

RECEIVED

Nov 03 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County
Honorable Diane S. Goodstein, Circuit Court Judge
Honorable Brian M. Gibbons, Circuit Court Judge

JAMAQUES SALLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001320

APPENDIX

JESSICA M. SAXON
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ZACHARY W. JONES
Assistant Attorney General
P.O. Box 11629
Columbia, SC 29211
(803) 734-3737

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

VOLUME II OF II

PAGES 501-672

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED AUGUST 8, 12-13, 2013	1
INDICTMENTS	244
SENTENCE SHEETS	248
FIRST <i>PRO SE</i> APPLICATION FOR POST-CONVICTION RELIEF FILED AUGUST 14, 2014	250
RETURN FILED JANUARY 16, 2015.....	257
AMENDED APPLICATION FOR PCR FILED MAY 16, 2016	262
UNAPPEALED POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 24-25, 2017.....	267
UNAPPEALED POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 14, 2017.....	426
STATE’S MOTION TO ADMIT CODEFENDANT’S PLEA TRANSCRIPT INTO EVIDENCE FILED MAY 7, 2019	511
PLEA TRANSCRIPT OF CARLOS D. WILLIAMS DATED AUGUST 13, 2013	515
RETURN TO STATE’S MOTION TO ADMIT TRANSCRIPT (UNFILED).....	529
REPLY TO RETURN TO STATE’S MOTION TO ADMIT CODEFENDANT’S PLEA TRANSCRIPT INTO EVIDENCE FILED JULY 8, 2019	530
NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF SENTENCE OF CARLOS D. WILLIAMS FILED AUGUST 15, 2013	534
LETTER FROM CARLOS D. WILLIAMS TO AIKEN COUNTY CLERK OF COURT FILED FEBRUARY 3, 2014.....	536
LETTER FROM AIKEN COUNTY CLERK OF COURT TO CARLOS D. WILLIAMS WITH PCR APPLICATION DATED FEBRUARY 3, 2014	537
EVIDENTIARY HEARING TRANSCRIPT DATED OCTOBER 6, 2021	538

ORDER OF DISMISSAL FROM FIRST <i>PRO SE</i> APPLICATION FOR PCR FILED DECEMBER 27, 2021	592
CURRENT <i>PRO SE</i> PCR APPLICATION FILED AUGUST 7, 2023	634
RETURN FILED MARCH 22, 2024.....	642
SECOND POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 16, 2024	649
CONSENT ORDER GRANTING <i>AUSTIN</i> APPEAL	667

1 THE COURT: Sure.

2 MS. COLEMAN: Okay. And you can go first, if you'd
3 like.

4 MS. ZMROCZEK: Sure. Your Honor, not just for the
5 reasons that we listed, the numerous reasons that we listed,
6 that Mr. Broadwater was ineffective: His failure to object,
7 his failure to investigate, his failure to even challenge,
8 minimally, the evidence much less hire an expert or the more
9 complex issues in this case. Your Honor, it's not just a
10 failure on those issues, what it is -- and I know these
11 courts still haven't really come to a decision on the
12 comprehensive error.

13 THE COURT: Right.

14 MS. ZMROCZEK: But in this case, Your Honor, there were
15 so many failings to point out. Just one failing, for
16 example, only objecting two times during the entire trial,
17 not challenging properly the evidence, not laying a
18 foundation as you heard Ms. Coleman argue today. Well,
19 there's no foundation for the video, there's no foundation
20 for the phone records. And these phone records, which
21 Plaintiff's Exhibit or Petitioner's Exhibit 7, those phone
22 records went in and were the crux of the State's argument
23 against Mr. Salley. And what they did is they cherry picked
24 pieces of the conversation and those weren't challenged at
25 all. And when read as they were presented, of course,

1 appear very damning instead of when taken in context. Your
2 Honor, that's just one example of the many failings that we
3 believe prejudiced Mr. Salley in getting a fair trial.

4 THE COURT: And what you're saying is that you're using
5 an example of Ms. Coleman's concern about the admissibility
6 of those documents today. And you're saying that that
7 elucidates the fact that at trial there was no objection,
8 that there was not a proper foundation because no one from
9 Verizon or whoever the carrier was had been present to
10 authenticate the calls, yes?

11 MS. COLEMAN: That's correct.

12 THE COURT: Okay. Got it. Got it, yeah.

13 MS. ZMROCZEK: And, again, that's just one example.
14 The video ---

15 THE COURT: I understand.

16 MS. ZMROCZEK: Yeah. And we can go on and on. I think
17 Your Honor -- it's been made very clear. And I understand
18 that Mr. Broadwater is maybe no longer practicing and
19 certainly is advanced in his age. But Mr. Salley's family
20 retained him under the belief in their criminal process and
21 due process rights that his rights would be protected. That
22 he would get a fair trial with a proper challenge to the
23 evidence and the witnesses.

24 Your Honor, a lot of things that we submitted with the
25 911 calls, when you listen to the tapes, things that were

1 said in trial versus things that were said on the 911 tapes
2 weren't challenged. There were so many lack of challenges
3 to the evidence. And it was clear that Mr. Broadwater
4 either didn't have the time or the energy to even look into
5 this. And I think that it's even highlighted. Because when
6 he showed up, after the jury was selected, in May and sat
7 down to prepare to try a case for a jury he hadn't even
8 selected, which obviously was stopped, but he was given time
9 until August to prepare and to prepare a defense. And you
10 recall Mr. Salley testifying, he only met with him one other
11 time. And one of the biggest issues that he raised, he,
12 Mr. Broadwater, raised in his request for additional time
13 was I needed an expert. And he ended up bringing I think a
14 newspaper man in to try to make some similarities. And when
15 you watch the videos and you look at the screenshots, you
16 see that seeing the faces is not even possible, that that's
17 not the route -- if he was even looking for an expert, not
18 that a newspaper photographer, I don't know, would even
19 qualify as an expert, but there were so many other areas to
20 attack. I asked him questions about jury charges. There
21 were no request to charge on intent. There were no requests
22 to charge -- I think I listed six or seven ---

23 THE COURT: Identification, yeah.

24 MS. ZMROCZEK: And, Your Honor, each of those in and of
25 themselves could have been reasons for granting this PCR.

1 But especially when you look at it as a whole and the
2 evidence that's been presented and that could have at least
3 been challenged or suppressed prior to even being heard by a
4 jury certainly prejudiced Mr. Salley and is why we -- it's
5 our position that he deserves a new trial.

6 THE COURT: Got it. Thank you so much. Yes, ma'am,
7 Ms. Coleman.

8 MS. COLEMAN: Thank you, Your Honor. I'll just start
9 with the fact, as you're aware, South Carolina courts have
10 not yet recognized the doctrine of cumulative error. So she
11 has to prove -- the applicant I mean -- he must prove that
12 any one of these things on its own was enough to change the
13 outcome of the trial. And I don't believe that any of these
14 things individually have done that. And that's just the
15 prejudice prong. I'll start with deficiency. And we don't
16 have the transcript yet from our first hearing. But I
17 recall Mr. Broadwater giving reasons for almost all of the
18 objections that Ms. Zmroczek alleges he should have made. I
19 think he -- he testified that he was prepared for trial. He
20 was ready to go forward with his argument. And he presented
21 the defense that his client wanted, his client took the
22 stand, he explained his side of the story to the jury, and
23 the jury just didn't believe him. I think that's what it
24 all comes down to.

25 So I don't believe that he was deficient. And if he

1 was deficient in any of these things, I don't think there's
2 any prejudice. First of all, I believe that there's
3 overwhelming evidence of the applicant's guilt. And there
4 is case law that states that where there's overwhelming
5 evidence, there can be no ineffective assistance of counsel.
6 There can be no prejudice. The applicant -- there was
7 testimony presented from a codefendant whose was at the
8 robbery, who placed the applicant there, said that he helped
9 plan it, he participated in it, he helped buy the backpack
10 at the Roses that was used to put the money in from the
11 Quick Cash. There was testimony from the cashier at the
12 Roses who sold him the backpack saying that she sold it to
13 him. He gave them his credit card with his name on it, and
14 she matched up his driver's license with his face to make
15 sure it matched the card. That same backpack was found in
16 his room when the police searched it with a search warrant
17 after the crime happened. And he didn't -- the applicant
18 didn't have an explanation for why it was in his room.

19 We've got videotapes of all this. And even if --
20 Ms. Zmroczek has alleged or has pointed out that there was a
21 lack of a foundation at trial for the videotapes. But even
22 without the videotapes, that evidence in itself is enough to
23 convince the jury of his guilt in my opinion. She has also
24 put forward evidence claiming failure to investigate
25 including records from the Quick Cash that the applicant --

1 that proved that the applicant had an account there. In my
2 opinion, that hurts his case. It makes it -- it proves to
3 the jury that he knew what the Quick Cash was. He had
4 accounts there, he knew how much money they had, how it
5 operated, which all matches up with his testimony about how
6 he helped them plan the robbery.

7 The cell phone records presented, first of all, not a
8 single text message was sent the morning of the crime. So
9 it's not like he's texting somebody else while the crime is
10 happening, which might show that he wasn't there. There
11 were no phone calls made at all during the time of the
12 crime. So we can't tell where he was or what he was doing
13 at the time. The only calls that were made on the morning
14 of the crime were to his co-codefendant at 9:23 a.m. for
15 nine seconds and 9:30 a.m. for five seconds. Which in my
16 opinion says to me, hey, I'm on my way to pick you up, I'll
17 be there soon, and then, hey, I'm outside, come outside.
18 And those phone calls were made from his house about an hour
19 before the crime. The testimony shows that they went to
20 Roses, they bought the backpack, they robbed the Quick Cash.
21 And then I'm sure he was dropped back off at home when he
22 made his next phone call from home at 11:53 a.m. So I don't
23 think the cell phone proves anything. If anything, it hurts
24 his client. It makes it look worse. I don't know why any
25 attorney would want to put that in to help his client. And

1 I don't think he can be deficient for choosing not to use
2 that.

3 As far as the appellate allegation, I can't recall what
4 we put in at the first hearing about the appellate records,
5 but I know that there was some discussion about how the
6 applicant chose to withdraw his appeal. So I would submit
7 that he was given his chance to appeal his conviction, and
8 he waived his right to do that. So he should not be
9 afforded relief as to a belated appeal.

10 THE COURT: All right. Got it. Thank you so much.
11 Ms. Zmroczek, any response?

12 MS. ZMROCZEK: Just briefly, Your Honor.

13 THE COURT: Sure.

14 MS. ZMROCZEK: If you look at page 48 of the trial
15 transcript you see that none of the things that were
16 recovered from Mr. Salley's home were actually entered or
17 used into the evidence, and that was because it was a
18 deficient search warrant. I think they knew that. So the
19 backpack was actually not ever entered that was recovered
20 from his home. And ---

21 THE COURT: Was it testified to?

22 MS. ZMROCZEK: It was not testified to that it was
23 recovered in his home.

24 THE COURT: Okay.

25 MS. ZMROCZEK: It was just testified to that a backpack

1 was purchased on the video.

2 THE COURT: Okay. All right.

3 MS. ZMROCZEK: And with regards to the phone calls and
4 text messages, obviously the main point of presenting all
5 that evidence is that's evidence that any reasonable and
6 reasonably trained attorney would have used and argued to
7 keep all of that evidence out. It was not presented
8 completely. It was completely misleading to the jury
9 especially when you pick and choose which text messages they
10 get to see. Additionally, Your Honor, I mean, I feel like I
11 could stand up here all day to talk about the ways that he
12 was prejudiced. But especially with regards, not only the
13 jury charges, the complete lack of presentation. She said
14 that it didn't matter that his -- he had an account there.
15 But as you recall, he testified, he, himself, Mr. Salley,
16 testified on the stand that I would, you know, I would never
17 have gone and robbed there because they knew me. I had an
18 account there. And getting those records would have
19 corroborated that.

20 He also didn't make a meaningful challenge to the lack
21 of evidence. The fact that there were cameras inside of the
22 store that we don't know what happened to, and, obviously,
23 four years later, are not available. And, Your Honor, for
24 those and all the many reasons above, we feel like he should
25 be granted a new trial.

1 THE COURT: Got it. Thank y'all so much. I'm going to
2 ask you for two things. I'm going to ask you for both of
3 the transcript when you receive them, please, and also for
4 your proposed orders. So I can expect that we're going to
5 be a little bit longer than 30 days because I got an e-mail
6 from the court reporter that said she was told to let it
7 come in line with the other work that she has. So just stay
8 in contact with her. And then when you get it, let me know,
9 and then 30 days hence I look for proposed orders.

10 Ms. Zmroczek, your client is trying to get your
11 attention.

12 Okay?

13 MS. ZMROCZEK: Thank you.

14 THE COURT: Thank you so much.

15 MS. COLEMAN: Thank you, Your Honor.

16 (The proceeding concluded at 2:46 p.m.)

17

18

19

20

21

22

23

24

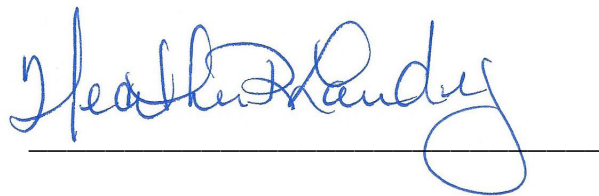
25

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF REPORTER
COUNTY OF CHARLESTON)

I, HEATHER R. LANDRY, at the time of this hearing,
Official Court Reporter for the Judicial Department of the
State of South Carolina, do hereby certify that the
foregoing is a true, accurate and complete Transcript of
Record of the proceedings had in the hearing of the
captioned case, in the Court of Common Pleas for Aiken
County, South Carolina, on the 14th day(s) of August 2017.

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

March 19, 2019



Heather R. Landry, CVR
Official Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
Jamaques Salley, #345433,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2014-CP-02-1848

**State's Motion to admit Codefendant's
Plea Transcript into Evidence**

FILED 5-7 2019 1:00 SP
Robert J. White
C.C.P. & G.S.
Shadell Parks
Deputy Clerk

The State would respectfully move before this Court to accept a guilty plea transcript for Applicant's co-defendant, Carlos Williams, into the record. The State respectfully submits that the plea transcript will provide context to evidence provided by the Applicant and serve the interests of justice. See Rule 106, SCRF; S.C. Code Section 17-27-80. The plea transcript is fourteen pages in length.

This matter is before this Court by way of an application for post-conviction relief (PCR). Hearings in this matter were held on May 24 and 25, 2017, and continued for additional testimony heard before this Court on August 14, 2017. Aimee Zmroczek, Esquire, represented Applicant, and former Assistant Attorney General Julie Coleman represented the State at these hearings. Undersigned counsel was recently reassigned the case upon Ms. Coleman's departure for private practice.

During the August 2017 proceedings, Applicant admitted an affidavit from Applicant's codefendant, Carlos Williams, which indicates Mr. Williams believed the solicitor promised he would receive a sentence of the minimum ten years imprisonment for armed robbery, but he complains he received thirteen years imprisonment.

