Subject: [External] RE: Artrell Hickson
Attachments: RE: Transcript Request Form for Artrell Hickson v. State (2013-CP-02-1153)

Follow Up Flag: Follow up
Flag Status: Flagged

Good Morning Mr. Flynn,

Unfortunately, we were unable to obtain the transcript for the referenced hearing, as when we requested it past the 5-year limit for court reporters to retain records. I've attached the transcript request and the court reporters' response to this email for your convenience.

Sincerely,
 Joshua Osborne

From: Flynn, Sean <sflynn@sccid.sc.gov>
Sent: Wednesday, December 29, 2021 10:14 AM
To: Joshua Osborne <joshuaosborne@scag.gov>
Subject: Artrell Hickson

Good morning,

Can you please forward me the PCR Hearing Transcript dated September 11, 2015? Thank you so much. I look forward to hearing back from you.

Sean Flynn
 Administrative Coordinator
 SCCID/Appellate Division
 (803) 734-1330

This communication and any attachment thereto is intended only for use by the addressee(s) named herein, and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, utilization, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error please notify the Commission on Indigent Defense immediately and permanently delete the original and any copy of any e-mail and any printout thereof. SCCID may be reached by using the email address of the sender, or at 803-734-1343.

Caudy, Lara

From: Transcripts <transcripts@sccourts.org>
Sent: Wednesday, June 23, 2021 10:11 AM
To: Kaitlyn Slice
Subject: RE: Transcript Request Form for Artrell Hickson v. State (2013-CP-02-1153)

Unfortunately, pursuant to rule 607, court reporters are not required to retain records after five-years. The date you provided is over the five-year limit.

From: Kaitlyn Slice <KSlice@scag.gov>
Sent: Wednesday, June 23, 2021 9:31 AM
To: RetiredCR <Retiredcr@sccourts.org>
Cc: Transcripts <transcripts@sccourts.org>
Subject: RE: Transcript Request Form for Artrell Hickson v. State (2013-CP-02-1153)

Sorry, forgot to attach the request form!

From: Kaitlyn Slice
Sent: Wednesday, June 23, 2021 9:30 AM
To: retiredcr@sccourts.org
Cc: Transcripts <transcripts@sccourts.org>
Subject: Transcript Request Form for Artrell Hickson v. State (2013-CP-02-1153)

Good morning!

Please find the attached transcript request form for the above-referenced hearing. If the transcription amount is over \$500, please let me know prior to preparing.

****Please note that we would like it expedited****

Thanks!



Kaitlyn S. Slice
Legal Assistant
SC Attorney General's Office
Rembert C. Dennis Building
1000 Assembly St.
Columbia, SC 29201
Office: 803-734-3737
kslice@scag.gov

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STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Aiken County

Honorable Courtney Clyburn-Pope, Circuit Court Judge

---

ARTRELL HICKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

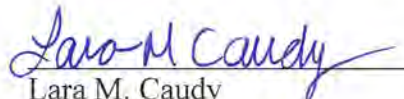
APPELLATE CASE NO. 2021-001262

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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies that a true copy of the Motion to Vacate the Order of Dismissal and Remand for a New Post-Conviction Relief Hearing in the above referenced case has been served upon Megan Harrigan Jameson, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and Artrell Jabar Hickson, #343019, at Allendale Correctional Institution, P.O. Box 1151, Highway 47, Fairfax, SC 29827, this 15th day of July, 2022.

  
Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

# The Supreme Court of South Carolina

Artrell Hickson, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2021-001262

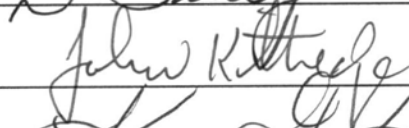
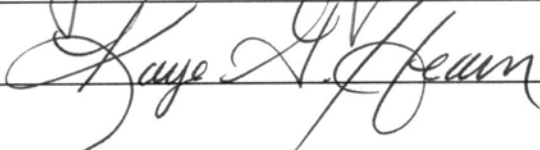
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## ORDER

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Petitioner has filed a notice of appeal from an order of the circuit court dated January 9, 2017, granting him an *Austin*<sup>1</sup> review of the denial of his first application for post-conviction relief (PCR). However, because the transcript from the hearing on Petitioner's first PCR application is no longer available, we remanded this matter to the Honorable Edgar W. Dickson to reconstruct the record of the September 11, 2015 hearing on Petitioner's first PCR application. Following the hearing, Judge Dickson determined it was not possible to reconstruct the hearing on Petitioner's first PCR application.

Petitioner now moves to vacate the order denying his original PCR application and remand the matter for a new PCR hearing. We grant the motion vacate the order dated January 9, 2017, and remand the matter to the circuit court for a new hearing on Petitioner's original PCR application.

|                                                                                      |            |
|--------------------------------------------------------------------------------------|------------|
|  | _____ C.J. |
|  | _____ J.   |
|  | _____ J.   |

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<sup>1</sup> *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

  
\_\_\_\_\_  
J.  
  
\_\_\_\_\_  
J.

Columbia, South Carolina

August 23, 2022

cc:

Megan Harrigan Jameson, Esquire

Lara Mary Caudy, Esquire

The Honorable Edgar Warren Dickson



## The Supreme Court of South Carolina

PATRICIA A. HOWARD  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA  
29211

1231 GERVAIS STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1080  
FAX: (803) 734-1499  
[www.sccourts.org](http://www.sccourts.org)

September 08, 2022

The Honorable Robert J. Harte  
PO Box 583  
Aiken SC 29802

### REMITTITUR

Re: Artrell Hickson v. State  
Lower Court Case No. 2013CP0201153  
Appellate Case No. 2021-001262

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script that reads "Brenda F. Shealy".

CHIEF DEPUTY CLERK

cc: Megan Harrigan Jameson, Esquire  
Lara Mary Caudy, Esquire  
The Honorable Edgar W. Dickson

|                           |   |                                |
|---------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS   |
|                           | ) |                                |
| COUNTY OF AIKEN           | ) | SECOND JUDICIAL CIRCUIT        |
|                           | ) |                                |
|                           | ) | 2013-CP-02-1153                |
| Artrell Hickson, #343019, | ) |                                |
|                           | ) |                                |
| Applicant                 | ) |                                |
|                           | ) | <b>AMENDED APPLICATION FOR</b> |
| v.                        | ) | <b>POST-CONVICTION RELIEF</b>  |
|                           | ) |                                |
| State of South Carolina,  | ) |                                |
|                           | ) |                                |
| Respondent.               | ) |                                |
| _____                     | ) |                                |

The Applicant, Artrell Hickson, through appointed counsel below, makes the following additional claims and amendments to his prior application for post-conviction relief filed on May 21, 2013:

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

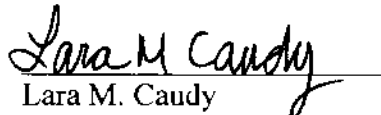
- a. Trial counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to object to the trial judge's erroneous jury instructions directing the jury to return a "fair and impartial" verdict, which diluted the state's burden of proof and shifted the burden of proof to Applicant. See Tr. 310, ll. 13-21; See also State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012); State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000); State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998).
- b. Trial counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to properly cross-examine Randy Wilson regarding the amount of prison time he was facing on the armed robbery charge for which he pled guilty and was seeking to be resentenced on in exchange for his testimony against Applicant as such evidence was critical to show bias. See Tr. 203, ll. 4-24; Tr. 211, l. 21 – 212, l. 15; See also Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018); State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012); State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002).
- c. Trial counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to object to the admission of the content of a text message allegedly received by Candice Bryant pursuant to Rule 403, SCRE, since any probative value of the evidence was

FILED January 22 2024  
Robert J. White 1215  
 C.C.P. & G.S.  
Charles R. White cnp

substantially outweighed by the danger of unfair prejudice. See Tr. 191, l. 15 – 192, l. 12. The evidence had zero probative value and was unfairly prejudicial because it suggested to the jury that Applicant or someone on his behalf engaged or attempted to engage in witness intimidation. Trial counsel was also deficient for failing to request the testimony concerning the content of the text message be proffered outside the presence of the jury before the judge ruled.

- d. Trial counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to advise Applicant to testify in his defense since there is a reasonable probability the outcome of Applicant's trial would have been different had he testified.
- e. Trial counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to call Charles Smalls and Tommy Parker as alibi witnesses at trial since there is a reasonable probability the outcome of Applicant's trial would have been different if Smalls and Parker had testified.

Respectfully submitted,

  
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ATTORNEY FOR APPLICANT

Columbia, South Carolina  
January 18, 2024

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Artrell Hickson, #343019,

Applicant

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

2013-CP-02-1153

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the Amended Application for Post-Conviction Relief in the above referenced case has been served upon T. Cruise Mitchell, Esquire, via U.S. Mail at PO Box 11549, Columbia, SC 29211-1549, and via email at his primary email address listed in the Attorney Information System (AIS), which is [cruisemitchell@scag.gov](mailto:cruisemitchell@scag.gov), this 18th day of January, 2024.

  
 Lara M. Caudy  
 Appellate Defender

ATTORNEY FOR APPLICANT



STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
SOUTH CAROLINA CIRCUIT COURT TWO  
C.A. NO.: 2019-CP-02-01521  
AND 2020-CP-02-00640

ATRELL HICKSON,  
PLAINTIFF,

VS.

STATE OF SOUTH CAROLINA,  
DEFENDANT.

H E A R I N G  
BEFORE THE HONORABLE BRIAN M. GIBSON

DATE: JULY 16, 2024  
LOCATION: SOUTH CAROLINA CIRCUIT COURT 2  
TRANSCRIBED BY: PAM GRAY

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REPRESENTING THE DEFENDANT

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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS  
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

## P R O C E E D I N G S

MR. JONES: Please bear with me because the procedural history of this one's a little bit involved.

THE COURT: Okay.

MR. JONES: This is the matter of *Atrell Hickson versus the State of South Carolina*, case number 2013-CP-2-1153.

Mr. Hickson was indicted by the Aiken County Grand Jury in December 2009, for armed robbery and in April 2010, for possession of a firearm during the commission of a violent crime. He proceeded to trial on September 20, 2010, before the Honorable Doyen A. Early and a jury on September 22, 2010.

The jury found Mr. Hickson guilty as indicted. He was sentenced to 28 years for armed robbery and 5 years concurrent for the weapons offense. Mr. Hickson filed a timely notice of appeal. The Court of Appeals ultimately affirmed his convictions and sentence in an unpublished opinion.

On May 21, 2013, Mr. Hickson filed an application for post-conviction relief and an evidentiary hearing was held on September 11, 2015, before Judge Dixon. He was represented at that by Aimee Zmroczek. By order filed January 9, 2017, Judge Dixon denied relief and his counsel ultimately failed to file a notice of appeal from that order denying him post-

1 conviction relief. On June 19, 2019,  
2 Mr. Hickson filed a second PCR application seeking a belated  
3 appeal from the denial of his first application, and an  
4 evidentiary hearing was convened before Judge Clyburn Pope on  
5 September 7, 2021.

6 By order dated September 10, 2021, Judge Clyburn Pope  
7 granted him a belated appeal from the denial of his first  
8 application for post-conviction relief. However, in  
9 preparation for the belated PCR appeal, it was determined  
10 that a transcript of evidentiary hearing held on  
11 September 11, 2015, during his first action for PCR, could  
12 not be transcribed because more than five years have passed  
13 from the date of the hearing.

14 By order dated April 5, 2022, the Supreme Court remanded  
15 the matter to reconstruct the record of  
16 Mr. Hickson's September 11, 2015, evidentiary hearing. A  
17 reconstruction hearing was held before Judge Dixon on  
18 April 28, 2022. Ultimately, Judge Dixon concluded that the  
19 record could not be reconstructed to allow for meaningful  
20 appellate review, and the Supreme Court accordingly vacated  
21 the initial order of dismissal and demanded for a *de novo* PCR  
22 hearing on the Applicant's original PCR application, which is  
23 where we are now.

24 THE COURT: (Indiscernible) I've had a couple of these

1 believe it or not.

2 MR. JONES: Really?

3 THE COURT: Yeah, believe it or not. I've been on the  
4 bench a long time. First PCR I ever did involved a record  
5 that could not be reconstructed for whatever reason, and I  
6 heard it. It was in Lexington County. So I'm familiar with  
7 how all this stuff goes.

8 MR. JONES: All right. Well, excellent. And I guess  
9 I'll turn it over to Ms. Caudy to begin her case.

10 MS. CAUDY: Good afternoon, Judge. I'm Lara Caudy. I  
11 represent the Applicant, Atrell Hickson. Does Your Honor  
12 have a copy of the amended piece of arbitration that I filed?

13 THE COURT: Right here. (Indiscernible) Dated  
14 January 18, 2022.

15 MS. CAUDY: That's correct. Yes, Your Honor. Those are  
16 the allegations that we intend to go forward with on today --  
17 today, with the exception of Letter D. We're going to waive  
18 that issue and go forward on the four other allegations.

19 THE COURT: Letter delta is out?

20 MS. CAUDY: That's correct. Yes, Your Honor. And go  
21 forward on the other four allegations of ineffective  
22 assistance of trial counsel.

23 THE COURT: Okay.

24 MS. CAUDY: I would like to call the Applicant, Atrell  
25 Hickson, as our first witness.

1 THE COURT: All right. While he's coming up, everybody  
2 agrees that this is the initial evidentiary hearing on his  
3 initial PCR application for the record.

4 MR. JONES: Yes, Your Honor, as amended on January 18,  
5 2020.

6 THE COURT: Right. That's correct. That's where we're  
7 going by. This is his first bite of the apple, so to speak,  
8 on the PCR application, correct?