Williams pled guilty on August 13, 2013, the same day Applicant was convicted by a jury and sentenced by the presiding judge, the Honorable Doyet A. Early. Judge Early also presided over Williams' guilty plea.

While preparing the State's proposed order, undersigned counsel reviewed Mr. Williams' sentencing sheets and found it prudent to order an expedited transcript of Mr. Williams' guilty plea. The State is providing the transcript as an attachment to this motion.

Williams' guilty plea transcript fails to show the existence of any sort of agreement from the State. Williams agrees he has not been promised anything or held out any hope of reward for his plea. GP Tr. p. 7. Further, neither his plea counsel nor the State reveal any prior agreement. From the onset of the plea, Judge Early recognizes the value of Williams's testimony at Applicant's trial. GP Tr. p. 3. Notably, his plea counsel concludes the presentation of mitigation with a request for Williams to receive the ten year minimum sentence for armed robbery. GP Tr. p. 11. In response, Judge Early informs him that he will not give the minimum sentence but further advises that it may be appropriate in the future event "additional information" is received. Judge Early references an in chambers discussion, the substance of which Judge Early did not deem appropriate to explain in open court, but Judge Early advised he would "live up to [his] word" if the information "bears fruit." GP Tr. p. 12.

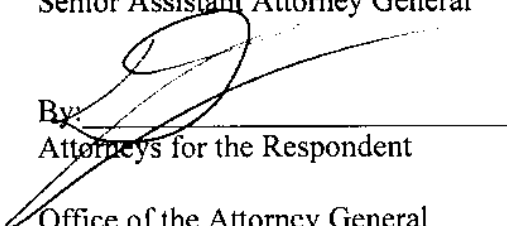
The State respectfully submits that Carlos Williams' plea transcript provides context to the affidavit and is relevant to the proceedings. The State respectfully submits that the plea transcript provides an explanation for codefendant Williams' expectation of a ten year sentence other than a discovery violation by the prosecution as it suggests that Williams was seeking to provide substantial assistance on another matter in order to receive a future sentence reduction.

For the foregoing reasons, Respondent would request this Court to allow the transcript to be admitted into the record. Additionally, the State would respectfully request for the deadline for proposed order be held in abeyance until twenty days from the date of this Court's ruling on the State's motion and for any other relief this Court believes is just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

By: 
Attorneys for the Respondent

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3727

May 2, 2019

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

2014-CP-02-1848

JAMAQUES SALLEY, #345433,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

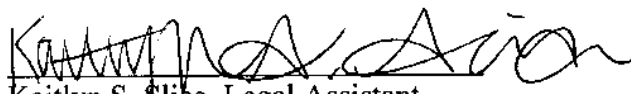
Respondent.

FILED 5-7 2019 11:00 SP
Robert L. White
CCCP & G.S.
Shadell Parks
Deputy Clerk

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 **State's Motion to Admit Codefendant's Plea Transcript into Evidence** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Aimee J. Zmroczek, Esquire
A.J.Z. Law Firm, LLC.
Post Office Box 11961
Columbia, South Carolina 29211

DATED this the 2nd day of May 2019.


Kaitlyn S. Slice, Legal Assistant
For Respondent

1 State of South Carolina) In the Court
2 County of Aiken) Of General Sessions
3
4 Indictment Number: 2013GS0200762
5 2013GS0200763
6
7 State of South Carolina,)
8 Plaintiff.)
9 vs.) Transcript of Record
10 Carlos D. Williams,)
11 Defendant.)
12
13 August 13, 2013
14 Aiken, South Carolina
15
16 B E F O R E:
17 The Honorable Doyet A. Early, Judge.
18
19 A P P E A R A N C E S:
20 Kevin N. Molony, Assistant Solicitor
21 Attorney for the State
22 Andrew Smith, Public Defender
23 Attorney for the Defendant
24
25 Brenda J. Sigwald, Circuit Court Reporter
To The Honorable Doyet A. Early III
P.O. Box 206, Jackson, South Carolina 29831

I N D E X

	<u>Page</u>
Guilty Plea.....	3
Certificate of Reporter.....	14

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Page</u>
---------------	--------------------	-------------

(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

GUILTY PLEA

MR. MOLONY: Carlos Williams.

CARLOS WILLIAMS, was duly sworn

THE COURT: All right. Mr. Williams, how are you?

THE DEFENDANT: Fine. And yourself?

THE COURT: I'm fine. I'm fine. Let me just say this, Mr. Williams. You're here to plead guilty in connection with the armed robbery and kidnapping dealing with Quick Cash, which was, I guess hindsight, looking back on things is 20/20, perfect vision, if you had to do it over again, I know you wouldn't. It was a very stupidly planned, crazy idea. And I'm not sitting up here fussing at you, but I want to tell you this: Notwithstanding your involvement in it, it takes a man to admit what they did and then face the man and then come forward and be truthful and assist the State in prosecuting your lying codefendants. And I appreciate your truthfulness and your credibility. And you will be given consideration for your cooperation.

THE DEFENDANT: Thank you, sir.

THE COURT: And if you continue to be as truthful as you are, you'll get this behind you and perhaps make something out of yourself.

THE DEFENDANT: Yes, sir.

THE COURT: Hopefully, anyway.

1 All right. Mr. Smith, you represent Mr. Williams.
2 We're all familiar with these facts, but he's now before me
3 on 13GS763, that's the kidnapping indictment; and
4 13GS02762, that's the armed robbery. I assume that you've
5 advised him of these charges, the possible sentence, which
6 is a 10 to 30 on the armed robbery; 0 to 30 on the
7 kidnapping.

8 Kidnapping is violent and serious too, isn't it?
9 Or most serious?

10 MR. MOLONY: Yes, sir, Your Honor.

11 THE COURT: It's not marked.

12 MR. MOLONY: I apologize, Judge.

13 THE COURT: But you've advised him of the charges,
14 the potential sentence, also that it's classified as
15 violent and most serious, and what that means under our
16 enhancement laws; is that correct?

17 MR. SMITH: Yes, sir.

18 THE COURT: Have you advised him of his right to
19 trial by jury?

20 MR. SMITH: Yes, sir.

21 THE COURT: And he's before me to plead guilty and
22 I assume that you agree with that decision?

23 MR. SMITH: I do.

24 THE COURT: Mr. Williams, is that not -- that's
25 correct, isn't it?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You're charged with kidnapping and you
3 know that carries 0 to 30 and armed robbery which carries a
4 minimum of 10 up to 30?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You also know that they're both
7 classified as violent, which will have some effect on where
8 and how you're housed in the department of corrections?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: They're both classified as most
11 serious, which means you now have at least one strike under
12 our three strike law which means that if you become
13 involved in criminal activity that's classified as serious
14 or most serious, the combination of one more most serious
15 or two more serious, that you would be subjecting yourself
16 to life in prison without parole?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And likewise, these are what we call no
19 parole sentences, so whatever I do sentence you to, you
20 will have to do at least 85 percent before you're eligible
21 for release and you would be released into a community
22 supervision program; do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you have any questions about any of
25 that?

1 THE DEFENDANT: No, sir.

2 THE COURT: Understanding all that, how do you wish
3 to plead? Not guilty or guilty?

4 THE DEFENDANT: Guilty, sir.

5 THE COURT: By pleading guilty, you'll give up your
6 right to remain silent. You've already testified,
7 obviously admitting your guilt in this matter in the other
8 two trials. And you'll give up your right to a jury trial
9 that your other two codefendants have gone through.

10 You know what a jury trial is. In a jury trial you
11 would have the right to confront everyone who testified
12 against you through cross-examination. You would have the
13 right to present your own case, call witnesses on your
14 behalf. You could testify in your own defense. If you
15 chose not to testify, I would tell the jury that they could
16 not hold the fact that you didn't testify against you in
17 any manner whatsoever and they were not to consider the
18 fact that you didn't testify when they deliberated your
19 guilt or innocence. You would be presumed innocent
20 throughout the trial. The State of South Carolina would
21 have to burden of proving you guilty beyond a reasonable
22 doubt to a jury of twelve people.

23 And in order for that jury to convict you, all
24 twelve people would have to unanimously agree that you are,
25 in fact, guilty. And even if you were found guilty, you

1 would still have the right to an appeal. Now, do you
2 understand your rights to trial by jury?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Understanding those rights, do you
5 still wish to enter this plea of guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has anybody promised you anything, held
8 out any hope of reward or threatened you in any manner in
9 order to make you plead guilty?

10 THE DEFENDANT: No, sir.

11 THE COURT: You've been represented by Mr. Andy
12 Smith. Are you satisfied with his legal services?

13 THE DEFENDANT: Very, sir.

14 THE COURT: In your opinion has he had enough time
15 to spend with you; enough time to research the law and
16 investigate the facts so that he could properly defend you
17 here today?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Is there anything else you want him to
20 do for you today, other than speak up on your behalf?

21 THE DEFENDANT: No, sir.

22 THE COURT: And I ask you again, Mr. Williams, are
23 you totally and completely satisfied with his
24 representation?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Williams, are you today under the
2 influence of alcohol, drugs, or prescription medication?

3 THE DEFENDANT: No, sir.

4 THE COURT: Mr. Williams, are you today aware of
5 any mental, nervous, or emotional conditions that would
6 keep you from understanding these proceedings or my
7 questions?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you have any questions you wish to
10 ask me or your lawyer before we proceed?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you pleading guilty to both of
13 these indictments of your own free will.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And did you, Mr. Williams, participate
16 in the armed robbery of Quick Cash wherein monies were
17 taken from Ms. Guerier, I'm trying hard, and she was
18 kidnapped during that armed robbery? Are you pleading
19 guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you've described your involvement
22 in detail in testimony in both of your codefendant's cases.
23 Are you pleading guilty because that testimony was
24 truthful?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. So I find your decision to
2 plead guilty to be freely, voluntarily, and intelligently
3 made. You've had the representation of a lawyer,
4 Mr. Smith, with whom you say you're satisfied and I will
5 accept your plea.

6 If you disagree with my sentence of these
7 proceedings, you have 10 days from today's date to file a
8 notice of appeal. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: We can do this one of two ways, I can
11 just hold sentencing in abeyance until these other matters
12 are concluded -- it would probably be better to go ahead
13 and sentence and let you file the motions that we talked
14 about. That way he can be sent onto Columbia and he won't
15 have to be here in the county jail.

16 MR. MOLONY: Yes, sir.

17 THE COURT: All right. What do you need to put on
18 the record for this one? I mean we've -- the Court's very
19 familiar with all the facts, but...

20 MR. MOLONY: Briefly for the record, Your Honor,
21 the defendant admitted to being the individual, along with
22 Jamaquez Salley that entered the Quick Cash at 1114
23 Richland Avenue on February 19th of this year, that's in
24 Aiken County, with a BB gun, which appeared real to the
25 victim in this case, Ms. Guierier; while in there, holding

1 her against her will and taking away with \$450 in cash. As
2 Your Honor stated he did testify against his two
3 codefendants and there is no other recommendation.

4 THE COURT: All right. And if we -- if necessary,
5 we would include, as part of this plea, his testimony given
6 both in the --

7 MR. MOLONY: Michael Quarles.

8 THE COURT: And --

9 MR. MOLONY: Jamaquez Salley.

10 THE COURT: Salley's case.

11 MR. MOLONY: Yes, sir.

12 THE COURT: All right.

13 MR. SMITH: Thank you, Your Honor, may it please
14 the Court. Your Honor, Mr. Williams is 21 years old. He's
15 from here in Aiken. He attended Saluda High School, as
16 well as Aiken High School. He graduated from Aiken High
17 School in 2010. Since then, he's been working. He's
18 worked at least four jobs: At Kentucky, Tennessee Clay
19 Company; Amick's Farms; he's worked in the Reids Deli; and
20 when this occurred, he had a job through Select Staffing at
21 Carlisle Tire and Wheel.

22 Your Honor, he is the only -- he doesn't have any
23 kids, he's never been married, but he has a fiance and they
24 were planning on getting married. She has a daughter and
25 he has been the only father figure in her life. And he

1 considers himself as her father.

2 Your Honor, this -- I think over the course of the
3 two trials, you've come to know a little bit of him and his
4 character. Right from the get go, or early on, in this
5 case, he came clean and he told the truth. Primarily
6 because that's who he is.

7 When I went to speak with him the first time, he
8 was honest and upfront with me and it struck me as I got to
9 know him more, that he was in this position, it struck me
10 as very unfortunate and it was an aberration of his
11 character and who he is. He knows that what he has done is
12 wrong. He's very sorry for it. He's been very helpful in
13 the prosecution and --

14 THE COURT: Well, quite frankly, I don't think we
15 could have -- we, they could have successfully prosecuted,
16 he certainly added to the prosecution. I just wanted to
17 say that.

18 MR. SMITH: Yes, sir. I'd just like you to take
19 all that into consideration, as I know you will.

20 And just for information purposes, he has been in
21 jail for 175 days.

22 THE COURT: Well, he will certainly get credit for
23 that.

24 MR. SMITH: We would like to ask you to consider a
25 minimum sentence in this case.

1 THE COURT: Well, I'm not going to give him a
2 minimum. That may be appropriate in the future in the
3 event additional information is received, and I allow you
4 to the file a motion to reconsider based on that new
5 information that comes available. For the record, we had
6 an in-chambers discussion discussing this. Let's not put
7 that on the record out here. I certainly will live up to
8 my word if that becomes --

9 MR. SMITH: Yes, sir.

10 THE COURT: -- bears fruit.

11 All right. Mr. Williams, anything you want to tell
12 me?

13 THE DEFENDANT: Sir?

14 THE COURT: Anything you'd like to say?

15 THE DEFENDANT: I just want to apologize to the
16 victim in the case. I didn't mean for her to get hurt.
17 I'm just saying it was a stupid idea. This is not the type
18 of person I am, no matter what the case facts show. I know
19 this is not the person I am and all I ask is that -- just
20 for forgiveness from the victim and from the citizens of
21 Aiken County, sir.

22 THE COURT: Well, I sort of tend to believe that's
23 not the type of person you are. I think the type of person
24 you are has been shown by coming forward and being truthful
25 about it, being a man about it. And hopefully as I said

1 earlier, that when you get all this behind you, that you
2 continue to be a truthful and trustworthy person and show
3 us that this was a fluke and be a productive citizen.
4 That's my hope for you anyway.

5 And I will reconsider my sentence in the event that
6 the other information is forthcoming.

7 Sentence of the Court to both indictments is that
8 you be sentenced -- committed to the State Department of
9 Corrections for 13 years. They'll run concurrent. You're
10 to be given credit for the time served.

11 THE DEFENDANT: Thank you, sir.

12 MR. SMITH: Thank you, Your Honor.

13 MR. MOLONY: Thank you, Judge.

14

15 * * * * * END OF TRANSCRIPT * * * * *

16

17

18

19

20

21

22

23

24

25

1 State of South Carolina)
2 County of Aiken) Certificate of Reporter

3
4
5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of General Sessions in and
12 for the State of South Carolina on 13th day of August 2013.