9 MR. JONES: Correct.

10 THE COURT: Is that correct?

11 MS. CAUDY: That's correct.

12 CLERK: Place your left hand on the Bible. Raise your  
13 right hand. Do you solemnly swear or affirm the testimony  
14 you give in this court should be the truth, the whole truth,  
15 and nothing but the truth, so help you God?

16 MR. HICKSON: Yes, ma'am.

17 CLERK: Please take a seat in the witness stand.

18 (Indiscernible) The Court.

19 THE COURT: All right. Yes, ma'am.

20 THE WITNESS: Atrell Hickson.

21 DIRECT EXAMINATION

22 BY MS. CAUDY:

23 Q. All right. Mr. Hickson, are you currently incarcerated?

24 A. Yes, ma'am.

25 Q. And what are you serving time for?

1 A. Armed robbery.

2 Q. Do you remember what your sentence is?

3 A. Twenty-eight years for armed robbery and five years  
4 concurrent weapons charges.

5 Q. Do you remember when you were arrested?

6 A. June 30, 2009.

7 Q. So about 15 years ago?

8 A. Yeah.

9 Q. Did you proceed to trial or did you plead guilty?

10 A. Trial.

11 Q. And who represented you at trial?

12 A. Ms. Kelly P. Brown.

13 Q. Did you retain Ms. Brown or was she appointed to represent  
14 you?

15 A. She was appointed.

16 Q. Do you remember about when she was appointed after you were  
17 arrested?

18 A. No, ma'am.

19 Q. Do you remember when you were tried?

20 What was the date of your trial?

21 A. September 20, 2010.

22 Q. Okay. So you were arrested on June 30th of 2009, and you  
23 proceeded to trial on September 28th of 2010?

24 A. Yes, ma'am.

25 Q. Did you post bond during that time period?



- 1 A. Yes, ma'am.
- 2 Q. Do you remember about when you posted bond?
- 3 A. Around September.
- 4 Q. September of 2009?
- 5 A. Yes, ma'am.
- 6 Q. So about three months after your arrest?
- 7 A. Yes, ma'am.
- 8 Q. Did you meet with Ms. Brown while you were incarcerated
- 9 before you posted bond?
- 10 A. No, ma'am.
- 11 Q. Did you meet with Ms. Brown after you posted bond before your
- 12 trial?
- 13 A. Yes, ma'am.
- 14 Q. Do you recall how many times you met with her?
- 15 A. Once.
- 16 Q. Just once. During that meeting, did Ms. Brown review the
- 17 discovery materials with you?
- 18 A. I can't remember.
- 19 Q. Did she discuss the State's evidence against you that they
- 20 would present at your trial?
- 21 A. I can't remember.
- 22 Q. Did you ask Ms. Brown to investigate any witnesses on your
- 23 behalf?
- 24 A. I want to say I had, but I can't remember.
- 25 Q. Do you remember discussing with Ms. Brown potential alibi

1 witnesses and Charles Smalls and Tommy Parker?

2 A. Repeat that one more time.

3 Q. Did you ask Ms. Brown to investigate Charles Smalls and Tommy  
4 Parker as potential alibi witnesses to present during your  
5 trial?

6 A. I want to say I had, but I can't remember.

7 Q. Okay. Were you ultimately tried jointly with your co-  
8 defendant?

9 A. Yes, ma'am.

10 Q. And who was your co-defendant?

11 A. My brother, Javier Hickson.

12 Q. Did you have any other co-defendants?

13 A. David Pierce.

14 Q. That's all, Your Honor.

15 THE COURT: Okay. Mr. Jones?

16 MR. JONES: Nothing from the State, Your Honor.

17 THE COURT: All right. Thank you, sir. You may step  
18 down. Call your next witness, Ms. Caudy.

19 MS. CAUDY: The Applicant -- Applicant calls Kelley  
20 Perkins Brown.

21 THE COURT: All Right.

22 CLERK: Place your left hand on the Bible and raise your  
23 right hand. Do you solemnly swear or affirm the testimony  
24 you give in this court should be the truth, the whole truth  
25 and nothing but the truth so help you God?

1 MS. BROWN: Yes.

2 CLERK: Please take a seat on the witness stand.

3 (Indiscernible) The Court.

4 DIRECT EXAMINATION

5 BY MS. CAUDY:

6 A. My name is Kelley Perkins Brown.

7 Q. Do you prefer to go by Perkins Brown or just Ms. Brown?

8 A. Just Ms. Brown.

9 Q. How long have you been practicing law, Ms. Brown?

10 A. I have for 26 to 27 years.

11 Q. And where are you currently employed?

12 A. I'm currently employed with the Second Circuit Public  
13 Defender's office.

14 Q. And how long have you been employed with the Public  
15 Defender's office?

16 A. I've been employed with the Public Defender's office for 26  
17 years. Originally as the Aiken County Public Defender's  
18 office. And when -- 1998 is when I started. And then in  
19 2008 when the defender system changed, we became a circuit  
20 based system. But I've been continuously with the Defender's  
21 Office since 1998.

22 Q. Okay. And were you appointed to represent Mr. Hickson?

23 A. I was. I was not the first attorney in my office to be  
24 appointed to represent him, but I was ultimately appointed to  
25 represent him.

1 Q. And who was the first attorney who was appointed to represent  
2 him?

3 A. So -- if I can consult my file. In going back and looking it  
4 appeared that he had originally been appointed to Grant  
5 Gibbons in my office, and then had been assigned to a Justin  
6 Mims. When he had -- he originally came in on charges of  
7 possession of a stolen pistol and unlawful carrying of a  
8 pistol, and he was out on bond. And then subsequently he was  
9 charged with the armed robbery and the possession of weapons  
10 during the commission of a violent crime.

11 According to the paperwork, it looks like he had  
12 originally waived the public defender on his original  
13 paperwork, and then -- this was the beginning of July 2009.  
14 That fall it appeared that our office thought that Mr.  
15 (indiscernible) had been retained to appoint his -- to  
16 represent him. And my office closed out his file. In the  
17 spring of 2010, it was discovered that there was an error.  
18 He had not been retained. Don't exactly remember all the ins  
19 and outs of that, but ultimately I was appointed. I received  
20 the file in the spring of 2010.

21 Q. So you represented him on his charges of armed robbery and  
22 possession of a weapon during the commission of a violent  
23 crime?

24 A. Well, I had him on all four of his charges, but the -- the  
25 armed robbery and possession of weapon charges are the only

1 charges that went to trial. I don't recall what happened  
2 with the other two. My guess is that they were dismissed as  
3 a result of his conviction, but I (indiscernible) to verify.

4 Q. How many times did you meet with Mr. Hickson between when you  
5 were appointed in the spring of 2010 and his trial in  
6 September of 2010?

7 A. I believe I met with him at least twice. I have notes from a  
8 -- from an office visit in April of 2010. And then I have  
9 notes from a meeting with him in September -- September 7th  
10 of 2010.

11 Q. And during those meetings, did you discuss with him the  
12 discovery materials and the evidence that the State intended  
13 to present against him at his trial?

14 A. I feel certain that I did. I don't have any specific  
15 recollections of that. My notes would indicate that we did  
16 go over the facts of his case, what the State intended to  
17 bring to the witnesses as we knew them at that time.

18 Q. Are you aware whether he had any co-defendants?

19 A. Yes, he did.

20 Q. And who were they?

21 A. His brother, Javier Hickson, and then I believe that David  
22 Pierce.

23 Q. Was Mr. Hickson tried jointly with any of his co-defendants?

24 A. He was tried along with his brother.

25 Q. And do you know who represented his brother?

1 A. Michael Routzong, also out of our office.

2 Q. Did you -- when you met with Mr. Hickson those two times,  
3 did he ever discuss with you any potential witnesses that he  
4 would want you to call on his behalf?

5 A. Yes.

6 Q. And who were those witnesses?

7 A. My notes indicate his grandmother, Beulah Hickson, and a  
8 Tommy Lee Parker, Sr.

9 Q. Do you remember whether he mentioned a Charles Smalls?

10 A. I don't recall and I don't have any notes.

11 Q. Did you investigate the two witnesses that he suggested you  
12 investigate?

13 A. I have notes from a telephone conversation with Tommy Parker.  
14 And don't have any notes indicating that I spoke with his  
15 grandmother.

16 Q. And what was your understanding of why Mr. Hickson wanted you  
17 to speak with Mr. Parker?

18 A. May I refer to my notes? My notes of my conversation with  
19 Mr. Parker indicated that he knew that they couldn't have  
20 been involved because they were with him at the time of the  
21 robbery.

22 Q. Okay. So Mr. Parker was a potential alibi witness?

23 A. That's correct.

24 Q. You mentioned that Mr. Hickson's brother, Javier Hickson, was  
25 tried jointly with Mr. Hickson, and the brother was

1 represented by Michael Routzong out of your office.

2 Did you discuss the case with Mr. Routzong before trial?

3 A. I don't remember. It would not have been unusual to do so,  
4 but I honestly don't recall any conversations that we had.

5 Q. So you indicated that you spoke to Mr. Parker on the  
6 telephone and you have notes from that telephone  
7 conversation?

8 A. That's correct.

9 Q. So you did not meet with him in person?

10 A. I don't believe so.

11 Q. Are you aware of whether Mr. Routzong spoke with Mr. Parker  
12 in person?

13 A. I have no idea.

14 Q. Are you aware of whether Mr. Routzong met with Charles  
15 Smalls?

16 A. I have no idea.

17 MS. CAUDY: May I approach the witness, Your Honor?

18 THE COURT: Yeah.

19 BY MS. CAUDY:

20 Q. I'm going to show you what -- these were marked as exhibits  
21 during Mr. Hickson's first post-conviction relief hearing.

22 They appear to be affidavits that were written by

23 Mr. Routzong in August of 2009. One is from a Charles Smalls  
24 and the other is from a Tommy Parker.

25 I would just ask if you recognize those documents and if

1           you were aware of them before trial?

2   A.    I do not recognize these, and I was not aware of them before  
3           trial.

4   Q.    Okay.

5           MS. CAUDY: Your Honor, may I mark this as exhibits just  
6           for purposes of the record?

7           THE COURT: Yes.

8           MS. CAUDY: I'd like to mark the affidavit of Charles  
9           Smalls as Applicant's exhibit number one. And the affidavit  
10          from a Tommy Parker as Applicant's exhibit number two.

11          THE COURT: You want them admitted into evidence?

12          MS. CAUDY: Yes, Your Honor.

13          THE COURT: Any objections from the State?

14          MR. JONES: No, Your Honor.

15          THE COURT: All right. They're admitted into evidence.

16                 (Whereupon, the above-described documents were  
17                 marked and admitted into evidence as Defendant's  
18                 Exhibit Nos. 1 and 2, respectively.)

19   BY MS. CAUDY:

20   Q.    You indicated -- sorry, Your Honor -- you indicated when you  
21           spoke to Mr. Parker that he told you that Mr. Hickson and his  
22           brother, Javier, could not have been responsible since they  
23           were not there. What was your testimony in that regard  
24           again?

25   A.    My notes said, knew they couldn't have been involved because



1           they were with him.

2   Q.    They were with him, okay.  Do you know why you ultimately  
3       chose not to call them as witnesses?

4   A.    I do not remember.  I can speculate, but it's been 14 years,  
5       and I don't know exactly -- I would speculate that based on  
6       how the trial was going, may have decided to try to retain  
7       the advantage of my arguments.  But I don't know specifically  
8       why I did not call them or why Mr. Routzong did not call  
9       them.

10  Q.    So you have no other details besides your notes as to what  
11       Mr. Parker would have testified to if he had been called?

12  A.    I have no recollection.

13           MS. CAUDY:  May I approach your witness?

14           THE COURT:  Yes.

15           MS. CAUDY:  Thank you.

16  BY MS. CAUDY:

17  Q.    I'd like to show you trial transcript page 31.  It's the  
18       trial court's opening remarks to the jury.  We have lines 10,  
19       where the trial court mentions true facts, line 12 where he  
20       again mentioned -- I'm sorry -- it's trying to determine --  
21       sorry it says line 14, for the record -- determine which  
22       evidence convinces you of its truth.

23           And then on line 19, on that same page 31, it says, once  
24       they determine what the true facts are.  So there's at least  
25       three times on that one page where the trial judge instructs

1 the jury during his opening remarks that their job is to try  
2 to find the true facts -- determine what the true facts are.  
3 Did you see any reason to object to that testimony?

4 A. At the time, no.

5 Q. I'm sorry. Not testimony, but the remarks from The Court.  
6 And then on page 310 of the transcript during the judge's  
7 jury instructions -- let me just find that page. Lines 18  
8 through 21, specifically on line 20, he instructs the jury  
9 that they are trying to determine a fair and impartial  
10 verdict in this case. Did you object to that instruction?

11 A. I don't believe I objected to that.

12 Q. Do you recall why you didn't object to The Court's opening  
13 remarks and during instruction concerning true facts and fair  
14 and impartial verdict?

15 A. If I did not object it's because I did not think that they  
16 were objectionable.

17 Q. Were you aware of case law, specifically, *State versus Olesky*  
18 *and State versus Needs*? *Olesky* was decided in 2000 and *State*  
19 *versus Needs* was decided in 1998 by our South Carolina  
20 Supreme Court.

21 Were you aware that those cases suggested that or held  
22 that such language can reduce the burden of proof and shift  
23 the (indiscernible) of burden of proof to the defendant?

24 A. No. In a word, no. I mean, I would not have been able to

1 quote those cases to you. I think that I have an  
2 understanding of the holdings that you are referring to.  
3 But, no. At the time I did not put one with the other and  
4 object to the (indiscernible).