13 I FURTHER CERTIFY that I am neither kin, counsel,
14 nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal at Aiken County, this 29th day of April 2019.

17

18

19

20

21

22

23

24

25

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	
Jamaqus Salley, #345433	)	
Applicant,	)	Applicant's Response in Opposition
	)	to State's Motion to Admit
vs.	)	
	)	
State of South Carolina,	)	
Respondent.	)	

COMES NOW the Applicant, by and through his undersigned attorney, and responds to the State's motion seeking to admit Codefendant's plea transcript into evidence. Applicant opposes any entry of such evidence as Applicant's attorney should have a right to cross examine the codefendant who pled if the Court is to consider this as evidence against Mr. Salley's PCR. There was a full hearing in this case and witnesses were presented and the Court was able to makes its determination on the credibility of those witnesses. Applicant believes it would be improper under the rules to allow the Court to consider this document when there has been no opportunity to question any of the participants.

THEREFORE, Applicant respectfully opposes any introduction of the codefendant's plea transcript without an opportunity to cross-examine Mr. Williams.

Respectfully Submitted,

A.J.Z. Law Firm, LLC

By 
 Aimee J. Zmroczek, #77193
 P.O. Box 11961
 Columbia, South Carolina 29211
 803.400.1918·803-403-8005 (fax)
aimee@ajzlawfirm.com
 Attorney for Jamaques Salley

June 25, 2019.
 Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Jamaques Salley, #345433,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2014-CP-02-1848

**Reply to Return to State's Motion
to admit Codefendant's
Plea Transcript into Evidence**

The State would make the following reply to Applicant Salley's return to the State's motion to admit co-defendant Carlos Williams' guilty plea transcript:

Applicant complains he should have the "right to cross-examine the codefendant who pled" if this Court were to accept the evidence. However, Applicant chose to present an affidavit in lieu of calling Williams as a witness. Applicant also argues that a full hearing was held with witness testimony and this Court was able to determine the credibility of the witnesses. However, no testimony was presented concerning Williams' affidavit beyond testimony from Applicant's investigator that he obtained the affidavit from Williams. This Court was not able to judge Williams' credibility. However, the State does not oppose reopening the record for testimony on the issue so long as the State is also allowed to call its own witnesses on the matter.

Applicant argues that it would be "improper under the rules" to allow this Court to consider the codefendant's transcript. However, transcripts are admitted and utilized in PCR on a regular basis.

Further, allowing the transcript is proper under Rule 106, SCRE. Rule 106 is a procedural rule that governs the timing of the completion of evidence and is designed to affect

the order of proof. State v. Taylor, 333 S.C. 159, 170-71, 508 S.E.2d 870, 876 (1998). There is no requirement that the writings or recordings be contemporaneous or responsive to one another. State v. Tennant, 394 S.C. 5, 14, 714 S.E.2d 297, 302 (2011). The Supreme Court explained in Tennant that “[t]he standard here is ‘fairness,’ not responsiveness.” Id. Tennant quotes, with approval, the Fed.R.Evid. 106 advisory committee’s note as follows: “The [corresponding federal] rule is based on two considerations. The first is the misleading impression created by taking matters out of context. The second is the inadequacy of repair work when delayed to a point later in the trial.”

In the e-mail to which Applicant’s return to the State’s motion was attached, Applicant argues that Williams filed a motion to reconsider his sentence and sent correspondence to the clerk, “therefore it is the Applicant’s position that the transcript is not an accurate reflection of the deal.” However, the motion for reconsideration was filed by Williams’ counsel and in relevant part asserts: “The Court told counsel to file a Motion for Reconsideration. After the Defendant testifies against another Defendant at trial and if the testimony is full and sincere the Judge will consider the Motion for Reconstruction.” The correspondence that followed was a request from Mr. Williams for his “PCR papers” to which the clerk responded with the indictment numbers and a PCR application. Respondent has attached those items to this motion for the Court’s consideration.

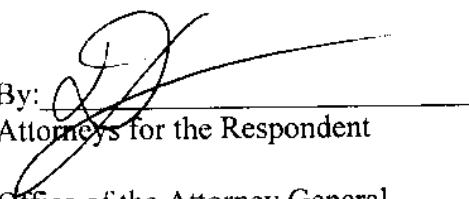
The State would respectfully move before this Court to accept a guilty plea transcript for Applicant’s co-defendant, Carlos Williams, into the record. The State respectfully submits that the plea transcript will provide context to evidence provided by the Applicant and serve the interests of justice. See Rule 106, SCRE; S.C. Code Section 17-27-80.

The State respectfully submits that the plea transcript provides an explanation for codefendant Williams' expectation of a ten year sentence other than a discovery violation by the prosecution as it suggests that Williams was seeking to provide substantial assistance on another matter in order to receive a future sentence reduction.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

By: 
Attorneys for the Respondent

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3727

July 5, 2019

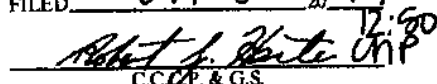
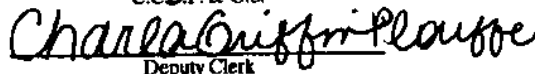
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2014-CP-02-1848
	)	
JAMAQUES SALLEY, #345433,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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 **Reply to Return to State's Motion to Admit Codefendant's Plea Transcript into Evidence** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Aimee J. Zmroczek, Esquire
A.J.Z. Law Firm, LLC.
Post Office Box 11961
Columbia, South Carolina 29211

DATED this the 5th day of July, 2019.


Kaitlyn S. Slice, Legal Assistant
For Respondent

FILED 07/08 20 19

C.C.P. & G.S.

Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

INDICTMENT #: 2013 A02 201 00204
2013 A02 201 00170

NOTICE OF MOTION AND MOTION FOR
RECONSIDERATION OF SENTENCE

VS.)

CARLOS WILLIAMS)
DEFENDANT)

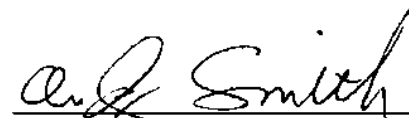
TO: THE HONORABLE DOYET A EARLY, III

The Defendant will move before this Honorable Court for an Order granting him reconsideration on his sentence.

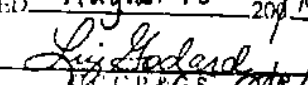
The Defendant was before said Judge on August 13, 2013 for the charge(s) of Armed Robbery and Kidnapping. Said Defendant was sentenced to 13 years. The Court told counsel to file a Motion for Reconsideration. After the Defendant testifies against another Defendant at trial and if the testimony is full and sincere the Judge will consider the Motion for Reconsideration.

Wherefore, the Defendant prays that his sentence be reconsidered.

Respectfully Submitted,


Andrew Smith
Attorney for Defendant

August 13, 2013

FILED August 15 2013

L. J. Anderson
Shannon W. Roberts
Deputy Clerk

2 cert copies PD

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)

IN THE COURT OF GENERAL SESSIONS
 SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

INDICTMENT #: 2013 A02 201 00204
 2013 A02 201 00170

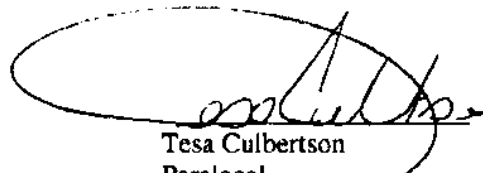
VS.)

**NOTICE OF MOTION AND MOTION FOR
 RECONSIDERATION OF SENTENCE**

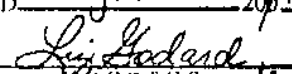
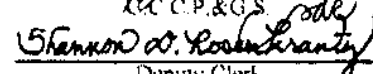
CARLOS WILLIAMS)
 DEFENDANT)

AFFIDAVIT OF SERVICE

I, Tesa Culbertson, do hereby state that I have filed the original Notice of Motion and Motion for Reconsideration of Sentence with the Clerk of Court for Aiken County and hand delivered a certified copy to the Honorable Doyet A. Early, III and to the Solicitor for Aiken County.


 Tesa Culbertson
 Paralegal

August 15, 2013

FILED August 15 2013

 Lij Gooden
 CL C.P. & G.S.

 Shannon D. Rosenkrantz
 Deputy Clerk

2 cert copies PD

To Whom it may Concern:

My name is Carlos Demetrius Williams and I was convicted of armed robbery and kidnapping. I was sentenced to thirteen years in the South Carolina Department of Corrections. I am writing to request my [REDACTED] PCR papers. I do not know my Case number, but my Public Defender's name was Andy Smith. Please send them to me at your earliest Convenience.

Thank you in advance

Carlos D Williams

FILED

Feb 3 2014

Lij Hadwell
ECCP&GS. *SB*
Deborah M. Brie
Deputy Clerk

February 4, 2014

Mr. Williams,

I am assuming what you are requesting is a PCR application. I have enclosed that and also I am enclosing your indictment numbers. You will need them to file your PCR. Indictment number 2013-GS-02-00762, and 2013-GS-02-00763

Thanks,

L. Bell 

STATE OF SOUTH CAROLINA) SOUTH CAROLINA CIRCUIT COURT 2
COUNTY OF AIKEN) DOCKET No.s. 2014-CP-02-01848
2023-CP-02-01766

JAMARQUES SALLEY,
Petitioner,
versus
THE STATE OF SOUTH CAROLINA,
Respondent.

H E A R I N G
BEFORE THE HONORABLE DIANE SCHAFER GOODSTEIN

DATE: October 6, 2021.
LOCATION: South Carolina Circuit Court 2
TRANSCRIBED BY: Latasha Jefferson

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606

864-467-1373

depos@legaleagleinc.com

APPEARANCES:

AIMEE JENDRZEJEWSKI ZMROCZEK, ESQUIRE

A.J.Z. LAW FIRM, LLC.

P.O. Box 11961

Columbia, South Carolina 29211

Attorney for the Petitioner,

DAVID A. SPENCER, ESQUIRE

SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE

P.O. Box 11549

Columbia, South Carolina 29211

Attorney for the Respondent.

ALSO ATTENDING:

(None)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Proceedings.....	6
Certificate of Transcriber.....	54

EXAMINATIONS

<u>WITNESSES</u>	<u>PAGE</u>
------------------	-------------

CARLOS DEMETRIUS WILLIAMS (PW)	
Direct examination by Ms. Zmroczek	11
Cross-examination by Mr. Spencer	18
Re-direct examination by Ms. Zmroczek	29, 33

1

2

3

EXAMINATIONS

4

WITNESSESPAGE

5

KEVIN MOLONY (SW)

6

Direct examination by Mr. Spencer

36

7

Cross-examination by Ms. Zmroczek

40

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2

3

EXHIBITS4 NO. DESCRIPTIONID. EV.

5 (None Marked)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
2 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

3 THE COURT: Okay. Now -- all right. Mr. Spencer, if
4 you would be so kind as to just introduce the case, give us
5 the case number and a little bit of the history?

6 MR. SPENCER: Certainly, your Honor. Just hold on a
7 second because --

8 THE COURT: Sure.

9 MR. SPENCER: A little bit out of practice. And I
10 apologize. This is 2014-CP-02-1848. It is a Second Judicial
11 Circuit case out of Aiken. This has got a bit of a history
12 to it. We have -- this is regarding Jamarques Salley. We
13 had a hearing -- there was a couple hearings. The first, I
14 think, was in May of 2017. The second was in August --

15 MS. ZMROCZEK: Yes, it's --

16 MR. SPENCER: -- 2017.

17 MS. ZMROCZEK: The first one was May 24th and 25th.
18 Sorry.

19 MR. SPENCER: All right.

20 MS. ZMROCZEK: And then the second one -- and then the
21 second one was August 14th. Sorry.

22 MR. SPENCER: That's right. I must've read the wrong
23 date. Mr. Salley was convicted of armed robbery and
24 kidnapping. And he was sentenced by Judge Early to 35 years,
25 cumulative. He was represented by Mr. Broadwater.

1 Mr. Broadwater has already testified. We're here today
2 because during the second hearing, an affidavit from
3 Mr. Carlos Williams, who is the gentleman from Corrections
4 that is with us today, he had -- Ms. Zmroczek's investigator
5 had introduced an affidavit from Mr. Williams, discussing
6 what he had said was a 10-year plea deal.

7 And so, we're here to kind of ask about that. And I
8 also have Mr. Molony available to testify and give some
9 background on the case. And, you know, I do want to thank
10 you, Judge Goodstein, for allowing me to first of all submit
11 the -- Mr. Williams guilty plea transcript in an earlier
12 motion and also to take this testimony today so we can sort
13 out, basically run down everything that we need to know. And
14 with that, your Honor, we can proceed however it is you want.

15 THE COURT: Sounds great. Now, Mr. Salley, I
16 understand he's in quarantine, right, Ms. Zmroczek?

17 MS. ZMROCZEK: That's correct, your Honor. That's what
18 I was just going to make sure that we put on the record. So
19 -- well -- so, my client's not -- my client doesn't have
20 COVID, but his dorm is in quarantine, because he and I were
21 having a conversation and he's like, "I'm not in quarantine."
22 And I'm like, "But they're telling me you are." So yesterday
23 I ended up just calling Christina Bigelow, who is in the
24 legal department over there, one of the greatest people ever.
25 Like, she just always fixes my problems --

1 THE COURT: That's great.

2 MS. ZMROCZEK: -- and I told her -- I was like -- she's
3 so great. I said, "Here's the problem; David says that he's
4 in quarantine, my client's telling me he's not." And then so
5 she was able to find out that it's actually the dorm. And
6 then just yesterday they had somebody else in that dorm test
7 positive, so now they're out for another two weeks. So --

8 THE COURT: In other words, none of you are correct?

9 MS. ZMROCZEK: So -- exactly. So I talked with my
10 client yesterday, obviously -- you know, there is some --
11 some history to this. And -- and COVID obviously threw a
12 wrench in everybody's plans. And my client was advised of
13 what we would be doing today, and he was like, "Just get it
14 done," so that we can move forward with the case.

15 THE COURT: Okay. And he understood that we would --

16 MS. ZMROCZEK: So he waives -- he absolutely waives his
17 presence.

18 THE COURT: Okay. And he understood -- he knows that
19 we would be happy to wait if --

20 MS. ZMROCZEK: He does.

21 THE COURT: Okay. And we -- we certainly would. I
22 mean, I would still take it out of turn just like this.
23 Y'all have been so wonderful to work with us to get this
24 scheduled, and we would certainly do that in the next --
25 bless -- I want to say bless his heart and people can just --

1 MS. ZMROCZEK: I know.

2 THE COURT: (Inaudible) two weeks and another two
3 weeks. But we -- as long as he was in quarantine, we would
4 simply continue to postpone and set it out of -- you know, as
5 soon as we get everyone together. But he knows that,
6 Ms. Zmroczek, you think he senses that he is just ready for
7 us to proceed?

8 MS. ZMROCZEK: He does. That's correct, your Honor.

9 THE COURT: Yeah. And I know you -- I know that he
10 probably trusts you very well, Ms. Zmroczek, that you will
11 certainly relay to him all that occurred.

12 MS. ZMROCZEK: I will.

13 THE COURT: Okay, very well. All right. Now, it seems
14 to me -- Ms. Zmroczek, how do you want to proceed? Do you
15 want to now speak with Mr. Williams? Do you want to do his
16 testimony now and go back to the State? Or you know, does --
17 I think maybe that makes sense.

18 MS. ZMROCZEK: I can do that, your Honor. Yes.

19 THE COURT: Okay. That -- that sounds great.

20 MS. ZMROCZEK: Thank you.

21 THE COURT: All right. And Mr. Williams, I guess --

22 MR. WILLIAMS: Here, your Honor.

23 THE COURT: Hello, Mr. Williams, thank you for being
24 present with us today.

25 MR. WILLIAMS: Hello.

1 THE COURT: And I hope somebody shared with you that
2 you have some information that very well may be important
3 with regards to Mr. Salley's PCR. So we're doing this --
4 because of COVID, we're doing this virtually. So thank you
5 for joining us. I really appreciate it. And, you're not in
6 quarantine, obviously.

7 MR. WILLIAMS: Well, I didn't even know about this
8 until about --

9 THE COURT: About -- about the quarantine? I think
10 that's a good thing, don't you, Mr. Williams?

11 MR. WILLIAMS: Yes, I guess so.

12 THE COURT: I guess so too. So stay of quarantine --
13 stay out of COVID, right?

14 MR. WILLIAMS: Yes, ma'am.

15 THE COURT: Yeah. So what I'm going to do is I'm going
16 to ask you, Mr. Williams, just to raise your right hand. I'm
17 going to swear you in.

18 CARLOS DEMETRIUS WILLIAMS,
19 being duly sworn, testified as follows:

20 THE COURT: Thank you, Mr. Williams. You can you put
21 your hand down. Ms. Zmroczek is going to ask you some
22 questions. Mr. Spencer may ask you some questions. If you
23 can't hear, you just let us know, okay?

24 THE WITNESS: All right.

25 THE COURT: And we can hear you very well, but if those

1 changes -- our bandwidth has been, you know, going in and out
2 a little bit. So if it does that, and we have trouble
3 hearing you, or if you have trouble hearing us, please just
4 let us know, okay?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Thank you, Mr. Williams. All right,
7 Ms. Zmroczek?

8 MS. ZMROCZEK: Thank you, Judge. May it please the
9 Court?

10 DIRECT EXAMINATION

11 BY MS. ZMROCZEK:

12 Q. Good afternoon, Mr. Williams.

13 A. Good afternoon.

14 Q. We've never met face-to-face, correct?

15 A. Correct.

16 Q. Right. But do you recall back in April of 2017 --
17 which was a while ago, an investigator of -- that worked for
18 me coming to the -- to detention facility and having -- and
19 letting you write an affidavit?

20 A. I remember, but I just can't remember what I wrote
21 on that (inaudible).

22 Q. That's fine. And, your Honor, I believe it's
23 already in evidence, and it says -- this whole document
24 sharing thing, I'm not sure how it works, but -- so what I
25 have is -- I'm going to hold it up. It's already in

1 evidence. Can you read that, Mr. Williams?

2 A. I don't have my glasses on, and I can't see
3 without. Sorry.

4 Q. Okay. Can I -- can you at least see this
5 signature line right here?

6 A. Yes, ma'am.

7 Q. Is that your signature?

8 A. Yes, ma'am.

9 Q. Okay. You recognize that as being your signature,
10 right?

11 A. Yes, ma'am.

12 Q. Okay. And -- and we're not here to quiz you.
13 Obviously, this was already put in, and it was 2017, so I'm
14 not going to -- but I'm going to read it. And as an officer
15 of the court, like I said, it's already in, so I was just
16 going to read it. But it said -- that way he -- we're not
17 asking him questions and avoid --

18 THE COURT: Yeah. I understand.

19 BY MS. ZMROCZEK:

20 Q. Mr. Williams, it says, "During the prep for trial,
21 the prosecution stated to me that if I helped them convict
22 Mr. Salley, that they will give me ten years. When I went to
23 court, I was given 13 years with no parole. Also, in my
24 interview with Detective Savidge (ph), I was told that I
25 would not be charged with kidnapping, but I was." And then

1 there's a line, and it says, "Nothing follows." Do you
2 recall writing that back in 2017?

3 A. Yes, ma'am.

4 Q. And is that -- is that what you remember of your
5 interactions specifically dealing with this case?

6 A. Yes, ma'am. I -- I specifically remember because
7 I was 21, the first time I've ever been in trouble, and they
8 were telling me, you know, ten years, you know, that's what
9 my lawyer came and told me. And that's what the prosecution
10 was saying, it was ten years. I get to court, everybody
11 (inaudible) every was like, you know, "I'm not going to give
12 you ten years, I'm going to give you 13, you know, so you can
13 think about what you did." That kind of threw me for a loop.

14 Q. And do you remember -- you said everybody knew
15 what was going on, but you didn't. Were there times that
16 your lawyer -- I believe it was Andrew Smith at the time, and
17 the prosecutor, Mr. Molony, would go into the back and talk
18 to the judge without you, do you -- do you remember that
19 happening?

20 A. I can't recall that.

21 Q. Okay.

22 A. Like I said, I was 21, I didn't understand a lot
23 of what was going on. If I knew then what I know now, it
24 probably would've played out differently, but I really didn't
25 know a lot of what was going on back then.

1 Q. So let me ask you this question: Do you ever
2 recall having a meeting with just you, and the judge, and the
3 lawyers?

4 A. No, ma'am.

5 Q. Okay.

6 A. I don't recall.

7 Q. Okay. So there was never a time that you remember
8 going back into chambers or going back into Judge Early's
9 office?

10 A. No, ma'am.

11 Q. Okay. All right. And then you -- I wanted to ask
12 you. Back in -- so the State -- Mr. Spencer is here for the
13 State and the Attorney General's Office -- Office -- excuse
14 me. And they filed a motion to admit your plea transcript
15 into evidence, and there was -- there were also some other
16 things that were filed -- it looks like -- so, when you got
17 the 13 years, you asked or your attorney filed a motion to
18 reconsider the sentence?

19 A. I didn't -- I knew nothing of that.

20 Q. Okay. Do you --

21 MR. SPENCER: I'm sorry, I didn't hear that last
22 answer.

23 THE WITNESS: I said I didn't hear anything about it.

24 THE COURT: He said he didn't know anything about it.

25 MR. SPENCER: Thank you.

1 BY MS. ZMROCZEK:

2 Q. Okay. And in fact, I'm going to hold up another
3 little piece of paper. This was -- this is a court filing,
4 your Honor, but mainly -- I know he can't read, so I was just
5 going to point to his signature. Do you recognize that as
6 being your signature?

7 A. Yes, ma'am.

8 MS. ZMROCZEK: Okay. And your Honor, this is part of
9 the -- the public index.

10 THE COURT: Okay.

11 BY MS. ZMROCZEK:

12 Q. And it's a letter and it says, "To whom it may
13 concern. My name is Carlos Demetrius Williams. I was
14 convicted of armed robbery and kidnapping. I was sentenced
15 to 13 years in the South Carolina Department of Corrections.
16 I'm writing to request my PCR papers. I do not know my case
17 number, but my public defender's name was Andy Smith. Please
18 send them to me at your earliest convenience. Thank you in
19 advance. Carlos Williams." Mr. Williams, why were you --
20 why were you writing the clerk of court about a PCR after you
21 received 13 years?

22 A. Well, I was speaking to some guys who had been in
23 prison for a while and they were telling me that I could go
24 back for -- I had to file a PCR for entire (inaudible)
25 duration. Also, because I was given 13 years for armed

1 robbery and kidnapping after I was already told that I wasn't
2 going to be charged with kidnapping. I was told that I had
3 to go back --

4 Q. And was the 13 years what you --

5 A. I was told that I had to go back for a time cut.

6 Q. Okay. And so -- and you say "time cut." So you
7 served -- when you received 13 years, how many years had you
8 anticipated receiving?

9 A. 10.

10 Q. Okay and then just -- I guess a little bit off
11 topic of that specific -- about the 10 years, I think we've
12 covered that. But I wanted to ask you just a few more
13 questions. Was there a time -- and now I'm going to go back
14 to 2013. So if you don't remember, you don't remember.
15 Okay? I don't want you to guess, but do you remember when
16 you were arrested for this crime, did you ever cross paths
17 with Mr. Salley while you were in the detention center? Did
18 you all --

19 MR. SPENCER: Your Honor -- your Honor, if I may
20 object? I think this is exceeding the scope of what we
21 reopened the record for.

22 MS. ZMROCZEK: It's really not that important, your
23 Honor. If he wanted to just limit it to that, that's fine.

24 THE COURT: Let me ask you. What -- what is the topic?
25 What would the topic be?

1 MS. ZMROCZEK: Well -- so, I was -- when I went back,
2 your Honor, to just relook at the testimony that had been
3 given so far, they had -- we have already admitted into
4 evidence the kites and back and forth. So I was just -- the
5 kites -- the letters between Mr. Williams and Mr. Salley,
6 those are already in, but --

7 THE COURT: Okay.

8 MS. ZMROCZEK: -- but if -- but if we don't need to go
9 there, we don't need to go there. That's fine.

10 THE COURT: Okay.

11 MS. ZMROCZEK: Because they're already in.

12 THE COURT: Okay.

13 BY MS. ZMROCZEK:

14 Q. So I'll move on and I just have two quick more
15 questions. First, Mr. Williams, do you have a brother named
16 "David Gavin?"

17 A. Yes, ma'am.

18 Q. Okay. That my only question about that. And then
19 the other question is, you remember you testified in
20 Mr. Maurice -- the co-defendant's trial, right? Quarles
21 something -- Michael Quarles. Do you remember testifying?

22 A. Yes, ma'am.

23 Q. And do you remember Mr. Quarles's attorney asking
24 you -- and even in that trial, Mr. Molony, the solicitor,
25 asking you if you'd ever been promised anything?

1 A. Yes, ma'am.

2 Q. And you said "No," right?

3 A. Yes, ma'am.

4 Q. Why did you say "No?"

5 A. Like I said before, you know, I had never been in
6 trouble of that magnitude before. So I didn't know if --
7 what it meant as far as -- you know, was I promised anything?
8 You know, until -- like I said, until I was able to be around
9 people who have been in this situation and they were talking
10 to me about it, and I was like, "Yeah, that's exactly what
11 happened."

12 MS. ZMROCZEK: Okay, and then -- I believe that's all
13 the questions I have, your Honor.

14 THE COURT: All right. There you go. All right. Now,
15 Mr. Spencer, cross-examination?

16 MR. SPENCER: Thank you, your Honor. May it please the
17 Court?

18 THE COURT: Yeah.

19 CROSS-EXAMINATION

20 BY MR. SPENCER:

21 Q. Mr. Williams, I wanted to -- you testified -- you
22 just testified that you testified in Mr. Michael Quarles'
23 trial, right?

24 A. Correct.

25 Q. You also -- excuse me, you also testified in

1 Mr. Salley's trial?

2 A. Correct.

3 Q. And as a matter of fact, Mr. Molony asked you if
4 there were any promises or deals for your testimony, right?

5 A. Correct.

6 Q. And you answered "No" to that also, right?

7 A. Right.

8 Q. Okay. Who was tried first? Mr. Quarles or
9 Mr. Salley?

10 A. I think it was Mr. Quarles.

11 Q. Okay. And you said in your affidavit that you had
12 been promised 10 years if Mr. Salley got convicted?

13 A. Say it again?

14 Q. As I understand in your affidavit, you said that
15 you were promised 10 years for armed robbery if Mr. Salley
16 got convicted? Is that right?

17 A. No. I don't know if I used those exact words. It
18 was more like -- you know, "Help us and --" you know -- "and
19 we --" you know -- "10 years is going to take --" you know,
20 the judge to agree to 10 years, victims to agree to 10 years,
21 we all agree to 10 years. That's what I got from --

22 Q. You said -- okay, let me back up. You said that
23 they said if you help them, 10 years is on the table?

24 A. Yes.

25 Q. Okay. So it was possible you could get 10 years?

1 A. Excuse me?

2 Q. So it was possible you would be able to get 10
3 years if you testified?

4 A. Yes.

5 Q. But they didn't say you absolutely would get 10
6 years, did they?

7 A. They said that it would be 10 years. My lawyer --
8 my lawyer specifically came to me and told me 10 years. He
9 said the -- he said, "The prosecution agrees with 10 years,
10 the judge agrees with 10 years, and the victims agree with 10
11 years."

12 Q. Well, let me ask you this. At what point did you
13 tell Judge Early, "Hey, I thought I was going to get 10
14 years?"

15 A. I didn't. I didn't get a chance to. Once he gave
16 me the time -- after I spoke, they gave me my time, they
17 walked me out of the courtroom. So --

18 Q. Let me ask you this. You -- when you testified --
19 at both trials, you testified under oath, right?

20 A. Right.

21 Q. And do you recall during Mr. Salley's trial,
22 Mr. Molony asked you what you were charged with?

23 A. Correct.

24 Q. And you said, "Armed robbery and kidnapping,"
25 right?

1 A. Right.

2 Q. So you said both charges?

3 A. Okay.

4 Q. So as I understand it, you knew you were charged
5 with kidnapping?

6 A. No. That's what the charge was coming to. Listen
7 -- listen, every interview is recorded. Am I correct? Every
8 interview you have (inaudible) is recorded. Y'all go back
9 and get the tapes and -- and listen to those, you will hear
10 what Mr. Savidge told me at the end of it, the whole thing.
11 "You won't be charged with all this (inaudible) the only
12 thing you're going to be charged with is armed robbery."

13 Q. But the time of trial, you were aware you were
14 being charged with kidnapping?

15 A. I guess you could say that, but not necessarily.
16 Like I said, I was young, I didn't know what was going on.

17 Q. And you knew 10 years was on --

18 A. First time I've ever been in trouble.

19 Q. And you knew 10 years were on the table, but you
20 knew it could be more than that, right?

21 A. No, I did not know it could be more than 10. I
22 knew it was going to be 10 years. That's what I knew.

23 Q. And so, you testified at trial -- both trials, no
24 deals?

25 A. Excuse me?

1 Q. In both trials, you testified that there were no
2 deals, that there were no promises made to you, right?

3 A. Right.

4 Q. Are you saying you lied under oath?

5 A. No, I'm not saying I lied under oath, I'm saying I
6 didn't understand what was going on. And now you're trying
7 to make me out to be a liar, but that's not what I am. I
8 didn't understand what was going on.