5 Q. Now understanding the holdings of those cases, as well as  
6 *State versus Daniels*, which was decided in 2012, so about two  
7 years after the trial of Mr. Hickson's case.

8 Now being aware of those holdings, would you have  
9 objected if you understood -- if you had been aware at the  
10 time of those holdings?

11 A. I probably would have, yes.

12 MS. CAUDY: Court's indulgence?

13 THE COURT: Sure.

14 MS. CAUDY: Approach the witness, Your Honor?

15 THE COURT: Sure.

16 BY MS. CAUDY:

17 Q. I'd like to show you page 191 of the trial transcript. This  
18 is the testimony of Candace Bryant. Let me pause for just  
19 one minute. Do you -- do you recall the basic allegations  
20 that were alleged against Mr. Hickson and his brother and  
21 David Pierce? What were the facts of the case as alleged by  
22 the State?

23 A. As I recall and going through things today, I think the basic  
24 allegations were that three individuals went into a branch of

1       -- I think it was the SRP Credit Union -- armed with weapons,  
2       demanded money, cash money, and ran off with them. One of  
3       the co-defendants, David Pierce, was ultimately arrested and  
4       gave statements that the Hickson brothers were with him and  
5       detailed basically, you know, conspiracy, the planning that  
6       had taken place previously, and so that's -- that was the  
7       gist of the -- of the State's case.

8     Q.    So the Hickson brothers were arrested based on the word of  
9       David Pierce; is that your understanding?

10    A.    Pretty much, yes.

11    Q.    Were any of the employees of the bank, any of the tellers,  
12       able to identify the perpetrators?

13    A.    I don't believe so.

14    Q.    Did Mr. Pierce testify against the Hickson brothers at their  
15       joint trial?

16    A.    He did.

17    Q.    Returning to page 191 ---

18    A.    Do you want me to pull out the transcript that I have? Would  
19       that be helpful?

20    Q.    Sure. That would be helpful. I should have asked that. This  
21       is the testimony of Candace Bryant.

22    A.    You said 191?

23    Q.    Yes, please.

24    A.    Okay.

25    Q.    On page 191 -- this is the first page of Ms. Bryant's

1 testimony. And the solicitor asked her did -- this is on  
2 line 15 -- did you receive a text message last night?, and  
3 Ms. Bryant responds, yes, ma'am. And then the solicitor  
4 asked, what did the text message say?, and then you objected.  
5 What was your objection?

6 A. It was to relevance. The transcript says specifically, Your  
7 Honor, objection. Relevance.

8 Q. And then do you remember the judge's ruling? It's on the  
9 next page.

10 A. I'm sorry, this transcript was bound backwards. Court says,  
11 I'll allow it. If it's not relevant, I'll strike it. I  
12 don't know if it's going to be.

13 Q. Are you aware of that text message and the contents of that  
14 message before the testimony was elicited?

15 A. I don't remember.

16 Q. Did you think to ask the judge? His ruling was, I don't know  
17 what it's going to be, you know. I'll let the witness  
18 testify to the contents, and if it's not relevant, you know,  
19 I'll strike it.

20 Did you think to ask the judge to proffer the contents  
21 of the text message, that testimony, before it was given  
22 before the jury?

23 A. No, I did not. I should have, but I did not.

24 Q. And what was the witness's testimony as to the content of the  
25 message she received the day before her testimony? It's on

1 line seven.

2 A. What, are you at the courthouse snitching?

3 Q. So she alleges that she received a text -- text message the  
4 day before the hearing asking her, what, are you at the  
5 courthouse snitching?

6 A. Yes.

7 Q. And does she actually say that twice? Because the court  
8 says, what? And then the witness says the contents again,  
9 what, are you at the courthouse snitching?

10 A. Yes.

11 Q. Did you further object based on relevance, which was your  
12 initial objection?

13 A. I did not.

14 Q. Did you think to object based on Rule 403, arguing that the  
15 contents of that text message where the probative value was  
16 substantially outweighed by the danger of (indiscernible)  
17 prejudice?

18 A. I did not.

19 Q. Did you have any strategic reason for failing to object based  
20 on Rule 403?

21 A. No.

22 Q. Do you think that that text message suggests that  
23 Mr. Hickson, or his brother, or someone on their behalf had  
24 attempted to reach out to Ms. Bryant before her testimony,  
25 perhaps to discourage her from testifying to, you know,

1 witness intimidation? Did any of that cross your mind as to  
2 what -- as to how that message could have been prejudicial?

3 A. I think, in retrospect, it certainly could be interpreted  
4 that way. Yes.

5 Q. So you think you should have objected pursuant to Rule 403?

6 A. Probably, yes.

7 Q. And you think that you should have asked the judge to proffer  
8 that testimony as to the contents of the message before it  
9 was heard by the jury?

10 A. Yes.

11 Q. Now you spoke about David Pierce and how he was a main  
12 witness against the Hickson brothers. He was a co-defendant.

13

14 Did Mr. Pierce testify against Mr. Hickson at his trial?

15

16 A. Yes.

17 Q. Do you recall Randy Wilson and what his role was in  
18 Mr. Hickson's trial?

19 A. I don't recall off-hand.

20 Q. I'd ask you to turn to page 202 of the transcript. This is  
21 during Mr. Randy Wilson's testimony before the jury.

22 MR. JONES: Your Honor, if it would assist the witness,  
23 I have a perhaps more correctly bound version of the record.

24 THE COURT: Yeah, that's fine.

25 MS. BROWN: That'd be great.

1 THE COURT: All right. What page again?

2 MS. CAUDY: Page 201.

3 THE COURT: Okay.

4 BY MS. CAUDY:

5 Q. Mr. Wilson indicates that he was arrested on July 1, 2009,  
6 for robbing the First Citizens Bank in Jackson. Now, that  
7 was a separate -- separate bank robbery from the one that  
8 Mr. Hickson was charged with; is that correct?

9 A. I believe so.

10 Q. And Mr. Wilson testifies on that page that he -- he was  
11 arrested on July 1, 2009, and he was interviewed by an FBI  
12 agent that day. Is that what the transcript says?

13 A. Yes.

14 Q. Does Mr. Wilson indicate that he confessed his involvement  
15 with the armed robbery of the First Citizens Bank?

16 A. Yes.

17 Q. And does his testimony indicate that during that interview,  
18 he also told the FBI about the armed robbery that occurred at  
19 the Security Federal Bank on June 25, 2009, which is the  
20 armed robbery that Mr. Hickson was charged with?

21 A. Yes.

22 Q. And it says at the top of page 202, Mr. Wilson testifies --  
23 is this correct -- that he implicated both Mr. Hickson and  
24 his brother in that robbery?

25 A. That's correct.



1 Q. And then Mr. Wilson -- is this correct -- he testifies that -  
2 - on the bottom of page 202 -- that he was interviewed by a  
3 Chuck Kane -- with the -- investigator, Chuck Kane -- with  
4 the Aiken County Sheriff's Office on December 11th of 2009,  
5 so about six months later. And did he tell Investigator Kane  
6 during that interview who robbed the bank on June 25th of  
7 2009?

8 A. Yes.

9 Q. And then it indicates Mr. Wilson testifies that on December  
10 14th, so that would have been three days late -- three days  
11 later, that he pled guilty to armed robbery for the July 1st  
12 unrelated bank robbery; is that correct?

13 A. Correct.

14 Q. So he pled guilty, according to his testimony, on December  
15 14th of 2009. But then on the top of page 202, does he  
16 indicate that he was not sentenced until March 8th of 2010?

17 A. That's correct.

18 Q. And that would have been before Mr. Hickson's trial?

19 A. That's correct.

20 Q. And then does Mr. Wilson indicate that his -- I'm sorry --  
21 that he filed a motion to reconsider his sentence that same  
22 day, March 8th of 2010, the same day he was sentenced?

23 A. It just says in -- subsequent to your sentencing, your  
24 attorney filed a motion on your behalf.

25 Q. Okay. It doesn't indicate the date? And then does he

1 indicate that it's his understanding that his motion to  
2 reconsider his sentence is still pending?

3 A. That's correct.

4 Q. Does he indicate whether he has a -- you know, a deal or  
5 promise with the solicitor's office in exchange for his  
6 testimony against Mr. Hickson?

7 A. He said he did not.

8 Q. If you'll turn to page 211. This is during your cross-  
9 examination of Mr. Wilson. Line 21 through 23, you asked  
10 him, you're going to be in the South Carolina Department of  
11 Corrections for a good long time; aren't you?

12 A. Sorry, what page are we on? Oh, 211.

13 Q. 211, yes, ma'am. Do you see his response?

14 A. Yes. Yes.

15 Q. You questioned him on -- so whether he was going to be in the  
16 Department of Corrections for a good long time.

17 Did you question Mr. Wilson about what he was sentenced  
18 to and the possible reduction that he could have received in  
19 exchange for his testimony against Mr. Hickson?

20 A. I did not specifically question him as to the time he  
21 received or the time that he was hoping to get. No, I did  
22 not.

23 Q. I assume you don't recall now, but do you know whether you  
24 knew at the time as to what sentence he received after he  
25 pled guilty to armed robbery and was sentenced in March of

1           2010; do recall his sentence?

2    A.    I do not recall.

3    Q.    What does armed robbery carry?

4    A.    Minimum of 10, maximum of 30, number one offense.

5    Q.    If I told you that Mr. Wilson was sentenced originally to 28  
6           years, do you think that you should have questioned him about  
7           the possible reduction in his sentence from 28 years all the  
8           way down to the possibility of 10, which is the mandatory  
9           minimum armed robbery?

10               Do you think you should have questioned him about the  
11               significant departure and sentence he could have received in  
12               exchange for his testimony against Mr. Hickson?

13   A.    Well, my cross-examination did question whether or not he  
14           expected a reduction in sentencing. As far as should I have  
15           specifically asked him that? It certainly would have been a  
16           stronger cross-examination. Yes.

17   Q.    Were you aware of case law at the time of Mr. Hickson's trial  
18           that permitted you to cross-examine him pursuant to the  
19           Confrontation Clause about the amount of time that he was  
20           facing on the armed robbery and the perhaps reduction that he  
21           could have received?

22   A.    I believe so, because I believe that I crossed the family of  
23           David Pierce fairly thoroughly on that same issue. And in  
24           specifics, we did have coverage with the judge in regards to  
25           being able to get out the time that he was facing. And so I

1        would assume that I was aware that that could be done, since  
2        I didn't do that with another witness.

3    Q.    Do you think it would have been further evidence -- it would  
4        have shown additional evidence of his bias, or the extent of  
5        his bias, to show to the jury that he was facing a possible  
6        reduction of 18 years from 28 years all the way down to 10?

7    A.    Yes, it would have been a stronger cross-examination had I  
8        specifically asked him about that time.    Yes.

9    Q.    Are you aware of whether he, after he testified against  
10       Mr. Hickson, about whether he did, in fact, receive a  
11       sentence reduction?

12   A.    I have no idea.

13   Q.    If I told you that he was ultimately sentenced to 18 years,  
14       would you have any reason to doubt it?

15   A.    No.

16   Q.    Do you recall the significance of Mr. Wilson's testimony  
17       against Mr. Hickson?

18   A.    Not off the top of my head, no.

19   Q.    So you said that there -- that the ---

20   A.    I'm sorry.    The significance is -- I mean, he gave statements  
21       saying that they were involved.    So the significance is he  
22       put them -- testified that he had knowledge of their  
23       involvement.    So the significance of his testimony would have  
24       been evidence against Mr. Hickson, evidence of his guilt.

25   Q.    Do you recall during your cross-examination of Mr. Wilson,

1       you elicited testimony from him that when he spoke to the FBI  
2       agent on July 1st of 2009, and when he spoke to investor --  
3       Investigator Kane in December of 2009 with Aiken County  
4       Sheriff's office that he -- during those two meetings with  
5       law enforcement, that Mr. Wilson did not say he was present  
6       during any planning for the armed robbery that Mr. Hickson  
7       was convicted of? Do you recall listening that testimony  
8       from him?

9     A.    I don't recall.

10    Q.    So on page 210 and 211, you asked on line eight of 210, you  
11       didn't tell him about his planning meeting that happened the  
12       day before this robbery; did you?. And Mr. Wilson responds,  
13       they didn't ask. So that was for the FBI. And then same  
14       with page 211, lines six through five, it says when you spoke  
15       with Investigator Kane on December 11th, you didn't say  
16       anything about this conversation that was happening before;  
17       did you?. And Mr. Wilson again responds, they didn't ask.  
18       So it appears that you elicited testimony from Mr. Wilson  
19       that what he told law enforcement during his interviews  
20       before Mr. Hickson's trial was not consistent with his  
21       testimony during actual the trial; is that correct?

22    A.    That's correct.

23    Q.    And do you think that if you would have elicited testimony  
24       from Mr. Wilson, as far as that he could have received as  
25       much as an 18-year reduction in his sentence, that that would

1 have been a motivation as to why his -- his statement that he  
2 had given to the investigators changed, essentially that he  
3 had a -- you know, a motivation to lie, you know, to  
4 implicate Mr. Hickson in order to get that sentence  
5 reduction?

6 A. I'm sorry. Could you repeat that?

7 Q. Do you think that you could have further elicited testimony  
8 from Mr. Wilson showing how -- you know, making the  
9 connection between the fact that his -- his statements to law  
10 enforcement in July of 2009 and December of 2009, it was  
11 different than his trial testimony? And the reason that his  
12 testimony was different was that he had a bias, a motivation,  
13 to further implicate Mr. Hickson in order to get that  
14 possible 18-year sentence reduction?

15 A. Well, I think I did make that attempt in the cross-  
16 examination to make that link. Every trial lawyer, in  
17 retrospect, thinks that they could have done a better job of  
18 doing that, tying that up, or neatly presenting that to the  
19 jury more specifically. And I think there's always more that  
20 you could do, but I didn't -- but he hadn't been sentenced to  
21 the 18 years at that point.

22 So I don't -- I couldn't have foreseen that that would  
23 be the exact reduction, or what the exact reduction could  
24 have been. Could I hammered at him more, longer,  
25 repetitively? Sure. Some of that is trial strategy, trying

1 to get in and give that information to the jury and try to do  
2 the damage you can in your cross-examination to show that  
3 bias. And then get out before anything can further damage  
4 what you're trying to do.

5 Q. Just a brief follow up. You weren't aware that he was  
6 ultimately sentenced to 18 years, of course, because it  
7 hadn't happened yet. But you were aware that there was a  
8 possible 18-year reduction that he could have received given  
9 the fact that he was sentenced to 28 years and the mandatory  
10 minimum for armed robbery is 10.

11 A. Yes. Simple math, he was 28, he could have -- I see where  
12 you're going with that now. He could have received an 18-  
13 year reduction to all the way down to 10 years. Yes.

14 Q. And that would have further -- as you said, stronger cross-  
15 examination. It would have further shown the extent of his  
16 bias and his motivation to -- to lie.

17 A. Sure.

18 Q. Just to recap, you said that the employees of the bank could  
19 not identify the suspects; is that correct? There was no  
20 (indiscernible) hearing or any sort of identification?

21 A. That is my recollection. I think gave descriptions,  
22 potential height, maybe weight, but no specific  
23 identifications of the individuals to my recollection.

24 Q. And Mr. Wilson had admitted his -- his involvement in a bank  
25 robbery that occurred five days later on July 1st.

1 A. That's correct.

2 Q. And Mr. Wilson had pled guilty to that charge?

3 A. Yes, he had.

4 Q. Were you -- do you recall whether Mr. Wilson's appearance  
5 would have matched the general appearance of the armed  
6 robbers that were given by the employees of the bank? If you  
7 look on page 213 of the record, they do question him about  
8 his height.

9 A. I remember I had something in my notes about that. So on  
10 213, the question was, how tall are you? Is that where we  
11 are?

12 Q. Correct.

13 A. He answered that he was about five foot eight.

14 Q. And would that have matched the general description given by  
15 the bank employees of at least one of the suspects?

16 A. As I recall -- I don't recall specifically. I think I recall  
17 description being given. I think two, around five- four, and  
18 I think the other taller. But I don't recall specifically.

19 Q. In addition to Mr. Wilson's testimony, if you recall the  
20 other main evidence against Mr. Hickson was his co-defendant,  
21 David Pierce.

22 A. That's correct.

23 Q. Was there any physical evidence that implicated Mr. Hickson  
24 in the crime, such as DNA, fingerprints?

25 A. I don't believe so. I think we spent a lot of time cross-



1       examining. I think I spend a lot of time cross-examining the  
2       investigators about the lack of fingerprints. Specifically,  
3       I recall and -- and having looked through to talk a lot about  
4       fingerprints and inquire what -- and their explanation as to  
5       why not having those. But, no, I never recalled any -- any  
6       physical evidence linking them.

7           MS. CAUDY: I have no further questions.

8           THE COURT: All right. Mr. Jones.

9                           CROSS-EXAMINATION

10       BY MR. JONES:

11       Q.    Thank you, Your Honor. Thank you, Ms. Brown. Regarding  
12       these witnesses, I believe you testified, but you don't  
13       recall hearing anything about a Charles Smalls in your notes  
14       or in your personal recollection?

15       A.    I don't have anything in my notes or in my recollection about  
16       Charles Smalls.

17       Q.    All right. And do you -- does that include whether the  
18       Applicant told you about him, or whether Michael Routzong  
19       told you about him? Or is it just generally no recollection  
20       whatsoever?

21       A.    I didn't have anything in my notes that I took from my  
22       conversations with Mr. Hickson about Charles Smalls and would  
23       not have been a general practice to have taken notes in  
24       conversation with colleagues about the case. So I don't have  
25       any notifications of that.

1 Q. You did have a note about Tommy Parker, correct?

2 A. Yes.

3 Q. The -- could you turn to page 9 of the record on appeal?

4 MS. CAUDY: The trial transcript or the record on  
5 appeal?

6 MR. JONES: I think it's the trial transcript. The  
7 record I have is not (indiscernible).

8 BY MR. JONES:

9 A. I've got page 9 of the trial transcript.

10 Q. Does this appear to be a list of the potential witnesses in  
11 the case being read prior to the jury selection?

12 A. It starts on page 8 and goes on to page 9, yes.

13 Q. All right. And at the end of that first paragraph on line  
14 eight of page 9, you see Tommy Parker's name?

15 A. I'm sorry. Line what?

16 Q. Line eight of page 9.

17 A. Yes.

18 Q. All right. So that would indicate that he was at one point,  
19 a potential witness for at least one of the parties in the  
20 case.

21 A. Yes.

22 Q. All right. And I believe you testified that you don't  
23 specifically remember why he wasn't called, but just  
24 generally, as the case develops, different considerations  
25 might cause you not to call someone who had originally been

1 listed as a witness?

2 A. That's correct. And I don't know his name would have been on  
3 my potential witness list or Mr. Routzong's, not having those  
4 in front of me.

5 Q. Or perhaps the State's?

6 A. Or perhaps the State's, correct.

7 Q. Regarding your cross-examination of Randy Wilson, you'd agree  
8 that in the -- especially with the passage of many years,  
9 there's always cases where an attorney can look back and  
10 think, I could have done this more thoroughly or differently.

11 A. Absolutely.

12 Q. But you would also agree that the substance of what you  
13 elicited from him on cross-examination included that he was  
14 charged with this prior robbery and was hoping for a  
15 reduction in his sentence based on his cooperation with the  
16 State?

17 A. Yes. That's what I'm trying to get across to the jury.

18 Q. All right. I think that's all the questions I have for you.  
19 Thank you.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MS. CAUDY:

23 Q. Just very briefly. Did your office have an investigator in  
24 2010?

25 A. Yes. Our office has had at least two investigators ever

1       since I joined the office in 1998. So I don't know  
2       specifically who was in that role in 2010, but, yes, we did  
3       have investigators who were employed full-time by our office.  
4

5   Q.   And I don't recall whether I asked you, did you have one of  
6       your office investigators meet with Mr. Tommy Parker or  
7       interview Mr. Parker?

8   A.   I am not sure if I did or not.

9   Q.   Given your notes that you had a phone conversation with  
10      Mr. Parker, and he indicated that he knew Mr. Hickson could  
11      not have done it because he was with Mr. Parker, do you have  
12      any reason why you wouldn't have asked an investigator to  
13      follow-up with Mr. Parker?

14  A.   Sorry. I'm still trying to go through my notes to see if  
15      there was any indication of that. I can't recall any  
16      specific reason why I would not have had the investigator  
17      follow up with that. Probably should have, but I don't know.  
18      I just don't know.

19  Q.   Given your testimony, that there was no physical forensic  
20      evidence against Mr. Hickson, and it was essentially -- you  
21      know, the main witnesses were David Pierce and Randy Wilson,  
22      who obviously had a motivation to lie, do you think that the  
23      presentation of an alibi witness would have affected the  
24      outcome of the trial?

25  A.   It's certainly possible, yes.

1 MS. CAUDY: No further questions, Your Honor.

2 THE COURT: Anything else? (Indiscernible)

3 MR. JONES: Nothing further, Your Honor.

4 THE COURT: Thank you, ma'am. You may step down. The  
5 Applicant can call next witness.

6 MS. BROWN: Your Honor, may I be excused?

7 THE COURT: Any objections?

8 MS. CAUDY: No, Your Honor.

9 MR. JONES: No, Your Honor.

10 MS. CAUDY: The Applicant rest.

11 THE COURT: Applicant rest. Anything further from The  
12 State?

13 MR. JONES: No witnesses from the State, but I do have a  
14 number of legal arguments.

15 THE COURT: Absolutely. Let me hear from the Applicant  
16 first in closing, then I'll let you respond as such.

17 MS. CAUDY: May it please The Court. As far as  
18 Allegation A and the amended application concerning failure  
19 to object to the jury instruction and court remarks on, you  
20 know, instructing the jury to return a fair and impartial  
21 verdict, instructing the jury that their job is to find the  
22 true facts.

23 I think there is significant case law from our South  
24 Carolina Supreme Court, both before Mr. Hickson's trial and  
25 after Mr. Hickson's trial, that say that those type of

1 instructions dilute the State's burden of proof and shifts  
2 the burden of proof to the Defendant.

3 THE COURT: I agree with you on that. That was around  
4 the time I got on the circuit board for eight years before  
5 that. So I've been around for a while. You know my  
6 understanding of the law that is in that -- in that gray area  
7 between the most recent case, the 2012 case, state -- yeah,  
8 *State versus Daniel*, the first one you have cited.

9 Because I know I'm in that, all my jury charges where I  
10 got rid of fair. I got rid of the word truth, true. You  
11 know, clerk of court still swear in jury saying it true and  
12 accurate. Break, you know, they still do all that. So it  
13 doesn't that create a harmless error analysis, rather than an  
14 abuse of discretion, which would mandate reversal if trial  
15 does show that?

16 MS. CAUDY: I think the case law says that it's an error  
17 to instruct the jury with that sort of language. But yes, on  
18 direct appeal, it would be subject to a harmless error  
19 analysis. Now, of course, this is a PCR proceeding, so all  
20 we would have to prove is that if there's a reasonable  
21 probability that it would have affected the -- would have  
22 affected the outcome of Mr. Hickson's trial.

23 And I think given that there was no physical evidence  
24 against him, no forensic evidence against him, such

1 instructions which reduced the State's burden of proof likely  
2 could have or reasonably did affect the outcome of his trial,  
3 particularly in conjunction with our other allegations,  
4 namely, trial counsel's failure to cross-examine Mr. Wilson  
5 with the amount of time the possible sentence reduction that  
6 he was receiving.

7 And, again, there's significant case law on that issue,  
8 that the amount of time that a witness is facing, the amount  
9 of time that a witness is able to avoid by testifying against  
10 a defendant, shows the extent of their bias. And I think  
11 just the general cross-examine that trial counsel engaged  
12 with -- you know, you're facing a lot of time in the  
13 Department of Corrections, aren't you, and you want -- you're  
14 hoping for your sentence to be reduced.

15 It's just not the same as questioning that witness that,  
16 hey, you're -- you're seeking a possible 18-year sentence  
17 reduction, and she knew that he, or should have known, that  
18 he was sentenced to 28 years before  
19 Mr. Hickson's trial, and that the mandatory minimum of a  
20 robbery is ten years. He had a significant motivation to  
21 lie. And I think if the jury would have been aware of that,  
22 that there's a reasonable probability of the outcome  
23 Mr. Hickson's trial would have been different.

24 Again, in conjunction with the jury instruction that was  
25 improper, and then again with the allegation concerning trial

1 counsel's failure to object to Candace Bryant's testimony  
2 concerning the content of that text message.

3 THE COURT: But she did object.

4 MS. CAUDY: She objected pursuant to relevance. One,  
5 she didn't renew her objection. I mean, the judge really  
6 never ruled on it. He says, on page 192 ---

7 THE COURT: That's reserved for appellate review then.

8 MS. CAUDY: Not on direct appeal -- not on direct  
9 appeal, but we're at -- you know, we're at PCR. So he says,  
10 if it's not relevant, I'll strike it. And then once the text  
11 message is introduced, not once, but twice, before the jury,  
12 she doesn't renew her objection. Argument's not relevant.  
13 But, honestly, my argument is not really related to  
14 relevance. It's related to Rule 403.

15 I mean, there's no probative value of the content of  
16 that text message, but it's highly prejudicial to  
17 Mr. Hickson because it appears that he's engaging in witness  
18 intimidation, or someone on his behalf is engaging in witness  
19 intimidation, which is bad character evidence. And given a  
20 case where there's no physical evidence, no forensic  
21 evidence, you know, such bad character evidence in  
22 conjunction with everything else, there's certainly a  
23 reasonable probability the outcome of this trial would have  
24 been different if counsel had objected to that construct -- I  
25 mean, sorry -- that testimony and the trial judge likely



1 would have ruled that it was inadmissible.

2 THE COURT: Or at least request a -- a hearing outside  
3 the presence of a jury.

4 MS. CAUDY: Yes, correct, Your Honor. Thank you for  
5 reminding me that, of course, requesting that the witness  
6 proffer the testimony before this comes out before the jury.

7 THE COURT: Right. And the alibi witnesses? Tell me  
8 about that again. That's the last one.

9 MS. CAUDY: Yes. Again, I mean, there -- trial counsel  
10 admitted that she spoke to Mr. Parker on the phone.  
11 Mr. Parker said that he knew that Mr. Hickson could not have  
12 been involved because Mr. Hickson was with him that day.  
13 Counsel failed to follow up with that conversation. She  
14 didn't send an investigator out to interview Mr. Parker.

15 Clearly, Mr. Parker was listed as a witness, which was  
16 pointed out by the State, and she didn't really seem -- trial  
17 counsel didn't really seem to give any sort of strategic  
18 reason as to why she didn't follow up with  
19 Mr. Parker or why she did not call him as a potential  
20 witness, which certainly given the case, it could have  
21 affected the outcome.