9 Q. And how was that -- do you understand what a
10 promise is?

11 A. You can speak to me like I'm an adult, because I
12 am an adult, first and foremost.

13 Q. Well -- I mean, I just need to get the basic facts
14 out. Do you understand what a promise is?

15 A. And I'm giving you the basic facts. At the time,
16 I didn't understand what was going on. First time I've ever
17 been in a situation like this. I'm facing time away from my
18 family. I'm facing my whole life go. So was I thinking?
19 No, I wasn't thinking. Was I thinking when I committed the
20 crime? No, I wasn't thinking. But I've had the time to sit
21 and think of the things that I could learn back here that I
22 couldn't learn (inaudible) jail.

23 Q. So what you're telling me today is that prior to
24 you testifying in Mr. Salley's trial, you were promised 10
25 years?

1 A. From my understanding, yes, I was. That's what
2 was told to me.

3 Q. Okay. You were promised 10 years?

4 A. That's what -- that's what -- 10 years was told to
5 me.

6 Q. So what you're saying is, you were promised 10
7 years, and you told the jury that you were not promised
8 anything?

9 A. Apparently -- apparently, what I'm saying is not
10 getting through to you.

11 Q. Tell me how that's not a lie.

12 A. That was not a lie. One, like I said, I've never
13 been in a situation like this. I was told 10 years. That's
14 what I was told. I'm not going to make that up. I was told
15 10 years. So I was looking forward to 10 years, that's eight
16 and a half years under the 85 percent law, not 13 years so I
17 can do 11 years (inaudible).

18 Q. Let me ask you this. During your hearing, do you
19 recall your attorney asking Judge Early for a 10-year
20 sentence?

21 A. Correct.

22 Q. And Judge Early said he wasn't going to do that,
23 right?

24 A. Correct.

25 Q. But he also mentioned some further information

1 about --

2 MS. ZMROCZEK: Your Honor, sorry -- sorry -- sorry,
3 David, I don't mean to interrupt you. I think that if you're
4 asking him questions, are you asking him questions from his
5 plea transcript?

6 MR. SPENCER: Yeah, I am.

7 MS. ZMROCZEK: Okay. Do we mind if we can just mark
8 that so the record is -- we -- I mean, I know you just wanted
9 to admit it without asking him -- you know, we had -- you had
10 filed a motion to just admit the plea transcript, which is
11 fine as far as the plea transcript coming in. But my issue
12 was I just wanted Mr. Williams here so we could ask him
13 questions.

14 So I guess just for clarity's sake, if -- if -- I think
15 you just asked him about, "Do you remember the judge or your
16 lawyer asking the judge?" So I wanted to be clear that we
17 weren't talking about the trial transcript, that we were
18 talking about --

19 MR. SPENCER: Oh, I got you. Yeah.

20 MS. ZMROCZEK: You see what I'm saying?

21 MR. SPENCER: We're talking about Mr. -- we're talking
22 about Mr. Williams' plea transcript.

23 MS. ZMROCZEK: So maybe we can mark that as -- as -- as
24 ID just -- or I don't -- Judge, you understand what I'm
25 trying to just make it sure that --

1 THE COURT: Yeah.

2 MS. ZMROCZEK: -- it's clear that it goes up?

3 MR. SPENCER: I think it's part of the record at this
4 point.

5 THE COURT: The plea transcript as I understand is --

6 MS. ZMROCZEK: Okay.

7 THE COURT: -- and I've got -- let me ask, and this is
8 a terrible thing to do. I wanted to go to the -- I'm going
9 to the public index so that I can pull this exhibit up,
10 Mr. Spencer.

11 MR. SPENCER: Okay.

12 THE COURT: Because I want to follow along with you in
13 the plea transcript.

14 MR. SPENCER: Oh, certainly.

15 THE COURT: And so -- the last four digit I've got --
16 got 1848, but I don't know why I didn't write the rest of it
17 down, the case number so I can pop it in.

18 MR. SPENCER: Oh, okay.

19 MS. ZMROCZEK: It's 2014-CP-02-01848.

20 THE COURT: That's perfect. Let me just -- let me get
21 a second and get there because I want to follow along with
22 you.

23 MS. ZMROCZEK: I did too. Thank you. Sorry, David. I
24 didn't mean to interrupt. I'm going to mute myself now.

25 MR. SPENCER: Well, there's no problem. No problem.

1 THE COURT: All right. I'm there. I've got it. Thank
2 you, Mr. Spencer. Got it. I've got the transcript now.

3 MR. SPENCER: Okay, great. Thank you. Then I can go
4 ahead and carry on.

5 BY MR. SPENCER:

6 Q. Mr. Williams, I was just asking you -- first of
7 all, you recall that Mr. -- excuse me, Judge Early had said
8 he wasn't going to give you 10 years, right?

9 A. Right.

10 Q. All right. Now, he did mention that if you could
11 help with another matter, he might be able to revisit your
12 sentence, right?

13 A. No, I don't recall him mentioning that.

14 Q. You don't recall that?

15 A. I don't.

16 Q. Do you recall that you had offered to assist in
17 another case unrelated to the --

18 A. I remember that -- I remember that, but I don't
19 remember the judge saying anything about it.

20 Q. Okay. If the transcript says that, would you
21 disagree?

22 A. Say what?

23 Q. If the transcript said that -- if your plea
24 transcript said that, would you disagree?

25 A. If it said that, I couldn't disagree because it is

1 in writing.

2 Q. But you were going to try and help with another
3 case?

4 A. Thought about it. Thought against it.

5 Q. I'm sorry, what was that last part?

6 A. I thought about it, and then I thought against it.

7 So the --

8 Q. It was suddenly after?

9 A. I thought against it. So the case can be made
10 that if judge said that then I was probably to get something
11 out for my term, is that right?

12 Q. I'm trying to understand. So you do think --

13 A. I'm trying to --

14 Q. -- you thought you could help and then you decided
15 you didn't want to help, is that what you're saying?

16 A. Yes.

17 Q. Okay. All right. But the reason your attorney
18 filed that motion for reconsideration was in case you had
19 some information to offer and that information was helpful,
20 is that right?

21 A. I didn't --

22 MS. ZMROCZEK: Your Honor, I would object as to him
23 knowing why his attorney did something.

24 BY MR. SPENCER:

25 Q. Did your attorney tell you he's going to file a

1 motion for reconsideration?

2 A. No.

3 Q. So he just did it on his own without telling you?

4 A. Yes. If I had known, you think I would've asked
5 for a PCR if I knew he'd probably already done something?

6 Like I said, the case can't be made. That is the case. If
7 the judge said -- these are your words, if the judge said
8 that he was going to see if he could do something, that's a
9 promise in itself. If we -- if we go back by you saying that
10 I took promise, so you know what the promise is.

11 Q. Let me ask you this, so you let them know that you
12 might be able to help them, right?

13 A. Okay.

14 Q. Is that true?

15 A. Right.

16 Q. All right. Then you decided not to help them,
17 right?

18 A. Yes.

19 Q. So exactly what promise did Judge Early break if
20 you ended up not helping him?

21 A. Excuse me?

22 Q. What promise did Judge Early break if you didn't
23 end up helping him on that other matter?

24 A. I didn't say he broke. All I said was, you made
25 the case that he said he would do something right? That's

1 what you said. You just said that, right?

2 Q. Right. About the other case.

3 A. Exactly. So --

4 Q. And you didn't do anything?

5 A. Is that not a promise in itself?

6 Q. Well, that's a contingent promise, right?

7 A. But it's a promise.

8 Q. If you did something, Judge Early did something
9 else?

10 A. I didn't promise him anything. I didn't promise
11 anything. I said -- I made a statement. I said that I
12 would. Yes, I made a statement, but I didn't promise
13 anything.

14 Q. Did you ever file your PCR?

15 A. I didn't.

16 MR. SPENCER: All right. Do you recall -- you know
17 what? I think -- I don't think I have any further questions.

18 THE COURT: Just one second, y'all. All right.

19 Ms. Zmroczek, any re-direct?

20 MS. ZMROCZEK: Very briefly, your Honor.

21 THE COURT: Sure.

22 RE-DIRECT EXAMINATION

23 BY MS. ZMROCZEK:

24 Q. Mr. Williams, so -- did you meet with your
25 attorney and Mr. Molony with the solicitor's office? Did

1 y'all ever sit down and talk about your testimony?

2 A. I don't -- which -- which one? Are you referring
3 to that guy on top?

4 Q. I'm sorry, I didn't hear your question.

5 A. Which one? You're talking about the guy I was
6 just talking to?

7 Q. Yes. The one -- no -- no. The one who's raising
8 his hand. Can you raise it again? Thank you. That's
9 Mr. Molony. He's the prosecutor. Do you remember him?

10 A. If I -- I can't say if I remember him. I knew
11 that it was two guys, they were young, basically. Pretty
12 much all I can tell you.

13 Q. Mr. Molony used to be younger before he had kids.
14 Mr. Molony -- but -- so, I guess what we're trying to do is
15 -- I know this was your first time ever being involved in the
16 criminal system, right?

17 A. Yes, ma'am.

18 Q. And were -- and whose advice and information were
19 you relying upon to assist you through your case?

20 A. My lawyer's.

21 Q. Okay. And what -- and so what was your
22 understanding of -- if you testified at trial and said
23 certain things, what was your understanding is that you would
24 receive as a sentence?

25 A. 10 years.

1 MS. ZMROCZEK: Okay. That's all -- those are all the
2 questions I have.

3 THE COURT: Okay. So let me ask this question because
4 I don't know what this means. And I don't know if
5 Mr. Spencer, or Ms. Zmroczek, or Mr. Williams, if y'all can
6 help me, but I'm looking at the plea copy -- well, with the
7 judge. Mr. Williams, I'm looking at that. Okay? He's
8 having -- he's really speaking to -- to you. Okay? And --
9 and I'll just read it, Mr. Williams. Okay? So you know what
10 I'm talking about. Okay?

11 THE WITNESS: Okay.

12 THE COURT: And he says, "Well, I sort of tend to
13 believe that's not the type of person you are. I think the
14 type of person you are has been shown by coming forward and
15 being truthful about it, being a man about it. And
16 hopefully, as I said earlier, that when you get all this
17 behind you that you will continue to be a truthful and
18 trustworthy person and show us that this was a fluke, and
19 that -- and be a productive citizen. That's my hope for you
20 anyway.

21 And I will reconsider my sentence in the event that the
22 other information is forthcoming. Sentence of the Court to
23 both indictments is that you'll be sentenced committed to the
24 State Department of Corrections for 13 years. They'll run
25 concurrent. You're to be given credit for the time served."

1 And then you said, "Thank you, sir." What is being meant by
2 that?

3 THE WITNESS: By which part?

4 THE COURT: "I will reconsider my sentence in the event
5 that the other information is forthcoming." What other
6 information, Mr. Williams?

7 THE WITNESS: Information that the other guy was just
8 talking about. About another case or whatever the case would
9 be. The one where I said, "I don't think I'm going to do
10 that." And that's why I asked him, like -- that's why I
11 asked him the case could be made that the judge promised me
12 time cut off if I did that. So if I didn't do it then my
13 time won't be cut off. By reading that, anyone would see the
14 same thing that I said -- that I'm saying, that I was
15 promised something and given something completely different.

16 THE COURT: I understand. Now, you just -- you
17 testified in both of the co-defendant's case, right?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Mr. Salley's case and the other gentleman's
20 case, you testified in both of those cases?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: It -- and the -- what this is talking about
23 -- the other information to be forthcoming, that's a third
24 case?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Okay. Understood. Thank you,
2 Mr. Williams. Thank you very much for that. Got it. Okay,
3 and now does that prompt any questions, Ms. Zmroczek, from
4 you, or from Mr. Spencer?

5 THE WITNESS: What?

6 MS. ZMROCZEK: Just one follow-up question.

7 THE COURT: What I'm asking, Mr. Williams, since I've
8 asked you questions, I need to ask the lawyers the fact that
9 I've asked those questions of you, does that prompt any
10 questions that they need to ask? It's just to be fair, since
11 I've injected myself in that way. Ms. Zmroczek, does that
12 prompt anything else?

13 MS. ZMROCZEK: Just one question, your Honor. And I
14 appreciate you doing that because I do think it provides some
15 clarity, and I just wanted to make sure I understood his
16 answer so I don't misrepresent it.

17 FURTHER RE-DIRECT EXAMINATION

18 BY MS. ZMROCZEK:

19 Q. So Mr. Williams, when she asked you that question
20 about why you didn't go ahead and give information on the
21 third thing, it's my understanding that your answer was
22 because you had already been promised one thing and that
23 wasn't fulfilled, and so you weren't going to give any more
24 information. Is that the correct understanding of what
25 you're --

1 A. Yes, ma'am, you got it.

2 MS. ZMROCZEK: Okay -- okay. I just wanted to clarify
3 that to make sure I did not mistake that, your Honor. Thank
4 you.

5 THE COURT: All right. And Mr. Spencer, we have no
6 bandwidth. I hope it's -- is it me this time? There you
7 are. You know what? You're unfrozen. Mr. Spencer, do you
8 have any additional questions?

9 MR. SPENCER: No, your Honor. I don't have any further
10 question.

11 THE COURT: All right. And -- all right. And I --
12 Ms. -- and did -- Mr. Williams, you did file PCR or you did
13 not file a PCR?

14 THE WITNESS: I didn't because I talked to my friends
15 and they told me that if I file it into consideration,
16 they'll give me more time, so I just didn't do it.

17 THE COURT: Got you. I'm with you. And that's --
18 yeah. That is a risk that can happen. I understand
19 completely.

20 MS. ZMROCZEK: One thing I appreciate Mr. Williams is
21 that he said he is intelligent, and it -- and that clearly
22 shows.

23 THE COURT: Thank you.

24 MS. ZMROCZEK: So I wanted to make (inaudible) with the
25 correct answer.

1 THE COURT: Yeah. Thank you -- thank you,
2 Mr. Williams.

3 MR. WILLIAMS: Thank you, Judge.

4 THE COURT: And stay safe now. Stay well.

5 MR. WILLIAMS: You too.

6 THE COURT: Thank you. All right. And Ms. Zmroczek,
7 do you have any additional witnesses?

8 MS. ZMROCZEK: I do not, your Honor. And if we can
9 tell SCDC that they can release him, he doesn't have to sit
10 here and listen to us. Hammer on. But -- I think
11 (crosstalk).

12 THE COURT: He might find it entertaining; you never
13 know.

14 MS. ZMROCZEK: He may.

15 THE COURT: He may.

16 MS. ZMROCZEK: Especially -- especially if Finn makes
17 another appearance somewhere. So thank you, but I don't have
18 any more questions. Thank you.

19 THE COURT: All right. Mr. Spencer, do you have -- you
20 had wanted to call Mr. Molony, right?

21 MR. SPENCER: That's right. And, your Honor, I
22 apologize if I've not quite responsively -- you and some
23 other people have been kind of coming in and out.