22 It reasoned properly, it would have affected the outcome  
23 of the trial if there had been qualified testimony.

24 THE COURT: Anything else?

25 MS. CAUDY: No, Your Honor.

1 THE COURT: Thank you, ma'am. Yes, sir.

2 MR. JONES: Thank you, Your Honor.

3 THE COURT: You going to respond to them the way they  
4 were presented?

5 MR. JONES: Yes, Your Honor. (Indiscernible) The first  
6 as regards to the letter A. The truth seeking language that  
7 Ms. Caudy complains about, it's contained -- you can find it  
8 on page 31 of the transcript, and it's contained in the  
9 paragraph about the jury's duty to judge the credibility of  
10 the witnesses.

11 Now, at the time of controlling the precedence,  
12 disfavoring truth seeking language was State v  
13 (indiscernible), which specifically said, but we don't think  
14 it's a problem if it's in the context of instructing the jury  
15 on the credibility of witnesses. So under State versus  
16 (indiscernible) with the controlling precedent at the time,  
17 there was nothing improper about the judge's use of truth  
18 language there.

19 THE COURT: Clarify that because I remember I had a jury  
20 charges one way, and I still have. When my law clerks change  
21 every year, invariably one of them will pull out an old jury  
22 charge from 2013, or '20, or whatever it is that still has  
23 the truth and all that kind of stuff in there. And because  
24 they're lazy and they aren't looking at (indiscernible). And  
25 I'll have to go back and strike out and make sure it's all

1 correct.

2 But I get what you're saying. I just wanted to put that  
3 in for the (indiscernible). Go ahead.

4 MR. JONES: Yes, Your Honor. And, in fact, even in the  
5 latest case *State v. Beaty*, which came out in 2018 to address  
6 the truth-seeking language, the Supreme Court itself said, we  
7 acknowledge that this language has appeared in our general  
8 sessions. (indiscernible) charging instructions.

9 THE COURT: Correct.

10 MR. JONES: But of course, *Beaty* and *Daniels* both, which  
11 came out after this trial. The attorney is not a part of  
12 being clairvoyant and anticipate changes in the law. She's  
13 entitled to a (discernible) what the law is at the time. And  
14 at the time, this was not an improper statement under *Alexay*  
15 and as regards to the fair and impartial mention, which was  
16 just very brief in the judge's closing jury instructions,  
17 again, you pointed out that when jurors are sworn, they're  
18 sworn to give a true verdict.

19 Likewise, when the court is interviewing jurors, prior  
20 to jury selection, he asked them that they can be fair and  
21 impartial. So, again, I think this would be perfect for --  
22 well it's not technically a harmless error analysis because  
23 we're on PCR. The burden is actually lesser because a  
24 harmless error analysis, you have to show that the error was

1       harmless beyond a reasonable doubt.

2               THE COURT:   Right.

3               MR. JONES:   And this, we just have to show that it's not  
4       reasonably likely to have affected the verdict, which I think  
5       is easily met in this case.   Regarding Ms. Brown's cross-  
6       examination of Mr. Wilson and her objection on the ground of  
7       relevance, rather than on 403, that we're just really nit-  
8       picking the performance of counsel at this point.

9               THE COURT:   She's an appellate defense attorney.   That's  
10       what she does.   She's done an excellent job.

11              MR. JONES:   I commend her for that.   But, again, the  
12       substance of what Ms. Brown was trying to elicit from Randy  
13       Wilson was that he was cooperating with the State in order to  
14       obtain a benefit for himself.   She did elicit that.   I don't  
15       think going into further specifics, sure it might have been  
16       helpful, but it's not -- it's not a deficiency, and it  
17       certainly doesn't call into question the fairness of this  
18       entire trial.

19              Similarly, the objection on relevance rather than 403,  
20       first of all, I think a 403 objection is clearly worse  
21       because this is probative evidence.   There's plenty of cases  
22       that say evidence of witness intimidation is probative of  
23       guilt because it suggests a guilty mind and an attempt to  
24       cover up the tracks of a crime, especially when it's  
25       specific.

1           THE COURT: Let me ask you this. Because I've had it  
2 argued both ways, this will make (indiscernible) for the  
3 record. For whatever may happen with this case, do you have  
4 to state the grounds of your objection to object?

5           MR. JONES: Your Honor, the grounds of the objection  
6 must be clear to the -- to the court that's deciding it and  
7 to the reviewing court.

8           THE COURT: Right. I don't know what I'm going to do,  
9 I'll ask, what's the grounds for your objection, or I'll have  
10 the lawyers approach. But I don't think there's any rule or  
11 requirements, and I couldn't find any when I was looking at  
12 stuff -- and y'all correct me if I'm wrong -- that requires  
13 attorneys in South Carolina, at least in the courts I  
14 presided over, to state the grounds of the objection when  
15 they make the objection.

16           Like objection, Your Honor, hearsay. Or I know what --  
17 you know, if you say objection, then I have to make an  
18 evidentiary ruling. Are you aware of anything that requires  
19 that if you -- if you are, that's fine. If you aren't,  
20 that's fine.

21           MR. JONES: It does have to generally be at least  
22 evident from the record if they don't specifically state.

23           THE COURT: You aware of anything while we're on this  
24 particular argument or this -- this issue?

25           MS. CAUDY: Absolutely. I mean, I -- how could the

1 judge possibly rule on the objection if he doesn't know the  
2 grounds of the objection?

3 THE COURT: I guess my question, being of  
4 (indiscernible) is, if an objection is made and -- and  
5 without stating the ground, the judge says, sustained or  
6 overruled, doesn't that preserve that issue for appellate  
7 review, whether or not the ground is stated?

8 MS. CAUDY: Absolutely not.

9 THE COURT: You say no.

10 MS. CAUDY: Tons of case law. You have to object with  
11 specificity, so that the trial judge knows what your  
12 objection is and what he's ruling on and appellate court can  
13 tell what issue the judge ruled upon.

14 THE COURT: All right. There we go. (Indiscernible) All  
15 right. Go ahead.

16 MR. JONES: With the caveat that sometimes the appellate  
17 court will reach an issue regardless of (indiscernible)  
18 preservation.

19 THE COURT: Correct.

20 MR. JONES: But, again, my point on this would be that  
21 even if it was objected to under Rule 403, it's clearly  
22 probative, and it's not unfairly prejudicial. I mean, it's  
23 the text message itself says, why are you at the courthouse  
24 snitching, is clearly related to this -- to this proceeding.  
25 She received the proceeding that the witness was testifying

1 in, and the contents of her testimony, it's clearly related  
2 to the issue, and it's clearly probative.

3 THE COURT: Okay.

4 MR. JONES: And, therefore, because it was admissible,  
5 there's no prejudice from failing to proffer it outside the  
6 presence of the jury. Finally, regarding Tommy Parker, so  
7 many years later, nobody can really recollect why he wasn't  
8 called. I can't help but notice that nobody thought it was a  
9 good idea to call him at the trial, and I can't help but  
10 notice that nobody's called him today.

11 Usually when you're making a PCR argument about the  
12 failure to call the witness at trial, it's incumbent upon you  
13 to produce that witness in order to substantiate what they  
14 would have said. In this case, although she couldn't  
15 specifically recall why she didn't introduce his -- or call  
16 him as a witness, she did say that there were numerous  
17 considerations that, in general, could have led her to decide  
18 it was not a good witness to call, including maybe the way  
19 the trial was going.

20 This would have been a better case for -- to try and  
21 preserve the order of final arguments. I think it, without  
22 any better evidence regarding this Tommy Parker, including  
23 his testimony at any proceeding, we are entitled, or  
24 Ms. Brown is entitled, and certainly under Strickland, to  
25 have This Court presume the that her decision was -- was an

1 appropriate one. So for those reasons, Your Honor, would ask  
2 that The Court deny Mr. Hickson's PCR application.

3 THE COURT: All right. Thank you, Mr. Jones. Coming  
4 back briefly to you. Yes, ma'am.

5 MS. CAUDY: Yes, just very briefly. I just wanted to  
6 respond to this argument that the text message was probative.  
7 I think he suggested a consciousness of guilt. Try to say  
8 that you know, if you're intimidating a witness, it's  
9 evidence that you're guilty, and that's why it's probative.

10 Number one, the State sought to admit the content of the  
11 text message just to show why the witness was nervous or why  
12 she was uncomfortable. There's no evidence that the State  
13 sought to admit the text message because it was evidence of  
14 consciousness of guilt. And then, moreover, there's no -- I  
15 mean, I'm trying not to counter my argument that is  
16 prejudicial, but it's just -- it's so vague. There's no  
17 evidence elicited as to who sent the text message. Was it  
18 someone on behalf of Mr. Hickson? Was it someone on behalf  
19 of his brother? It's just left out there, suggests that it  
20 was Mr. Hickson, but there's no evidence that it was.

21 So it's not probative of consciousness of guilt because  
22 we don't know that it came from Mr. Hickson. But at the same  
23 time, it's highly prejudicial, because it suggests to the  
24 jury that Mr. Hickson was trying to engage in witness  
25 intimidation.



1 THE COURT: Understood. Anything else for the purpose  
2 of this (indiscernible)?

3 MS. CAUDY: No, Your Honor.

4 THE COURT: All right. Thank you. I'm going to take  
5 this matter under advisement and review everything. I'll  
6 issue my decision and let the lawyers know. Good luck to  
7 you, sir.

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17 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING CONCLUDED.)  
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25

## CERTIFICATE OF TRANSCRIBER

I, Pam Gray, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Aiken County, South Carolina, on the 16th day of July, 2024.

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

February 18, 2025

*Pam Gray*

Pam Gray  
Certified Transcriber

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

Artrell Hickson, #343019,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

2013-CP-02-1153

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that this is a true and correct copy of the original documents which have been filed in my office this

ORDER OF DISMISSAL

FEB 24 2025

*Robert J. Harte*  
C.C.P. & G., Aiken County, S.C.  
*Charles Peabody*  
Deputy Clerk

OMP

This matter comes before the Court pursuant to an application filed by Artrell Hickson ("Applicant") for post-conviction relief ("PCR") originally filed on May 21, 2013. A hearing was held before on July 16, 2024, at the Aiken County Courthouse. Applicant was present and represented by Lara M. Caudy, Esquire. Assistant Attorney General Zachary W. Jones of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Kelley P. Brown, Esquire. This Court had before it the Aiken County Clerk of Court records concerning Applicant's convictions and sentences, the records of Applicant's direct appeal, the records of Applicant's previous PCR actions, the records of Applicant's PCR appeal, Applicant's South Carolina Department of Corrections records, the records of Applicant's current PCR action, and the trial transcript.

### I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true bill indicted at the December 2009 term of the Aiken County Grand Jury for Armed Robbery (2009-GS-02-2294) and at the April 2010 term of the Aiken County Grand Jury for Possession of a Firearm During the

FILED February 24 2025

*Robert J. Harte* 946  
C.C.P. & G.S.

*Charles Peabody* OMP  
Deputy Clerk

*[Signature]*

Commission of a Violent Crime (2010-GS-02-0670). Kelley P. Brown, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. On September 22, 2010, Applicant was found guilty as indicted. Judge Early sentenced Applicant to twenty-eight years' imprisonment for Armed Robbery and five years' imprisonment for Possession of a Firearm During the Commission of a Violent Crime, with both sentences to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Jerry M. Screen, Esquire. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Hickson, Op. No. 2012-UP-667 (S.C. Ct. App. filed December 19, 2012). The Remittitur was issued on February 11, 2013.

Applicant filed an application for PCR on May 21, 2013. A hearing was held on September 11, 2015, at the Aiken County Courthouse before the Honorable Edgar W. Dickson. On January 9, 2017, Judge Dickson issued an Order of Dismissal denying the application. Applicant did not file a notice of appeal.

On June 19, 2019, Applicant filed a second PCR application seeking belated appellate review under Austin v. State<sup>1</sup> of Judge Dickson's 2017 Order of Dismissal. Applicant filed a third PCR application, also seeking Austin relief, on March 16, 2020. An evidentiary hearing on both applications was held on September 7, 2021, before the Honorable Courtney Clyburn Pope. On September 10, 2021, Judge Clyburn Pope issued an order merging Applicant's second and third PCR applications and granting Austin review of the denial of Applicant's first PCR application.

Applicant filed a timely notice of appeal from Judge Clyburn Pope's order. During the pendency of that appeal, it was determined that the transcript of the September 11, 2015, evidentiary hearing before Judge Dickson was not available. On April 5, 2022, the South Carolina

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<sup>1</sup> 305 S.C. 453, 409 S.E.2d 395 (1991).



Supreme Court issued an order remanding the matter for a reconstruction of the record of the September 11, 2015, hearing.

A reconstruction hearing was held on April 28, 2022, before Judge Dickson. By order dated June 29, 2022, Judge Dickson found that the record could not be reconstructed to allow for meaningful appellate review. Subsequently, on August 23, 2022, the Supreme Court issued an order vacating the 2017 Order of Dismissal and remanding the matter to the circuit court for a new evidentiary hearing on Applicant's original PCR application.

### **UNDERLYING FACTS**

Around noon on June 25, 2009, Gabrielle Hastings was working as a teller at the Graniteville branch of Security Federal Bank when she looked up and saw three gunmen wearing dark clothes, gloves, and bandanas over their faces enter the bank. (Tr. pp. 42-43; p. 53; pp. 56-57; pp. 90-91; p. 95; p. 112). After entering the bank, the first gunman approached the counter of Amanda Wood, another teller at the bank, knocked her envelopes into the floor, pointed a gun at her, and demanded money. (Tr. pp. 51-52). Wood gave the gunman, who was approximately 5'4" tall and was wearing a backpack, money from her cash drawer. (Tr. p. 52; p. 91). Meanwhile, the second gunman, who was also around 5'4" tall, approached the office of Tonya Key, the branch manager of the bank, and ordered her to open the vault. (Tr. p. 43; p. 52). Terrified, Key was too afraid to move and did not respond. (Tr. p. 43). The second gunman then left the offices and demanded money from Wood. (Tr. p. 52). Wood told him she already gave the money to the first gunman, so he moved to the next counter and took stacks of \$1 bills, \$5 bills, and \$20 bills from Hastings at gunpoint. (Tr. p. 52; pp. 57-58). Throughout the robbery, the third gunman remained at the door and acted as a lookout for the others. (Tr. p. 51; p. 58; pp. 90-91).