24 THE COURT: I'm so sorry.

25 MR. SPENCER: Oh, that's okay. I think we're on track,

1 but I just want to let you know I'm having some issues
2 sometimes. I think I caught everything now.

3 THE COURT: Okay.

4 MS. ZMROCZEK: You know, David Henry's my neighbor. My
5 office is right across the street from his -- his house. I
6 can just go on over there and tell him to increase your
7 bandwidth.

8 MR. SPENCER: Yeah, that, yeah.

9 THE COURT: That's great.

10 MR. SPENCER: We're -- we're not cutting the agency, so
11 that wouldn't work. And if I may call Mr. Molony to --

12 THE COURT: Sure. To testify.

13 MR. SPENCER: -- to the stand for the oath?

14 THE COURT: Mr. Molony, if you would raise your right
15 hand?

16 KEVIN MOLONY,

17 being duly sworn, testified as follows:

18 THE COURT: Thank you.

19 THE WITNESS: Thank you.

20 THE COURT: Thank you so much. State your full name
21 for the record.

22 THE WITNESS: Kevin Molony.

23 THE COURT: Your witness, Mr. Spencer.

24 MR. SPENCER: Thank you, your Honor.

25 DIRECT EXAMINATION

1 BY MR. SPENCER:

2 Q. Mr. Molony, were you the prosecutor for the
3 Mr. Salley's and Mr. Quarles' trials?

4 A. I was.

5 Q. All right. And in the course of that, did you
6 have a chance to interview Mr. Williams?

7 A. Yes, I did.

8 MR. SPENCER: And -- I'm having connectivity issues at
9 my end. I don't know.

10 THE COURT: Just take your time.

11 MR. SPENCER: All right.

12 THE COURT: Okay.

13 BY MR. SPENCER:

14 Q. And Mr. Molony, if you answered my last question,
15 I didn't hear. I asked --

16 A. I did.

17 Q. All right. Now, at any point in time, did you
18 promise Mr. Williams 10 years?

19 A. No, I did not.

20 Q. Okay. So when Mr. Williams testified that there
21 were no promises or deals made for his testimony, was that
22 accurate?

23 A. It was.

24 Q. All right. What if he had mistakenly -- for
25 whatever reason, what if he had gotten that wrong? What if

1 he had answered that question incorrectly as you understood
2 it?

3 A. Just now or in the trial?

4 Q. I'm sorry, that's a whole -- that's a phrase. If
5 there was a plea offer and he testified there were no plea
6 officer -- offers, would you have corrected that on the --
7 while he was on the stand?

8 A. Yes.

9 Q. And you -- and it's important not to misrepresent
10 any plea offers -- again, whether --

11 A. Right.

12 Q. -- there's any plea offers, to the jury, right?

13 A. Yes. And I went back, I had them pull the
14 sentencing sheets for Mr. Williams' case, and we would always
15 write if there was a recommendation or some sort of an offer
16 on there, or a negotiated sentence, I would always write it
17 for Judge Early's wishes right beside where it says "Sentence
18 sheet in all dark letters." And not once, while I was a
19 prosecutor many years ago, it seems like now, did we promise
20 any co-defendant anything before he or she testified. So it
21 was no different in this case.

22 Q. So there absolutely were no promises made for his
23 testimony?

24 A. No. He was instrumental in both cases. And I
25 have no doubts that Mr. Smith, his lawyer -- you know, he

1 asked the judge for 10 years. Personally, I wouldn't have
2 been offended by it by any means if Judge Early would've
3 decided to go the 10-year route because Carlos was a great
4 witness. He was -- I honestly -- I honestly felt bad for the
5 guy. He made a dumb mistake, but he did -- as the transcript
6 reads, he came to the table and was truthful throughout.
7 Really a nice guy to be around, but it was an open plea and
8 the judge did what the judge did. So...

9 Q. And so, you had no control over what sentence
10 Judge Early were going to hand down?

11 A. No, I did not.

12 Q. And you didn't tell Mr. Williams or his attorney
13 you had any control over what the ultimate sentence would be?

14 A. No, I did not.

15 Q. And I think -- and -- you know, you just heard
16 some testimony about some information on a third case that
17 Mr. Williams offered. Was that in any way related to this
18 armed robbery?

19 A. No. And in fact, if I remember correctly, it was
20 a separate murder case, I believe, that I was not even the
21 prosecutor of. I don't know if he told Mr. Smith that he had
22 information or if someone at one of the local agencies
23 sheriff's offices thought he may, I don't remember exactly
24 what the communication was, but there was a murder case that
25 had nothing to do with -- with his case or Salley's or any of

1 the other case that he mentioned some point that he would --
2 he had information on, which is what Judge Early is
3 referencing at the end of his plea as far as if things are
4 forthcoming. Meaning if Carlos was able to provide
5 information on -- I believe it was a murder case.

6 If that was helpful, then he would take that into
7 consideration as far as a reconsideration. But again, I had
8 nothing -- I wasn't the prosecutor of that case. I don't
9 even remember exactly what type of case it was. I just know
10 it was a separate criminal matter that was pending.

11 MR. SPENCER: All right. I don't think I have any
12 further questions.

13 THE COURT: All right. Thank you. Cross-examination,
14 Ms. Zmroczek?

15 CROSS-EXAMINATION

16 BY MS. ZMROCZEK:

17 Q. Thank you. Good afternoon, Mr. Molony.

18 A. Hey.

19 Q. You know, the (crosstalk) of you being old.

20 A. Oh, I am. Yes, I am. Yeah.

21 Q. So I -- he was asking you about the plea
22 transcript. Do you happen to have a copy of that in front of
23 you, or have you seen it?

24 A. I do, yeah.

25 MS. ZMROCZEK: Okay. So I was interested on the page

1 -- sorry, it looked like -- okay, so -- sorry, just had it
2 marked, and I don't know where it went. Okay. I beg the
3 Court's indulgence.

4 THE COURT: Okay.

5 MS. ZMROCZEK: So I have it in front of me.

6 THE COURT: That's okay.

7 MS. ZMROCZEK: Put my paper down.

8 THE COURT: Go on -- go on.

9 BY MS. ZMROCZEK:

10 Q. Okay. So I guess I can't find it right this
11 second. So did Andy Smith -- Mr. Smith have a -- a
12 conference in the judge's chambers that maybe wasn't put on
13 the record?

14 A. I heard the last part, I mean --

15 Q. Okay, go on.

16 A. Oh.

17 Q. Okay. Sorry. I'm on the second to last page of
18 the transcript.

19 A. Okay.

20 Q. Where about the fourth line down, it says, "For
21 the record, we had an in-chambers discussion discussing
22 this." I guess that's the point of -- what's that -- what's
23 this? Because obviously I wasn't there, Mr. Williams wasn't
24 there. It seems like Mr. Smith, and the Court, and you were
25 there. So when he said, "We had an -- let's not put that on

1 the record out here," which is sometimes frustrating for
2 people who are trying to armchair quarterback because I have
3 no idea what that is in reference to, if maybe you could
4 enlighten that.

5 THE COURT: Yeah, I saw that too, Ms. Zmroczek. Yeah.

6 THE WITNESS: It was in reference to -- again, I
7 believe it was a murder case that was pending in the office
8 that Carlos had come forward, either with -- with Andy Smith,
9 his lawyer, I don't know exactly how that information came.
10 But ultimately, Andy in chambers, with Judge Early, was
11 discussing that Carlos could potentially help the State in a
12 completely separate matter. And I don't remember who -- what
13 case that was. I know it wasn't my case.

14 BY MS. ZMROCZEK:

15 Q. Okay.

16 A. I wanted to say that it was (inaudible) may have
17 been prosecuting it, pending murder case. And so ultimately,
18 Judge Early is referencing to that. And if he's able to
19 provide information on this murder case that was determined
20 helpful by the State, that Judge Early would take that into
21 consideration with the motion to reconsider, that Andy filed.

22 Q. Okay. So I want to ask you briefly -- obviously
23 this was a long time ago, but when you were -- so
24 Mr. Quarles's trial was first, and then Mr. Salley's was
25 second, correct?

1 A. I believe so, yeah.

2 Q. Okay. Did you sit down -- how many times did you
3 sit down with Mr. Williams to prepare his testimony?

4 A. I couldn't tell you any -- I would say at least
5 twice. One for each trial.

6 Q. And was it -- was his lawyer present as well?

7 A. Yes -- yes.

8 Q. Okay. And in -- in one of the trials -- and it
9 may have been Mr. Quarles -- so you recall Mr. Chester being
10 Mr. Quarles's attorney?

11 A. I didn't know till you said that, yeah.

12 Q. Okay. And we have a copy of that trial
13 transcript, but -- and I don't know if you've seen it or not,
14 but Mr. Chester is somebody who you knew to be a defense
15 attorney, right?

16 A. Yes.

17 Q. And he was familiar with -- with how to cross
18 snitches or co-defendants?

19 A. I think he's a good lawyer.

20 MR. SPENCER: Your Honor, I would --

21 MS. ZMROCZEK: Okay. And in fact --

22 MR. SPENCER: Your Honor, I would object. I think
23 we're getting off track of whatever we're missing here.

24 MS. ZMROCZEK: I'll bring it back -- I'll bring it
25 back.

1 MR. SPENCER: Okay.

2 BY MS. ZMROCZEK:

3 Q. I'll bring it back. So Mr. Molony, in both that
4 trial and in Mr. Salley's trial, you asked -- I think your
5 third question was: And were you promised any deals, or were
6 you promised anything? Right?

7 A. I would ask that in all of them. So I -- yeah, I
8 would assume so.

9 Q. Okay. Which brings me to kind of my next point.
10 Like, so when you were the prosecutor and you're meeting with
11 testifying co-defendants, if for whatever reason in federal
12 court, when they do that, they do proffers where they write
13 out what -- what's the deal they're getting, but they don't
14 do that instead, right?

15 A. That's right.

16 Q. But what they do do instead is -- is what we,
17 defense attorneys, like to call "A wink and a nod."
18 Basically, the first one on the bus generally understands
19 that they're going to get a better treatment than their
20 co-defendants. Is that -- is that your understanding?

21 MR. SPENCER: Your Honor, I object. This is not really
22 relevant to the issue, whether there's an exact promise.

23 THE COURT: Okay. Yeah, I'll allow it.

24 THE WITNESS: Oh. I -- I've never winked or nodded
25 with them, but I made the -- the office there, and Storm did

1 a good job at the time of making us -- making sure we were
2 extremely careful in that regard. In that, it was almost
3 over the top that they knew that there were no promises,
4 because the last thing you wanted was any inclination by them
5 that something like this would happen.

6 So now, at the same time, I think the -- the same -- if
7 you help, it's pretty easy for his lawyer to tell him, "Look,
8 it allows me to go in front of the Court and say, 'Look at
9 what he's done. He has testified in these two cases.'" And
10 this is a perfect example of it. With Mr. Salley getting 35
11 years and Carlos getting 13 -- you know. I think ultimately,
12 his -- his helping the State in this case certainly helped
13 him out, but it's not something you tell him. You know, and
14 Judge Early could have given him 30 right then.

15 Frankly, I -- I didn't know what he would've done, but
16 Carlos was extremely helpful, like I said and -- this is one
17 I remember because I really liked Carlos, and -- you know,
18 one of those things that it was -- I don't know that he had a
19 prior record at all. If he did, it was minimal. So there
20 was no -- we did not nod...

21 BY MS. ZMROCZEK:

22 Q. We could have...

23 A. Certainly.

24 Q. And you said that...

25 A. Now you go ahead, sorry.

1 Q. Oh, I'm sorry. You said that he was instrumental
2 in both cases because he is the only witness who actually
3 placed people at the scene. Is that correct?

4 A. If I remember, he may have been the only
5 individual -- yes, who was able to identify Mr. Salley.

6 Q. And if ...

7 A. Because I believe they had mask on.

8 Q. And -- and in fact, they had -- because there were
9 photo lineups done, if you remember, that Mr. Williams was
10 picked out of the photo lineup, but Mr. Salley was not, is
11 that correct?

12 A. I -- I don't...

13 MR. SPENCER: Your Honor, I object. I think we're on
14 the field of issue of any promises or anything like that.

15 MS. ZMROCZEK: Your Honor, I think it just goes a
16 little bit to the background of why his testimony was so
17 important to the case, and maybe what his understanding of
18 what he would receive as a result of that testimony, and
19 that's the last question I had about that, so...

20 THE COURT: Oh, okay. I was just (inaudible) back to
21 the transcript because as -- and I just read it, I thought
22 that -- that Judge Early remarks that the case that
23 Mr. Williams' testimony was -- was extremely important. Did
24 I read that correct? It looked -- it almost looked like,
25 Mr. Molony, it should have been your argument, but I think it

1 was what Judge Early himself said. He must have tried. He
2 must have tried those two cases. Did he?

3 MS. ZMROCZEK: He tried -- he tried Mr. Salley's. I
4 think Keys might have tried the other one.

5 THE COURT: Got you -- got you. But he clearly made
6 that comment?

7 MS. ZMROCZEK: Right.

8 THE COURT: Or at least the (crosstalk).

9 MS. ZMROCZEK: It was -- I believe that's -- yeah.

10 THE COURT: So when the judge makes a comment, then
11 obviously that clearly is something that the judge is aware
12 of. Yeah.

13 MS. ZMROCZEK: All right. And then -- and I believe
14 that those are all the questions I have for Mr. Molony.
15 Thank you.

16 THE COURT: Any re-direct, Mr. Spencer?

17 MR. SPENCER: No, your Honor.

18 THE COURT: Thank you so much, Mr. Molony. I really
19 appreciate your time this afternoon.

20 THE WITNESS: Anytime. Thank y'all.

21 THE COURT: You take good care. All right,
22 Mr. Spencer, anyone else?

23 MR. SPENCER: No, your Honor. That's it. I think
24 we've flushed that issue out -- you know, for your Honor to
25 make a determination on, and we just have the matter of both

1 parties submitting proposed orders at this point.

2 THE COURT: I think that's correct. Yeah, we...

3 MS. ZMROCZEK: And your Honor, I just...

4 THE COURT: Go ahead, Ms. Zmroczek.

5 MS. ZMROCZEK: Oh no -- no, I'm sorry. I was going to
6 say, I -- so I had -- as -- I know Mr. Spencer has too,
7 because he and I have been communicating, which I really
8 appreciate people on the other side communicating with me.
9 But I believe that we're both -- we were just finishing up
10 the proposed orders with just -- all we had to do was plug
11 this in, so I don't anticipate -- and that's why Mr. Salley
12 was very keen on waiving his presence here today, because
13 obviously, you know, he would've just been sitting around.
14 And so I let him know that by doing this, that we -- that
15 Mr. Spencer and I could both submit our proposed orders,
16 hopefully relatively quickly and get a ruling one way or the
17 other.

18 THE COURT: Sure.

19 MS. ZMROCZEK: It's stuck right now.

20 THE COURT: How long -- I'm just asking the question;
21 how long do you need to -- to be finished with them?

22 MS. ZMROCZEK: I can submit mine by Friday.

23 THE COURT: Wow, that is fast. Mr. Spencer?

24 MR. SPENCER: Your Honor, I would just ask rather than
25 Friday, a week from Friday, if that's all right. Just...

1 THE COURT: It is.

2 MR. SPENCER: And, you know, I'm pretty close. I
3 should have it ready.

4 THE COURT: Why don't you just take that time,
5 Ms. Zmroczek, and just finish it when he finishes it, because
6 I don't look at -- I typically wait to get both to look at
7 either one.

8 MS. ZMROCZEK: That's fine.

9 THE COURT: I just (crosstalk) there, folks. Just wait
10 and get it.

11 MS. ZMROCZEK: And -- and I think the public index has
12 all of the exhibits, right?

13 THE COURT: Right.

14 MS. ZMROCZEK: Because I want to make sure that --
15 okay.

16 THE COURT: I'm not -- I don't want to make that
17 representation, but if you find it to be otherwise, let me
18 know. Okay?

19 MS. ZMROCZEK: Okay. And I think I had some CDs and
20 things that I provided to Mr. Spencer. I think the phone
21 records -- because they were so voluminous, we put on CDs.
22 But I could -- whatever Mr. Spencer doesn't have, if he wants
23 to look through that list, I'll make sure that he gets --
24 he's right down the street, so...

25 THE COURT: Okay. Very close? Thanks.

1 MR. SPENCER: That's right. Yeah, your Honor, if I
2 could just one more thing --

3 THE COURT: Sure.

4 MR. SPENCER: -- that just came now? The nature of the
5 application -- and I'm not -- I want this to be taken as a
6 criticism or anything. The nature of the application was a
7 little open-ended in the sense that -- you know, certainly
8 understood the -- what was being alleged, but sometimes I'm
9 not sure which facts go with which allegation, if you will.
10 And I just -- one mechanism I was going to ask is for the
11 ability, if it's necessary, after we submit proposed orders
12 to maybe do -- be able to do an objection by email, whatever
13 to anything, or ask for additional briefing in case I've
14 missed something. I want to address everything they're
15 addressing and address it fairly.

16 THE COURT: I have no problem with that at all.

17 MR. SPENCER: Thank you, your Honor. That's great.

18 THE COURT: And I tell you, probably what makes sense
19 is that once you have received -- once that Friday has come
20 and gone, then why don't you -- the following Monday or
21 Tuesday, just take a look? If y'all have any concerns, let
22 Mark or Kay know, and we'll have another quick conference
23 call, and we'll hash out what your concerns are.

24 MR. SPENCER: Certainly -- certainly.

25 THE COURT: And then what's the most appropriate thing

1 to do? Is it -- is appropriate to submit objections or some
2 sort of reply brief or whatever?

3 MS. ZMROCZEK: It could even just be an amended order
4 dismissal on my part or possibly Ms. Zmroczek's part.

5 THE COURT: Right. And -- but let's just -- if there
6 are those concerns, let's get together and just hash that
7 out. I don't know what you having to -- to do something and
8 then you got to do something else. Do you know what I mean?

9 MR. SPENCER: Sure -- sure.

10 THE COURT: Okay.

11 MS. ZMROCZEK: Especially with Judge -- Justice
12 (inaudible) you know, the way that he, like, argues that we
13 don't -- we as the bar don't provide y'all with, like, sort
14 of order. So I know they'll be trying to get that right back
15 to you. So hopefully between -- yeah, I know just returning
16 more paperwork, but -- but hopefully Mr. Spencer and I can --
17 can clarify that out.

18 THE COURT: That would -- I'll -- I'll let that be.
19 You know, I --

20 MS. ZMROCZEK: Yeah. Exactly. I've been on the
21 receiving end of that.

22 THE COURT: I'm a fan -- I'm a fan of lawyers. I'll
23 say this, I'm a fan of lawyers and I have never over 25 years
24 have needed something from attorneys that I have
25 communicated, that, "I need this, please help me," and they

1 have not provided it. That's it. I'll stand -- I'll stand
2 on that statement, if I may.

3 MS. ZMROCZEK: And we appreciate that. Thank you.

4 THE COURT: That has been my experience. I'm a fan.
5 (Inaudible) be more lawyers.

6 MS. ZMROCZEK: I know. Be more of us.

7 THE COURT: We don't get to have a miracle without
8 lawyers.

9 MS. ZMROCZEK: Which -- Mark, you should find out this
10 week, right, about -- or this month anyway?

11 MR. HINDS: If you know something, let me know.

12 THE COURT: Please stop laughing. He just put his --
13 put -- took his blood pressure up like 10-point aneurism.
14 He's just...

15 MS. ZMROCZEK: My former law clerk...

16 THE COURT: He just...

17 MS. ZMROCZEK: My former law clerk is...

18 THE COURT: He just (inaudible) from this morning, and
19 now he's back up where I was. So...

20 MR. HINDS: It's just going to be this week.

21 MS. ZMROCZEK: My former law clerk called me yesterday.
22 He's with Judge Hayes now. And he called me, and he was
23 like, "It's October." Like he was having a panic attack. So
24 I understand.

25 MR. HINDS: Yeah -- yeah, let's kind -- I think it's

1 gonna be Friday, though. So we'll -- we'll see.

2 MS. ZMROCZEK: That's what I heard.

3 THE COURT: He is going to be fine. I'm not worried.
4 Not worried at all. All right. Thank y'all so very, very
5 much. Be well and be safe.

6 MR. SPENCER: Thank you, Judge.

7 THE COURT: Now if something comes up and y'all need
8 more time, just get together with each other, figure out a
9 new time schedule, send to Mark and Kay, and we'll mark our
10 calendars. Not a problem.

11 MR. SPENCER: Certainly -- certainly, thank you.

12 THE COURT: Thank you so much. Y'all be well and be
13 safe, and thank you kindly. Bye now.

14 MR. SPENCER: Have a good evening.

15

16 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)

17

18

19

20

21

22

23

24

25

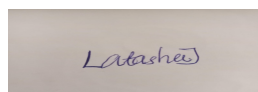
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF TRANSCRIBER

I, LATASHA JEFFERSON, 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 South Carolina Circuit Court 2 of Aiken County, South Carolina, on October 6, 2021.

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

June 29, 2025.

A rectangular box containing a handwritten signature in blue ink that reads "Latasha".

LATASHA JEFFERSON
Transcriber

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Jamaques Salley, #345433,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2014-CP-02-1848

ORDER OF DISMISSAL

FILED 12-27 20 21 3:04
SP
Robert J. White
C.C.P. & C.S.
Shadell Phlips
Deputy Clerk

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 14, 2014. Respondent made its Return on January 23, 2015. An evidentiary hearing was convened on May 24 and 25, 2017, at the Aiken County Courthouse. Applicant was present at both days of the hearing and was represented by Aimee J. Zmroczek, Esquire. The State was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Barry Thompson, Timothy Davis, and Shawneta Davis. Thomas Broadwater, Esquire ("Trial Counsel") testified during the State's case. This Court had before it the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, the trial transcript, and the pleadings from both parties. As discussed below, this Court also has before it the transcript from codefendant Carlos Williams' guilty plea hearing.

Following the hearing, this Court left the record open to obtain additional testimony. An additional hearing was held on August 14, 2017, at the Dorchester County Courthouse. Applicant was present and represented by Attorney Zmroczek. Respondent was represented by Assistant

Attorney General Coleman. At the hearing, Applicant presented testimony from Chris Watkins and Robert Watkins.

On May 2, 2019, Senior Assistant Attorney General David Spencer, on behalf of the State, moved to open the record and submit codefendant Carlos Williams' plea transcript. This Court granted the motion, and after consultation with the parties, convened a supplement virtual hearing on October 5, 2021. Ms. Zmroczek informed this Court that Applicant was unavailable due to a cell block quarantine and that Applicant waived his presence at the virtual hearing. Limited testimony was presented from codefendant Carlos Williams and from the lead prosecutor in the case, Kevin Molony, Esquire.

PROCEDURAL HISTORY

The records before this Court indicate the Applicant, Jamaques Salley, is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted at the May 2013 term of the Aiken County Grand Jury for kidnapping (2013-GS-02-00758) and armed robbery (2013-GS-02-00757). Thomas D. Broadwater, Esquire represented Applicant on the charges. Assistant Solicitor Kevin Molony prosecuted the case. On August 8, 12, and 13, 2013, Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III, and was found guilty as indicted. On August 13, 2013, Judge Early sentenced Applicant to thirty years for armed robbery and five years for kidnapping, to run consecutively.

A timely Notice of Appeal was filed on Applicant's behalf. By Order filed September 30, 2014, the South Carolina Court of Appeals granted Applicant's request to withdraw his appeal. The Remittitur was issued on October 16, 2014.

FACTS AT TRIAL

The State's evidence showed that on February 19, 2013, Applicant and his co-defendant, Carlos Williams, came into the Quick Cash store in Aiken wearing gloves and black hoodies, holding fake pistols and a Taser stun gun, and stole about \$450 from the cash register. During the robbery, Applicant lifted up the shirt of the victim, Penny Guerrieri, and deployed the Taser into her back. The two men left the victim curled up underneath her desk and ran out of the store. Tr. pp. 52-65.

The victim, Penny Guerrieri, was the first witness for the State. She testified she was working at Quick Cash at the time of the robbery. She testified the cash drawer contained about \$450 at the time of the robbery. She arrived at Quick Cash around 8:45 a.m. and opened the store at 9:00 a.m. Two customers came in, then a third person entered, a black male in a white hoodie with a red symbol on the front. After speaking with Guerrieri for a couple minutes about how to get a loan, the man left the store. Tr. pp. 52-55

Thereafter, Guerrieri saw two black males with black hoodies walking towards the store. They turned away when the mailman parked in front of the store and they walked towards the Days Inn. When the mailman delivered the mail, Guerrieri told him about the two suspicious men. After the mailman left, she called Aiken Public Safety to report the men, and when she hung up the phone, she realized the two men were now in the store. One man pointed a gun at Guerrieri's face and the other turned the lights off. At their request, she opened the cash drawer, then the robbers pushed Guerrieri into the corner and rummaged for money. Tr. pp. 56-60.

When asked about the gun, Guerrieri testified it looked real to her. She explained one of the men came around the counter, lifted the back of her shirt, and deployed a taser on her back. She fell to the floor and they ran out. She testified she never saw either of their faces because she was more focused on the gun. She eventually rose from the floor, locked the front door, and

called Public Safety while hiding under the store counter. Tr. pp. 60-62; p. 65. She noted the robbers wore white gloves, but she did not know if they were latex gloves. Tr. p. 65.

Wayne Brinegar was the mail carrier. He testified he arrived at Quick Cash and parked his vehicle at about 10:15 a.m. Guerrieri told him she was nervous about two black men on the street and asked if they were still outside. Brinegar stepped outside and saw the two black men in black hoodies still milling around and walking towards Days Inn. He reentered the store and provided Guerrieri with the phone number for the police department. He noticed the two men were still milling around and they stood by the Days Inn as he continued to deliver mail. He made three or four more deliveries before he heard the sirens. Tr. pp. 66-70.

Sheila Fulmer worked at a daycare center across the street. Looking out a window that morning, she saw a silver truck drive slowly, back up, stop, and pull into a dirt parking lot behind the daycare. She saw a passenger, a man in a white hoodie with a symbol on the front, leave the truck and cross the street to Quick Cash. She walked away from the window, but later looked out the window and saw the man in the white hoodie get in the driver seat of the truck, and she saw two other men in hoodies by the truck. The two men walked across the street, then towards the Days Inn. She felt something was going on and told her sister, who also works at the daycare, to call 911. Tr. pp. 73-76.

Fulmer's sister, Kathy Holsenback, testified consistently with Fulmer. She explained the two men wore black hoodies and one carried a backpack. They both wore white gloves. She was concerned enough to move all the children into one room for their safety. The sisters called Public Safety. Tr. pp. 80-82.

Carlos Williams admitted he was the robber that entered Quick Cash with a gun. Applicant was the other robber. The robbery was Applicant's idea: Applicant told Williams "he

got this place he's been looking at for about a year. I said okay." Tr. pp. 90-91. Williams testified he knew Applicant for about five years. He knew the third accomplice, Michael Quarles, through Applicant. He testified the gun was a BB gun purchased from Wal-Mart. He explained he went with Applicant to Wal-Mart a week before the robbery where Applicant purchased the gun. He identified Applicant on the Wal-Mart surveillance video as the purchaser of the gun. He explained they cut the orange tip off the BB gun to make it look like a regular gun. Tr. pp. 89-96.

Williams testified he was with Applicant when Applicant purchased a taser on the Saturday before the robbery from a flea market in Augusta. They went back to the flea market the next day because they did not have the key for the taser. Williams testified he borrowed his fiancé's step-dad's truck for the robbery. He picked up Quarles and then Applicant at Applicant's house. Tr. pp. 97-100.

They went to Roses Department Store to purchase a book bag. Williams wore a white hoodie, while Quarles and Applicant wore black hoodies. At trial, Williams identified himself, Quarles, and Applicant as the individuals in the Roses surveillance video entered by the prosecution into evidence. Tr. pp. 101-03. The three men then drove to Quick Cash and parked in the parking lot by the daycare. Williams swapped hoodies with Quarles, and Quarles walked into Quick Cash to scope the store under the pretense of asking about how to obtain a loan.

Williams and Applicant delayed entering the store after the mailman pulled up in front of the store. Instead, they walked down towards the Days Inn. After the mailman left, they entered the store and Williams pulled out the gun. Applicant did not have a gun, but he turned out the lights. The clerk opened the cash drawer and Williams took the money, about \$500, and put it in the book bag. Williams heard the taser discharge and the clerk hit the floor. The robbers walked

out of the store and broke into a run to reach the truck. They made their getaway and split the money — they gave Quarles the gun and taser. During his testimony, Williams identified the receipt from Roses. Tr. pp. 107-114.

Williams carried his cell phone on him at the time of arrest; and at trial, he identified several text messages between him and Applicant retrieved from his phone. Tr. pp. 116-20. The texts discussed going to the flea market in Augusta, plans for the robbery, and a question about disguises. Tr. pp. 119-21.

On cross-examination, Williams agreed one of the texts suggested Applicant was not participating in the robbery. They initially agreed not to do the robbery the next day, but they ended up carrying it out anyway. As Williams explained, he asked Applicant that question, but Applicant did not actually say he would not commit the robbery. Williams also agreed they wore latex gloves, but he threw them out the window while driving away from the robbery and he was unable to locate them for law enforcement. Tr. pp. 123-26. Williams explained he and Applicant wore the same kind of latex gloves where they worked together at Carlisle Tire. Tr. p. 130.