Approximately two minutes after the robbery began, the three gunmen fled from the bank and ran towards a nearby wooded area.<sup>2</sup> (Tr. p. 43; p. 61). The bank employees then locked the door and triggered an alarm. (Tr. pp. 43-44; p. 57). Shortly thereafter, law enforcement officers responded to the bank, secured the scene, and obtained a description of the suspects from the terrified employees inside the bank. (Tr. pp. 60-61; pp. 111-113). The bank employees informed the officers that the robbers were three black males wearing dark clothing, masks, and gloves. (Tr. pp. 111-112). Additionally, the bank employees described the suspects as approximately 5'4" tall. (Tr. p. 111). Subsequently, several bloodhound tracking teams were called to the scene and attempted to track the gunmen in the direction they fled after the robbery. (Tr. p. 64).

Officer Demetrick Drumming of the Aiken Public Safety Department and Lieutenant Clay Adams of the Aiken County Sheriff's Office followed the bloodhounds to a nearby church. (Tr. p. 67; p. 69; p. 96; p. 98). Next to the church, the officers discovered David Kearsse hiding underneath a storage shed. (Tr. p. 70; pp. 96-97). The officers removed Kearsse from underneath the shed and took him into custody. (Tr. p. 70; pp. 96-97). After arresting Kearsse, the officers looked underneath the shed where Kearsse had been hiding and discovered a semi-automatic pistol and a large wad of \$5 bills hidden behind a cinder block.<sup>3</sup> (Tr. p. 71; p. 97; pp. 100-102; p. 108).

Meanwhile, Investigator Greg Savell of the Aiken County Sheriff's Office responded to the bank and obtained a copy of the surveillance footage of the robbery. (Tr. p. 100; p. 113). He then travelled to the location of Kearsse's arrest and transported him to the Aiken County Detention Center. (Tr. pp. 133-114). After arriving at the detention center, Investigator Savell informed

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<sup>2</sup> During the robbery, the gunmen stole a total of \$4,902 from the bank. (Tr. p. 123). The majority of the money was never recovered. (Tr. p. 123).

<sup>3</sup> In total, Kearsse was in possession of \$290 comprised entirely of \$5 bills at the time of his arrest. (Tr. p. 123). Notably, Kearsse was also dressed in black. (Tr. p. 70).



Kearse of his rights and interviewed him about the robbery. (Tr. pp. 114-115). Kearse admitted to committing the robbery and implicated Appellant Artrell Jabar Hickson and Appellant's brother, Javier Hickson ("Javier"), as his accomplices in the crime.<sup>4</sup> (Tr. pp. 115-116).

Subsequently, on June 30, 2009, Appellant and Javier were arrested in connection to the robbery of the Graniteville branch of Security Federal Bank.<sup>5</sup> (Tr. p. 122). Once they were taken into custody, officers took photographs of the men during the booking process. (Tr. pp. 79-80; p. 122). Thereafter, Appellant and Javier were each indicted for armed robbery and possession of a firearm during the commission of a violent crime, and the brothers proceeded to trial together. (Tr. p. 7; Indictments).

During trial, the bank employees recounted the circumstances of the bank robbery, and the responding officers testified about their investigation into the robbery leading up to the arrests of Kearse, Appellant, and Javier. (Tr. p. 42; pp. 50-51; p. 57; p. 70). Additionally, the surveillance footage of the robbery was played for the jury. (Tr. pp. 54-55). Subsequently, the solicitor informed the trial judge that he intended to introduce a photograph taken of Appellant after he was arrested for the robbery. (Tr. p. 79). The solicitor noted Appellant's appearance had changed since the photograph was taken and asserted Appellant's identifiable features displayed in the photograph could be used to identify Appellant as one of the gunmen when compared to the surveillance footage. (Tr. pp. 79-80). In response, defense counsel objected to the admission of the photograph and argued there was no demonstrable need for it since Appellant was available in the courtroom for comparative purposes. (Tr. p. 81). Defense counsel further claimed the

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<sup>4</sup> Kearse refused to provide a written statement because he was scared. (Tr. p. 117). However, he directed the officers to the location where he parted ways with Appellant and Javier after the robbery. (Tr. p. 117).

<sup>5</sup> At the time of their arrests, Appellant was 5'4" tall and Javier was 5'6" tall. (Tr. p. 121).



photograph showed Appellant in a jail uniform. (Tr. pp. 82-83). Javier's defense counsel also objected, arguing the prejudicial nature of the photograph outweighed its probative value. (Tr. p. 83). Following the arguments of counsel, the trial judge ruled the photograph was admissible after determining there was a demonstrable need for it under the circumstances, it was not suggestive of a criminal record, and it was relatively benign. (Tr. p. 84). However, the trial judge cautioned the solicitor to avoid calling attention to the photograph's origins. (Tr. p. 84).

Thereafter, during Investigator Savell's testimony, Investigator Savell reviewed several photographs taken from the surveillance footage of the robbery and noted one of the robbers had pronounced bushy eyebrows and appeared to fully fill the space of the hood covering his head. (Tr. pp. 118-119). The solicitor then introduced a photograph of Appellant taken on the day of Appellant's arrest five days after the robbery, and the photograph was admitted into evidence over objection.<sup>6</sup> (Tr. p. 122). No reference was made regarding why the photograph of Appellant was taken. (Tr. p. 122).

As the trial progressed, Sabrina Oakman, who was living with Kearsse at the time of the robbery, testified about the events of June 25, 2009. (Tr. pp. 140-141). Oakman stated Kearsse got up on the morning of the robbery, left the home, and then returned around 10:30 a.m. (Tr. p. 142). After returning home, Oakman testified Kearsse asked her for a ride, and she drove him to Appellant and Javier's home. (Tr. pp. 142-143). Oakman stated she and Kearsse picked up Javier and Appellant, who was wearing a black backpack, before driving to Kearsse's grandmother's house, where Kearsse retrieved something from his grandmother's backyard. (Tr. pp. 144-146). Oakman

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<sup>6</sup> In the photograph, Appellant's full head of hair and distinctive eyebrows and nose are clearly visible. (State's Ex. # 20). Additionally, Appellant is pictured wearing a white shirt underneath a blue or green shirt in the photograph. (State's Ex. # 20). Notably, it is not readily apparent that the clothing Appellant is wearing is prison-issued attire, and nothing visible on the clothing identifies it as such. (State's Ex. # 20).





indicated the four then drove to a Wal-Mart where Javier's girlfriend and sister worked. (Tr. pp. 146-147). At the Wal-Mart, Oakman testified Javier went inside, returned a short time later, and followed them to Graniteville in another vehicle. (Tr. pp. 147-148). Oakman noted Kears was in possession of a cell phone at the time even though he did not own one. (Tr. p. 148). After leaving the Wal-Mart, Oakman testified she dropped Appellant and Kears off at Kalmia Apartments prior to 12:00 p.m. and then left.<sup>7</sup> (Tr. p. 150). Shortly after noon, Oakman stated she heard a phone ringing in her vehicle, found Javier's phone, and answered the call. (Tr. pp. 151-152). Oakman testified Kears, who sounded mad and was breathing heavily, was the caller, and he asked her to pick him up at a church before the call ended.<sup>8</sup> (Tr. pp. 152-154). Oakman indicated she then returned to Kalmia Apartments and encountered Appellant and Javier's sister, Monique Hickson ("Monique"), Javier's girlfriend, Crystal Harris, and "Devon."<sup>9</sup> (Tr. pp. 154-156; p. 189). At the apartment complex, Oakman testified she got into an argument with Harris and was accused of failing to fulfill her responsibilities as the getaway driver. (Tr. pp. 155-156). Oakman stated she then left the apartments in an effort to find Kears but was unable to do so. (Tr. p. 156).

Consistent with Oakman's testimony, Stanley Galloway, a guest at Kalmia Apartments, confirmed he saw Kears, Appellant, and Javier at the apartment complex before lunchtime on June 25, 2009. (Tr. pp. 179-180). Likewise, Beatrix Wright acknowledged she told investigators

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<sup>7</sup> Notably, Kalmia Apartments was located only a few blocks away from the Graniteville branch of Security Federal Bank. (Tr. p. 114).

<sup>8</sup> Kears called Javier's phone using Appellant's cell phone. (Tr. pp. 151-153). The caller I.D. on Javier's phone identified the caller as "My Bro." (Tr. p. 152).

<sup>9</sup> Significantly, Harris and Monique were supposed to be working at the Wal-Mart at that time. (Tr. pp. 175-176). However, the two unexpectedly left work at 12:55 p.m. that day, and their absences were unexcused. (Tr. pp. 175-177).



she saw Appellant, Javier, and Kears at the apartment complex on the morning of the robbery. (Tr. pp. 187-188). Additionally, Candice Bryant, Wright's cousin, testified she saw Kears, Appellant, and Javier outside of Wright's apartment prior to the robbery.<sup>10</sup> (Tr. p. 185; pp. 192-193).

On cross-examination, defense counsel questioned Bryant about a portion of her statement to law enforcement officers, and Bryant's statement was marked for identification purposes. (Tr. pp. 194-195). Thereafter, the solicitor asked Bryant to read her entire statement to the jury, and defense counsel for both Appellant and Javier objected, arguing it contained inadmissible hearsay. (Tr. p. 197). The trial judge then asserted Appellant already introduced the statement before permitting Bryant to read her statement to the jury.<sup>11</sup> (Tr. p. 197). Bryant then read the following statement:

On the day of the robbery at Security Federal Graniteville Artrell Hickson, Javier Hickson, and David Kears came to my cousin's Beatrix Wright's apartment. They were in a white Ford Focus. A dark skinned girl was driving. She worked – she – it was thought that she worked at Walmart on the south side. They were talking to Beatrix's boyfriend Stanley. After a while, they left. Stanley remained. Me and Beatrix took Stanley home to New Ellenton. We came back and saw the police who told us the bank had been robbed. Sabrina Oakman drove her black Tahoe and asked if Stanley knew where David was. We told her we had taken him to New Ellenton. Big Phil and Devon were at Kalmia Apartments saying, Them boys done robbed the bank I think. I saw a white Ford Focus. Phil and Devon were at the entrance to Kalmia Apartments. Sabrina kept

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<sup>10</sup> At the outset of her testimony, Bryant noted she received a text message on the preceding night stating: "What are you at the courthouse snitching?" (Tr. p. 192).

<sup>11</sup> Near the end of trial, the court reporter confirmed Appellant did not introduce any exhibits during trial. (Tr. p. 258).



calling Artrell's cellphone because David had it because Big Phil said David had the phone. Sabrina kept saying, David is in a storage in the woods. Sabrina was crying and said she was here to find him and pick him up. Sabrina and Artrell – Sabrina, Artrell, and Javier along with Devon. Beatrix told me that Artrell, Javier, and David were trying to get Stanley to rob the bank with them. Beatrix said Stanley told me this. Artrell dated a girl at Walmart on the south side. The girl was thought to be in the white Ford Focus. (Tr. pp. 198-199). Wright identified "Big Phil" as Phillip Paul and "Devon" as Devon Jones. (Tr. p. 199).

Following Wright's testimony, Randy Wilson testified about his knowledge of the robbery of the Graniteville branch of the Security Federal Bank. (Tr. pp. 201-202). At the outset of his testimony, Wilson noted he robbed a different bank on July 1, 2009, with Paul and Jelani Edwards, and was arrested.<sup>12</sup> (Tr. p. 201). After he was arrested, Wilson confirmed he implicated Appellant and Javier in the robbery on June 25, 2009. (Tr. pp. 202-203). Wilson stated he met with Paul, Edwards, Appellant, and Javier on June 24, 2009, to discuss the robbery that was to occur the next day. (Tr. pp. 203-204). During the meeting, Wilson testified they determined which bank was going to be robbed and who was going to commit the crime. (Tr. pp. 204-205). Wilson stated they decided Appellant, Javier, and Kearse were going to commit the crime, and Paul was going to supply the firearms.<sup>13</sup> (Tr. pp. 204-205). Wilson indicated Kearse's girlfriend was supposed to drop the robbers off before the crime and "Von" was going to drive them away afterwards. (Tr. p. 207). Subsequently, on the day of the robbery, Wilson stated he was at home with Paul and

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<sup>12</sup> At the time of trial, Wilson was serving a sentence for armed robbery. (Tr. p. 203). Wilson testified he hoped to have his sentence reduced after testifying during Appellant and Javier's trial. (Tr. p. 212).

<sup>13</sup> Wilson testified Appellant asked Paul to let him use an AK-47 during the robbery, but Paul declined to give it to Appellant. (Tr. pp. 205-206).



Edwards when Edwards' phone rang. (Tr. p. 207). Wilson testified Edwards answer the call and he overheard Appellant state they were "hemmed up" in Graniteville. (Tr. p. 208). Wilson stated Edwards and Paul then left in Edwards' vehicle.<sup>14</sup> (Tr. p. 208).

Subsequently, David Kearsé testified about his involvement in the robbery of the Graniteville branch of Security Federal Bank. (Tr. p. 219). Kearsé stated they began planning to rob the bank a week before the crime occurred, and the initial discussion regarding the robbery involved Appellant, Edwards, and Kearsé. (Tr. p. 222). Later that week, Kearsé testified he met with Appellant, Javier, and Paul to further discuss the robbery. (Tr. pp. 223-224). During the second meeting, Kearsé testified they planned when they were going to commit the crime and what they were going to wear. (Tr. p. 224). Following that meeting, Kearsé, Javier, and Appellant initially agreed to commit the robbery on June 24, 2009. (Tr. p. 225). However, on the day of the planned robbery, Kearsé stated they drove by the bank and decided to wait. (Tr. p. 226). Then, on the next day, Kearsé testified he asked Oakman to drive him to Appellant and Javier's house and they picked up Appellant and Javier. (Tr. pp. 228-229). Kearsé stated they then went to his grandmother's house and picked up some gloves before driving to Wal-Mart. (Tr. pp. 229-230). At the Wal-Mart, Kearsé indicated Javier borrowed his girlfriend's car, and they then all drove to Kalmia Apartments in Graniteville. (Tr. pp. 230-231). At the apartment complex, Kearsé stated they changed into black clothes and retrieved their guns from Appellant's backpack. (Tr. pp. 233). They then met with Jones, who was supposed to be the getaway driver, and rode with Jones to the bank. (Tr. p. 232; p. 234). Kearsé stated they went into the bank, committed the robbery, and came back outside. (Tr. pp. 234-235). Once outside, Kearsé testified Jones was nowhere to be

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<sup>14</sup> Around 3:30 p.m. on the day of the robbery, Investigator James Criscillis of the Aiken County Sheriff's Office observed Edwards and Paul travelling in Edwards' vehicle near the bank. (Tr. p. 214; pp. 216-217).



found, so they fled to a nearby wooded area. (Tr. pp. 235-236). Kearsé stated they then split up and he called Oakman on Appellant's phone. (Tr. pp. 237-238). Kearsé testified he was later arrested while hiding under a shed and implicated Appellant and Javier in the crime. (Tr. p. 238). Kearsé then identified Appellant and Javier in the surveillance photographs of the robbery. (Tr. p. 239).

Subsequently, the State rested its case, and defense counsel moved for a directed verdict, arguing no "credible evidence" linking Appellant to the crime had been presented. (Tr. p. 252). The trial judge denied the motion. (Tr. p. 252). Thereafter, during closing arguments, the solicitor noted Appellant's eyebrows, nose, and amount of hair matched the same features of one of the robbers visible in the surveillance photographs. (Tr. pp. 267-268). The solicitor further argued Bryant's statement was important in placing Appellant and Javier at the apartment complex prior to the robbery. (Tr. p. 279). However, the solicitor did not reference or emphasize any of the challenged portions of Bryant's statement in his argument to the jury. (Tr. pp. 279-280). Thereafter, at the conclusion of trial, Appellant was convicted as indicted. (Tr. pp. 321-322). The trial judge then sentenced Appellant to an aggregate term of imprisonment of twenty-eight years.<sup>15</sup> (Tr. p. 326).

### ALLEGATIONS

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

1. Ineffective assistance of trial counsel.
  - a. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure

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<sup>15</sup> Javier was also convicted as indicted and received an identical sentence. (Tr. pp. 321-322; p. 326).

to MOTION TO QUASH during pretrial the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."

- b. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO SUPPRESS during pretrial evidence emanating from the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
- c. "The applicant's right to be free from unreasonable seizures as guaranteed by the Fourth Amendment and right to Due Process of Law as guaranteed by the Fourteenth Amendment to the United States and South Carolina law was violated by trial counsel's failure to MOTION TO DISMISS with prejudice against the State, the applicant's arm robbery and possession of a weapon during the commission of a violent crime arrest warrants because the affidavit in support of each warrant was conclusory and insufficient to establish probable cause."
- d. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to provide the State with a written notice of the applicant's intent to offer a 'Alibi Witness.'"
- e. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to call alibi witnesses, Charles Smalls; [and] Tommy Parker . . . for the defense during applicant's criminal trial."
- f. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel failing to advise applicant as to the pros and cons of offering testimony and negligently advising applicant not to testify and for failing to explain to the applicant without his testimony his attempt to corroborate his alibi witness testimony would be seriously compromised."
- g. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and

South Carolina law was violated by trial counsel's failure to request a Neil -vs- Biggers Hearing due to the allege victim's bank employee never picked the applicant out of any type of photo array or line-up procedures prior to his arrest."

- h. "The applicant's right to effective assistance of counsel as guaranteed by the Sixth Amendment and Due Process of law as guaranteed by the Fourteenth Amendment of the United States and South Carolina law was violated by trial counsel's failure to motion to strike Sabrina Oakman and Candice Patrice Bryant, trial testimony due to these witnesses reading before the jury there entire voluntary statement whereas, the statements were never offered into evidence and the trial judge neglected to make a ruling for the admission or exclusion in regards to the evidence."

Applicant, through counsel, filed an amended application on January 18, 2024, alleging that he is being held in custody unlawfully for the following reasons:

- A. Trial Counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to object to the trial judge's erroneous jury instructions directing the jury to return a "fair and impartial" verdict, which diluted the State's burden of proof and shifted the burden on proof to Applicant. See Tr. 310, ll. 13-21; See also State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012); State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000); State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998).
- B. Trial Counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to properly cross-examine Randy Wilson regarding the amount of prison time he was facing on the armed robbery charge for which he pled guilty and was seeking to be resentenced on in exchange for his testimony against Applicant as such evidence was critical to show bias. See Tr. 203, ll. 4-24; Tr. 211, l. 21 – 212, l. 15; See also Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018); State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012); State v. Mizzle, 349 S.C. 326, 563 S.E.2d 315 (2002).
- C. Trial Counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to object to the admission of a text message allegedly received by Candice Bryant pursuant to Rule 403, SCRE, since any probative value of the evidence was substantially outweighed by the danger of unfair prejudice. See



Tr. 191, l.15 – 192, l.12. The evidence had zero probative value and was unfairly prejudicial because it suggested to the jury that Applicant or someone on his behalf engaged or attempted to engage in witness intimidation. Trial Counsel was also deficient for failing to request the testimony concerning the content of the text message be proffered outside the presence of the jury before the judge ruled.

- D. Trial Counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to advise Applicant to testify in his defense since there is a reasonable probability the outcome of Applicant's trial would have been different had he testified.
- E. Trial Counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution by failing to call Charles Smalls and Tommy Parker as alibi witnesses at trial since there is a reasonable probability the outcome of Applicant's trial would have been different if Smalls and Parker had testified.

At the evidentiary hearing, Applicant proceeded on the allegations articulated in his amended application.

### III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional



judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

##### **Ineffective Assistance of Counsel**

This Court finds Applicant has not met his burden of proving that Trial Counsel was ineffective as to any of his allegations.

##### *Arrest Warrants*

*(Original Allegations "a," "b," and "c")*



In his original application, Applicant alleges that Trial Counsel was ineffective for failing to move to quash the arrest warrants for Applicant's charges because the warrants were conclusory and insufficient to establish probable cause. Applicant further alleges that Trial Counsel was ineffective for failing to move to suppress evidence stemming from these arrest warrants and for failing to move to dismiss the charges because of the allegedly insufficient warrants. This Court finds these allegations are meritless and should be denied and dismissed with prejudice.

Applicant presented no arguments or evidence at the evidentiary hearing to substantiate these allegations. Therefore, the Court finds these allegations have been abandoned. In addition, it is well settled that an arrest warrant is facially valid if it contains information, given under oath, that plainly and substantially sets forth the offense charged. Carter v. Bryant, 429 S.C. 298, 308, 838 S.E.2d 523, 529 (Ct. App. 2020). Moreover, an arrest warrant may properly be issued based on information and belief. State v. Porter, 251 S.C. 393, 400–01, 162 S.E.2d 843, 847 (1968). Both warrants in this matter facially comply with those requirements. Applicant has failed to meet his burden of proving that the facially valid warrants in this case were not, in fact, based on probable cause. Therefore, he has failed to prove that Trial Counsel was deficient for failing to challenge those warrants, and he has not shown that he was prejudiced thereby.

*Failure to call alibi witnesses*

*(Original Allegations “d” and “e”; Amended Allegation “E”)*

Applicant alleges in his original and amended application that Trial Counsel was deficient for failing to call Charles Smalls and Tommy Parker to testify at trial. Applicant claims these witnesses could have provided an alibi for him and his brother Javier. The Court finds this allegation is without merit.

Applicant failed to present his alibi witnesses at the PCR hearing; therefore, he cannot claim ineffective assistance of counsel for failing to call said witnesses at the trial. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (an applicant cannot show prejudice due to the failure of trial counsel to call alleged alibi witnesses at trial if the applicant does not present said witnesses at the PCR hearing on his behalf). Applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

In addition, Trial Counsel testified that she possessed no notes or recollection concerning Charles Smalls as a potential alibi witness, and Applicant testified he could not remember whether he told Trial Counsel about any alibi witnesses. Therefore, the Court finds Applicant has not met his burden of proving that Trial Counsel was deficient for failing to call Charles Smalls.

Finally, Trial Counsel testified that she had notes from a telephone conversation with Tommy Parker, and the trial transcript indicates that Parker was listed as a potential witness. (Trial Tr. p.9, line 8). Therefore, the Court finds Trial Counsel adequately investigated Tommy Parker as a potential alibi witness. Trial Counsel testified her notes indicated Parker claimed to be with Applicant at the time of the crime; she could not specifically recall why she did not call Parker, but she testified that many considerations could have come up during trial that may have caused her not to call him. This Court, in evaluating the deficiency prong of Strickland, must indulge the strong presumption that Trial Counsel made all significant decisions in the exercise of reasonable professional judgment, and must affirmatively entertain the range of possible reasons Trial Counsel may have had for proceeding as she did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011).

There are many reasons Trial Counsel may have reasonably decided not to call Tommy Parker as a witness. This Court notes that, because Applicant did not call any witnesses, Trial



Counsel was able to have the final closing argument at the trial. (Trial Tr. p.258); see State v. Mouzon, 326 S.C. 199, 203, 485 S.E.2d 918, 921 (1997) (“In a criminal prosecution, where a defendant introduces no testimony, he is entitled to the final closing argument to the jury.”). This is a valid strategic consideration for criminal defense attorneys. See id. at 205, 485 S.E.2d at 921 (“If Mouzon had been allowed to argue last, then he could have more adequately addressed the issue of conspiracy to distribute crack cocaine.”). In addition, Trial Counsel may have believed that a jury would not find Parker’s alibi testimony credible, that the solicitor would be able to persuasively attack Parker’s testimony on cross-examination, or that Parker might change his story once he took the stand. Since Tommy Parker did not testify at the evidentiary hearing, this Court cannot find that any of these possibilities were not “within the wide range of reasonable professional assistance.” Strickland, 466 U.S. at 669.

Furthermore, this Court notes that Javier’s attorney, Michael Routzong, also knew that Parker claimed to have been with Applicant and Javier at the time the robbery occurred; however, Mr. Routzong—like Trial Counsel—chose not to call Parker to testify. This strongly suggests that, whatever Trial Counsel’s reasons for not calling Parker may have been, they were shared by Mr. Routzong. The fact that two defense attorneys independently decided not to call a supposedly favorable defense witness strongly suggests that the decision was professionally reasonable. For all these reasons, this Court finds Applicant has failed to rebut the strong presumption that Trial Counsel’s decision was within the wide range of reasonable professional judgment.

Because Applicant has failed to prove either deficiency or prejudice as to this allegation, this allegation is denied and dismissed with prejudice.

*Failure to advise Applicant to testify at trial*

*(Original Allegation “f”; Amended Allegation “D”)*



In his original and amended application, Applicant alleges that Trial Counsel was ineffective for failing to advise him to testify at trial. This allegation is meritless.

At the evidentiary hearing, Applicant did not explain what his testimony would have been had he elected to testify at trial. Therefore, the Court finds Applicant has not met his burden of proving a reasonable probability that the result of his trial would have been different but for the alleged deficiency of Trial Counsel. See United States v. Terry, 366 F.3d 312, 316 (4th Cir. 2005) (holding defendant failed to prove he was prejudiced by counsel's allegedly unreasonable advice not to testify, where defendant provided "no concrete evidence of what he would have testified to in exculpation").

In addition, the trial judge fully discussed Applicant's right to testify on the record and allowed him additional time to speak with his attorney, and Applicant stated—under oath—that he wished to remain silent. (Trial Tr. pp.253–56). See Blackledge v. Allison, 431 U.S. 63, 74 (1977) ("Solemn declarations in open court carry a strong presumption of verity."). Therefore, this allegation is denied and dismissed with prejudice.

*Failure to request a Neil v. Biggers hearing*

*(Original Allegation "g")*

Applicant's argument that Trial Counsel was ineffective for failing to request a Neil v. Biggers<sup>16</sup> hearing is also meritless. No evidence was presented on this issue at the evidentiary hearing; therefore, the Court finds this allegation has been abandoned.

Nevertheless, this allegation would have been meritless as a matter of law in any event. This was an armed robbery where the three suspects covered their faces, law enforcement did not present the Victims with any photo lineups to identify, nor did the Victims ever identify the

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<sup>16</sup> 409 U.S. 188 (1972).

suspects. This Court finds that there was no basis on which to request a Neil v. Biggers hearing, thus Trial Counsel cannot be found ineffective for this reason. Neither prong of the Strickland test is met, and this allegation is denied and dismissed with prejudice.

*Failure to move to strike witnesses statements read at trial*

*(Original Allegation "h")*

Applicant alleges that Trial Counsel was ineffective for failing to move to strike the statements that were read before the jury at the trial. No evidence was presented regarding this allegation at the evidentiary hearing; therefore, this allegation is deemed abandoned.

*Failure to object to jury instructions*

*(Amended Allegation "A")*

Applicant argues Trial Counsel was ineffective for failing to object to the trial judge's references to "true facts" and a "true and just verdict" during its preliminary instructions to the jury. Applicant contends this language is inappropriate under State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000). However, this Court finds Trial Counsel was not ineffective for failing to object to the trial judge's jury instructions because the instructions were not objectionable. Aleksey held that such language is *not* improper if it "did not appear in either the reasonable doubt or circumstantial evidence charges." Aleksey, 343 S.C. at 27, 538 S.E.2d at 251. Since the challenged comments in this case did not appear in the reasonable doubt or circumstantial evidence charges, they were not objectionable.

Applicant also argues Trial Counsel was ineffective for failing to object to the trial judge's instructions to the jury referring to a "fair and impartial verdict." (Tr. p.310, line 20). Again, the Court finds the challenged language was not improper. The use of the phrase "fair and impartial"

does not rise to the level of the improper charge in State v. Daniels where the jury was instructed to reach a verdict that represented “truth and justice for all parties that are involved in this case.” State v. Daniels, 401 S.C. 251, 255, 737 S.E.2d 473, 475 (2012). Daniels specifically pointed to the “all parties involved” phrase as potentially leading jurors to weigh the interests of victims in arriving at their verdict, which would be improper. That phrase does not appear in the trial court’s instructions in this case. In addition, Daniels was not decided until *after* Applicant’s trial had concluded. Trial Counsel cannot be deemed deficient for failing to make an objection based on a Supreme Court opinion that did not exist at the time.

The Court also finds that, even if these isolated phrases were somehow improper, the trial court’s jury instructions as a whole were free from error, and there was no reasonable probability that the jury applied the challenged instructions in an unconstitutional way. See id. at 258, 737 S.E.2d at 477. Therefore, this Court also finds Applicant has failed to prove either deficiency or prejudice as to this allegation.

*Failure to cross-examine Randy Wilson about sentencing*

*(Amended Allegation “B”)*

Applicant’s argument that Trial Counsel was ineffective for failing to cross-examine Randy Wilson about the amount of prison time he was facing is meritless. Trial Counsel *did* cross-examine Randy Wilson about his motivations for testifying, and she successfully elicited that he was “going to be in the South Carolina Department of Corrections for a good long time” and that he was hoping the State would reduce his sentence if his testimony helped the State. Applicant appears to argue that Trial Counsel should have gone into the specific sentence he had received and the specific amount of reduction he was hoping for, but this Court finds those details were not necessary to render Trial Counsel’s cross-examination effective. Trial Counsel went on to argue



in closing that Randy Wilson had a motive to fabricate his testimony in order to get a sentence reduction. (Trial Tr. pp.301–02). The Court finds Applicant has not met his burden of proving that Trial Counsel was ineffective for failing to more thoroughly question Randy Wilson on this point, nor has he met his burden of proving a reasonable likelihood that eliciting additional minor details about Wilson’s sentence would have changed the result of the trial. The Court finds neither prong of the Strickland test is met, and this allegation must be denied and dismissed with prejudice.

*Failure to object to testimony of Candice Bryant regarding text message*

*(Amended Allegation “C”)*

Finally, Applicant argues that Trial Counsel was ineffective for failing to object to Candice Bryant’s testimony regarding a text message she received prior to being called as a witness. That text message was “What are you at the courthouse snitching?” (Trial Tr. p.192, lines 7–10). Applicant acknowledges that Trial Counsel *did* object to this testimony on the ground of relevance; however, Applicant now contends Trial Counsel should have objected under Rule 403, SCRE, on the ground the message was substantially more prejudicial than probative. Applicant claims the text message had zero probative value and was unfairly prejudicial because it suggested Applicant or someone acting on his behalf was attempting to intimidate the witness into not “snitching” at the courthouse.

The Court finds the very inference Applicant claims was “unfairly prejudicial” was, in fact, the source of the testimony’s legitimate probative value. Contrary to Applicant’s argument, evidence of witness intimidation is considered highly probative of a defendant’s consciousness of guilt, which is a legitimate focus of the State’s proof. See State v. Edwards, 383 S.C. 66, 69–73, 678 S.E.2d 405, 406–08 (2009). The fact that a witness was warned to stop “snitching” at the courthouse, on the night before that witness was called to testify at Applicant’s trial, is indeed





strong evidence that either Applicant or someone acting on his behalf was attempting to suppress evidence of his guilt. That fact was probative and was not “unfair” to Applicant; therefore, Trial Counsel was not deficient for failing to object under Rule 403, SCRE.

In addition, because the evidence was admissible, this Court finds there could be no prejudice for failing to proffer it outside the presence of the jury. Accordingly, the Court finds Applicant has not met his burden of proving either deficiency or prejudice as to this issue.

A handwritten signature in black ink, consisting of a large, stylized 'S' or 'B' shape with a loop at the bottom.

## V. CONCLUSION

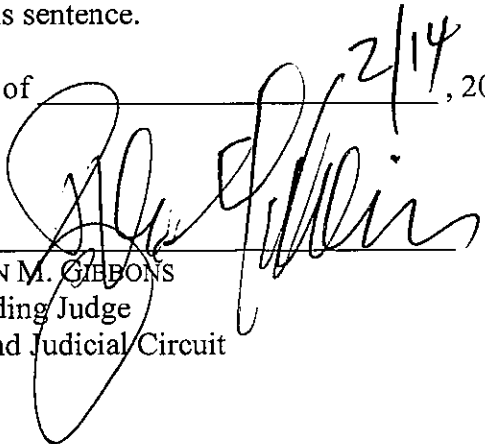
This Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Trial Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18,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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

### IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

  
 BRIAN M. GIBBONS  
 Presiding Judge  
 Second Judicial Circuit

  
 \_\_\_\_\_, South Carolina

**WITNESSES**

Aiken County Sheriff

J. Sanders

Law Enforcement Case #: 09-035912

SMR

**ARREST WARRANT NUMBER**

**M020089**

FILED December 10, 2009

Liz Garland  
Deputy Clerk  
Shannon M. Rosenkrantz  
Deputy Clerk

**ACTION OF GRAND JURY**

TRUE Bill

[Signature]

Foreperson of Grand Jury

Date: December 10, 2009

**VERDICT**

Foreperson of Petit Jury

Date:

**DOCKET NO. 2009GS0202294**

**The State of South Carolina**

**County of Aiken**

**COURT OF GENERAL SESSIONS**

**DECEMBER TERM 2009**

**THE STATE**

**VS.**

**ARTRELL JABAR HICKSON**

**CDR #: 0139**

**Indictment for**

**ARMED ROBBERY**

**§ 16-11-0330(A)**

**J. STROM THURMOND, SOLICITOR**

STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF AIKEN             )  
                                          )

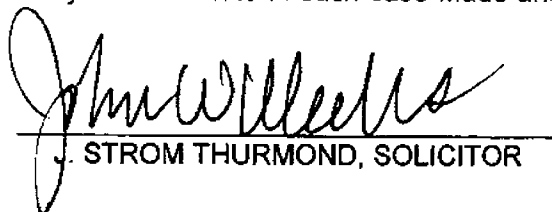
INDICTMENT FOR  
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on December 14, 2009, the Grand Jurors of Aiken County present upon their oath:

That **ARTRELL JABAR HICKSON**, along with others, did in Aiken County, South Carolina on or about June 25, 2009, while armed with a deadly weapon or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, feloniously take from the persons or presence of Gabrielle Hastings and Amanda Wood by means of force or intimidation goods or monies of Security Federal Bank, such goods or monies being described as follows: Four Thousand Nine Hundred Two and No/100 dollars (\$4,902.00), all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

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

  
J. STROM THURMOND, SOLICITOR

**WITNESSES**

Aiken County Sheriff

J. Sanders

Law Enforcement Case #: 09-035912

SMR

**ARREST WARRANT NUMBER**

**M020088**

**ACTION OF GRAND JURY**

*True Bill*

*[Signature]*  
Foreperson of Grand Jury  
Date: April 15, 2010

**VERDICT**

Foreperson of Petit Jury  
Date:

**DOCKET NO. 2010GS0200670**

**The State of South Carolina**

**County of Aiken**

**COURT OF GENERAL SESSIONS**

**APRIL TERM 2010**

**THE STATE  
vs.**

**ARTRELL JABAR HICKSON**

**CDR #: 0549**

**Indictment for**

**POSSESSION OF FIREARM DURING  
COMMISSION OF OR ATTEMPT TO  
COMMIT A VIOLENT CRIME**

**§ 16-23-0490**

**J. STROM THURMOND, SOLICITOR**

*April 15, 2010*  
*[Signature]*  
C.C.P. & G.S.  
*[Signature]*  
Deputy Clerk

934

STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF AIKEN            ) INDICTMENT FOR  
                                          ) POSSESSION OF FIREARM DURING  
                                          ) COMMISSION OF OR ATTEMPT TO COMMIT  
                                          ) A VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on April 19, 2010, the Grand Jurors of Aiken County present upon their oath:

That ARTRELL JABAR HICKSON did in Aiken County on or about June 25, 2009, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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

  
J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA  
COUNTY OF Aiken  
STATE

VS.

Artrell Jabar Hickson

AKA:

Race: B Sex: M Age: 20

DOB: 1989 SS#: [REDACTED]

Address:

City, State, Zip: Aiken, SC 29803

DL# [REDACTED] SID# [REDACTED]

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar # 74983

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed 18 yearsand/or to pay a fine of \$ 100.00; provided that upon the service of 18 days/months/years and or paymentof \$ 100.00; plus costs and assessments as applicable; the balance is suspended with probation for

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

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

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

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ 100.00 plus 20% fee: \$ 20.00 days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS

Recipient:

|                                        |         |           |
|----------------------------------------|---------|-----------|
| *Fine:                                 | \$      |           |
| \$14-1-206 (Assessments 107.5%)        | \$      |           |
| \$14-1-211 (A)(1)(Conv. Surcharge)     | \$100   | \$ 100.00 |
| \$14-1-211 (A)(2)(DUI Surcharge)       | \$100   | \$        |
| \$56-5-2995 (DUI Assessment)           | \$12    | \$        |
| \$56-1-286 (DUI Breath Test)           | \$25    | \$        |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$        |
| \$14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00  |
| \$14-1-213 (Drug Court Surcharge)      | \$150   | \$        |
| \$50-21-114 (BUI Breath Test Fee)      | \$50    | \$        |
| \$56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$        |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ 5.00   |
| \$44-53-450(C) (Conditional Discharge) | \$350   | \$        |
| 3% to County (if paid in installments) | \$      | \$ 3.90   |
| TOTAL                                  | \$      | \$ 133.90 |

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS0202294

A/W#: M020089

Date of Offense: 6/25/2009

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

## SENTENCE SHEET

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

*TPB Earls*  
*0139*  
*Sept 22, 2010*

STATE OF SOUTH CAROLINA  
COUNTY OF Aiken  
STATE

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS0200670

VS.  
Artrell Jabar Hickson

AM#: M020088

AKA:

Date of Offense: 8/25/2009Race: B Sex: M Age: 20S.C. Code §: 16-23-0490DOB: 1989 SS#: [REDACTED]CDR Code #: 0549Address: [REDACTED]City, State, Zip: Aiken, SC 29803DL# [REDACTED] SID# [REDACTED]

## SENTENCE SHEET

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Poss. weapon during violent crime, if not also sentenced to life without parole or deathIn violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1<sup>st</sup> or Lowd Act)The charge is: ☐ As indicated, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def. & initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar # 74983

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 90 days/months/years or ☐ under the Youthful Offender Act not to exceed 90 yearsand/or to pay a fine of \$ [REDACTED]; provided that upon the service of [REDACTED] days/months/years and or payment of \$ [REDACTED]; plus costs and assessments as applicable; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 09-65-02-2294☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ [REDACTED] plus 20% fee: \$ [REDACTED] days/hours Public Service EmploymentPayment Terms: [REDACTED]☐ Set by SCDPPPS [REDACTED]

Recipient

|                                        |         |                  |
|----------------------------------------|---------|------------------|
| *Fine:                                 | \$      |                  |
| \$14-1-206 (Assessments 107.5%)        | \$      |                  |
| \$14-1-211 (A)(1)(Conv. Surcharge)     | \$100   | \$ <u>100.00</u> |
| \$14-1-211 (A)(2)(DUI Surcharge)       | \$100   | \$               |
| \$56-5-2985 (DUI Assessment)           | \$12    | \$               |
| \$56-1-288 (DUI Breath Test)           | \$25    | \$               |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$               |
| \$14-1-212 (Law Enforce. Funding)      | \$25    | \$ <u>25.00</u>  |
| \$14-1-213 (Drug Court Surcharge)      | \$150   | \$               |
| \$50-21-114 (BUI Breath Test Fee)      | \$50    | \$               |
| \$56-5-20424 (Vehicle Assessment)      | \$40/ea | \$               |
| Proviso 80.5 (SCCJA Surcharge)         | \$5     | \$ <u>5.00</u>   |
| \$44-53-450(C) (Conditional Discharge) | \$350   | \$               |
| 3% to County (if paid in installments) | \$      | \$ <u>3.90</u>   |
| TOTAL                                  | \$      | \$ <u>132.90</u> |

Clerk of Court/Deputy Clerk Sharon D. [REDACTED]Court Reporter: Ronan H. Davignon  
SCCA217 (09/2010)Obtain GED ☐Attend Voc. Rehab. Or Job Corp. [REDACTED]May serve W/E beginning [REDACTED]Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$

Beginning

\$ [REDACTED] Paid to Public Defender FundOther: [REDACTED]☐ Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.Presiding Judge T. M. EarlyJudge Code: 0136Sentence Date Sept 22, 2010