Virginia Jackson, the cashier at Roses, identified Applicant as the purchaser of the book bag. She testified when Applicant purchased the book bag, she checked his identification against the credit card to verify it was the same person. She noticed his goatee in the picture and in person. She identified herself and the transaction depicted in the Roses surveillance video. She explained how she was checking Applicant's drivers license after Applicant presented a credit card to make the purchase. She explained she compared the face on the drivers license to Applicant. Tr. pp. 132-36; p. 139; p. 142.

The last witness was the lead investigator, Jeremy Hembree, who testified about his investigation, which began when he saw the vehicle matching the description of the vehicle identified at the crime scene. It was parked in front of a business called the Busy Bee. He found Williams inside and interviewed Williams. Williams was subsequently arrested and Investigator Hembree seized Williams's cell phone and \$168 cash. Applicant's phone was seized when he was arrested. Law enforcement also seized Applicant's red Visa credit card issued by the Navy Federal Credit Union. Tr. pp. 144-49.

Investigator Hembree testified Applicant's phone was an Android phone, and he was able to download texts from it with a Cellbrite machine. Investigator Hembree confirmed his agency downloaded and maintained information using a Cellbrite machine in the normal course of the agency's business. Investigator Hembree noted the same text communications were obtained from both Applicant's cell phone and Williams' cell phone. Tr. pp. 150-53. One of the texts recovered from Applicant's cell phone was a text to his stepfather telling the stepfather to tell police Applicant was home with him all day. Tr. p. 155.

The defense presented Bill Barley, a professional photographer, in order to submit into evidence several still photographs developed from the Roses surveillance video. Tr. p. 179. Trial counsel would argue that the still photographs depicted someone other than Applicant as the purchaser of the book bag. At the PCR hearing, Applicant explained, "[T]he strategy became, okay, enhance this video, get it big enough so that we can present it at trial and show because the State's case was basically to put me with my codefendants that morning." PCR Tr. p. 65, lines 17-25.

Applicant testified in his own defense. Applicant admitted during direct examination that he was convicted for an assault in 2009. He explained it was based on "a situation" with

Williams' sister. Applicant testified he held an account with Quick Cash and would not have robbed the store because they would recognize him there. He testified he worked with Williams until about two weeks before the robbery when Williams was laid off. When Williams was laid off, Applicant suggested he get a loan from Quick Cash. Williams said he might as well rob the place. Applicant claimed he told Williams he could not rob the place because they know him there. Tr. pp. 183-88.

Applicant told the jury that was not him in the Roses surveillance video. He admitted Williams and Quarles came to his house the morning of the robbery, but denied going with them. Applicant also admitted he bought a Taser at the flea market, but claimed he did not have a key to make it work. Applicant admitted asking Williams to take him back to the Augusta flea market the next day to retrieve the key for the Taser. He admitted "that was the plan but it never happened." Tr. pp. 188-93; p. 197 (direct quote, p. 193, lines 9-10). He did not dispute the credit card admitted into evidence was his credit card. Tr. p. 195.

On direct examination, Applicant agreed he knew Williams's brother, David Garvin, but replied he could not identify the people in the photographs entered into evidence when asked if Garvin appeared in any of the photographs and added he had not seen Garvin in a few years. Tr. p. 193, lines 11-19.

Applicant claimed he was on his couch at home between 9 and 11 a.m. the morning of the robbery. Tr. p. 194. He agreed with the prosecutor that he was the person purchasing the BB gun at Wal-Mart in the surveillance video. Tr. pp. 196-97.

Trial counsel recalled Guerrieri who testified she was able to identify Williams, but could still not identify the second robber. Tr. p. 200. Trial counsel also called Chief Investigator

David Savoy, who acknowledged the existence of several items seized and/or sent for testing in which the testing was not completed. Tr. pp. 206-07.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. Failure to investigate.
2. Newly Discovered Evidence
 - a. Video of all suspects together prior to robbery (enhanced video).
3. Failure to file Direct Appeal

Applicant filed an amended application on May 11, 2016, adding the following allegations:

- (a) Ineffective assistance of trial counsel to properly preserve appellate issues and improperly withdrawing appeal without consulting the client;
- (b) Ineffective assistance of counsel for failing to decline the case and being hired a day before trial;
- (c) Ineffective assistance of counsel for failing to challenge the grand jury and subject matter jurisdiction;
- (d) Ineffective assistance of counsel for failing to review discovery and prepare a defense, including an alibi defense with client;
- (e) Ineffective assistance of counsel for failing to make proper objections and preserve appellate issues;
- (f) Ineffective assistance of counsel for failing to object to improper impeachment;
- (g) Ineffective assistance of counsel for failing to prepare adequate jury charges and object to improper jury charges;
- (h) Ineffective assistance of counsel for failure to prepare mitigation after trial including not addressing sentencing disparities amongst co-defendants;
- (i) Prosecutorial misconduct including withholding and mischaracterizing evidence amounting to *Brady* violations;
- (j) Ineffective assistance of counsel for failing to properly research and present an expert regarding digital images presented at trial;
- (k) Ineffective assistance of counsel for failing to file pretrial motions and have a competent understanding of the criminal procedure and due process;
- (l) Ineffective assistance of counsel due to cumulative error.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

DISCUSSION

In a post-conviction relief action, an applicant carries the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, an applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989); Padilla v. Kentucky, 559 U.S. 356, 371 (2010) ("Surmounting Strickland's high bar is never an easy task.").

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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.

This Court will now address each allegation of ineffective assistance of counsel:

Authentication of evidence

Applicant alleges counsel was ineffective for failing to object to introduction of the video surveillance from Wal-Mart and Roses, and also for failing to object to the introduction of texts because the surveillance and texts were not properly authenticated.

"The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901(a), SCRE. The rule provides non-exclusive examples of how the authentication requirement may be satisfied. Rule 901(b), SCRE.

"The burden to authenticate is not high and requires only that the proponent offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic." Deep Kell, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 64-65, 773 S.E.2d 607, 610 (Ct. App. 2015) (internal quotation marks and alterations omitted).

(a) Video surveillance from Wal-Mart and Roses

At trial, Applicant's co-defendant, Carlos Williams, identified the video surveillance recordings from Wal-Mart and Roses and the accompanying still photographs. He verified he watched the videos and they were fair and accurate representations of himself and Applicant at these stores. For both videos, he identified himself and Applicant on the video and described what they were doing in the video. Tr. pp. 93-96; pp. 101-05.

Virginia Jackson, the cashier at Roses who transacted the purchase of the book bag in the surveillance video testified she previously watched the video. She then described for the jury the

photographic stills from the video that depicted Applicant purchasing the book bag and her accepting his credit card and checking it against Applicant's driver's license to ensure it was his credit card. Tr. pp. 133-39; p. 142.

Applicant testified at trial he was not the purchaser depicted on the Roses surveillance video. However, Applicant admitted he was one of the people depicted in the Wal-Mart Video. Tr. pp. 196-97.

This Court finds Applicant has not met his burden of showing counsel was deficient. Williams' testimony alone authenticates the videos such that the jury could be assured that the videos are what the prosecution claimed, videos depicting Williams and Applicant purchasing BB guns at Wal-Mart and a book bag at Roses. Therefore, counsel was not deficient for not objecting to the videos on the grounds of authentication. Further, because sufficient foundation was presented to authenticate the videos, Applicant was not prejudiced, especially where he identified himself in the Wal-Mart video. These claims are therefore denied.

(b) Texts from Applicant's phone

Applicant complains counsel should have objected to texts from his cell phone based on authentication. At trial, testimony established that Applicant's cell phone was seized when he was arrested. Counsel testified at the PCR hearing that a warrant for the content of his cell phone was issued. At trial, Detective Jerry Hembree testified he used a Cellebrite machine to download the materials from Applicant's cell phone. The report generated was several thousand pages in length. However, an extract or summary of this report was admitted into evidence without objection after Detective Hembree verified the downloads were items kept in the ordinary course of business by criminal investigators and the extract was a true and accurate

copy of the relevant downloaded materials. Tr. pp. 150-52. Counsel testified he felt the authentication of the records was sufficient. PCR Tr. pp. 150-52.

Applicant's expert witness, Chris Watkins, confirmed Cellebrite is a software program commonly used by law enforcement, and described it as "a great tool utilized for extracting data from cell phones." PCR Tr. II (Aug. 14, 2017) p. 32, lines 13-23. Watkins further testified he estimated the full report was around 600 pages and it was proper to create a summary report from the data as done in the present case. PCR Tr. II p. 33, lines 10-17.

This Court finds counsel exercised reasonable professional judgment in declining to object to the cell phone report and his performance was not deficient in this regard. Further, this Court finds sufficient foundation was presented to authenticate the records. This Court finds that while the cell phone texts were probative of Applicant's guilt, even if counsel sufficiently suppressed these records, the absence of these records was not reasonably likely to affect the outcome of trial considering the overwhelming evidence of guilt.

Further, this Court rejects Applicant's contention that representatives from the cell phone providers were necessary to authenticate the records since the records were not received from the cell phone provider, but were retrieved from Applicant and his codefendant's cell phones that were seized by law enforcement. This allegation is denied.

Expert required for text messages

Applicant also claims counsel should have objected to Detective Hembree testifying about the extraction of text messages without being qualified as an expert. This Court does not believe Detective Hembree was required to be qualified as an expert to testify about the process of extracting texts from the cell phone. Further, he testified that the extractions are done routinely and they are maintained in the ordinary course of the agency's business. See State v.

Brown, 424 S.C. 479, 490, 492, 518 S.E.2d 735, 741-42 (2018) (advising expert testimony is not necessary for the introduction of GPS records and noting authentication is permitted by someone with general knowledge and experience with the system used who can explain about how the records are generated and who can confirm the accuracy of the result). Notably, Applicant never disputed the accuracy of the messages extracted when he testified at trial. This Court finds, consistent with the holding in Brown, there is no requirement that an expert testify to authenticate texts extracted from a cell phone as done in this case.

This court finds Applicant has not met his burden of proving either prong of Strickland and denies this allegation.

Rule of completeness (Roses surveillance video)

Applicant alleges counsel should have objected to the Roses video surveillance on the basis of Rule 106, SCRE, and argues if he did object, the video could have been suppressed.

Under Rule 106, SCRE: "When a writing, or recorded statement, or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part of any other writing or recorded statement which ought in fairness to be considered contemporaneously with it."

Rule 106 is a procedural rule that governs the timing of the completion of evidence and is designed to affect the order of proof. State v. Taylor, 333 S.C. 159, 170-71, 508 S.E.2d 870, 876 (1998). There is no requirement that the writings or recordings be contemporaneous or responsive to one another. State v. Tennant, 394 S.C. 5, 14, 714 S.E.2d 297, 302 (2011). The Supreme Court explained in Tennant that "[t]he standard here is 'fairness,' not responsiveness." Id. Tennant quotes, with approval, the Fed.R.Evid. 106 advisory committee's note as follows: "The [corresponding federal] rule is based on two considerations. The first is the misleading

impression created by taking matters out of context. The second is the inadequacy of repair work when delayed to a point later in the trial.”

Some footage shows three men standing together in an aisle, but the footage of when the third person entered the store was not provided to law enforcement. Therefore, there was no additional footage to submit into evidence at trial. This Court fails to see how the rule of completeness would apply. The footage contemplated did not exist and this Court also fails to see that fairness would require its admission even if it did exist. This Court does not believe the video itself was misleading and further fails to see how the video depiction of the purchase of the book bag was taken out of context. This Court finds Applicant failed to meet his burden of proving either prong of Strickland.

Jury instructions on “true facts.”

Applicant alleges counsel should have objected to reference by the trial court to “true facts” during his opening remarks to the jury as burden shifting. Counsel testified he did not at the time of trial believe any of the trial court’s comments amounted to burden shifting.

Prior to opening statements, the trial court advised the jury they would be the judges of facts and would need to determine the credibility of witnesses amid conflicting testimony. The trial court advised it would be the jury’s duty to determine the truth. The trial court further advised the jury it takes “those true facts” it found and would apply it to the law provided by the trial court to be able to render a “true and just verdict.” Tr. pp. 42-43. The trial court later advised that “in making [its] decision as to what the true facts are” the jury could only consider the testimony and evidence admitted at trial. Tr. p. 43, line 24 – p. 44, line 2. The trial court concluded by appealing to the jury to take its “civic responsibility seriously so [it could] render a fair and efficient verdict.” Tr. p. 45, lines 7-14.

In State v. Beaty, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018), the Supreme Court advised trial judges to avoid the use of terms such as “search for the truth,” the finding of “true facts,” or the rendering of a “just verdict.” The Supreme Court noted that previously, its general sessions bench book contained these very phrases. Id. at 34, n.2, 813 S.E.2d at 506, n.2. In Beaty, the trial judge’s introductory remarks advised the jury that a trial is a search for the truth. The trial judge used the phrase “search for the truth” three times and made additional references to rendering “a true and just verdict” and determining “what the true facts are.” Id. at 32-33, 423 S.E.2d at 505. The Supreme Court found that while these phrases were disfavored, they were not linked to the reasonable doubt or circumstantial evidence instructions, citing State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000) (disfavoring seek or search for the truth language but finding no reversible error since the language was not tied to reasonable doubt or circumstantial evidence charges). In the instant case, the trial court’s instructions, which did not even contain the more questionable “search for the truth” language, did not tie “true facts” to reasonable doubt or circumstantial evidence.

Beaty was not decided until well after Applicant’s 2013 trial. Therefore, counsel was not required to be clairvoyant and anticipate changes in the law. His professional judgment at the time was reasonable and his performance was not deficient. Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) (“We have never required an attorney to be clairvoyant or anticipate changes in the law. . . .” (citing Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993))), *overruled on other grounds by* Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999); Thornes, 310 S.C. at 309-10, 426 S.E.2d at 765 (“This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial.”).

Further, like Beaty, any use of the disfavored language was harmless. Therefore, Applicant was not prejudiced by the initial remarks. This Court does not believe the initial remarks led to even the remote possibility the jury would fail to properly apply the concepts of reasonable doubt or the burden of proof. This allegation is denied.

Leading questions

Applicant alleges counsel should have objected to leading questions. This Court finds that to the extent counsel should have objected to leading questions, Applicant fails to show he was prejudiced. Counsel testified he did not think objecting to leading questions which would allow the prosecution to restate questions would be beneficial, because it would merely extend or compound testimony. PCR Tr. pp. 140-41. This Court finds counsel's judgment was reasonable and finds his performance was not deficient in this regard. This Court denies this allegation.

Whether counsel should have declined the case when it was set for trial the next day

Applicant complains counsel was hired the day before the case was to be tried and was not prepared for trial. The case was first called for trial on May 20, 2013. Counsel was hired the weekend before the trial began. Tr. pp. 8-9. The case was continued until it was called for trial in August. On August 8, a hearing was held to verify that the trial was ready to go the following week. Judge Early recounted the events of the first trial, explaining he declared a mistrial in May because he did not think trial counsel was prepared enough to effectively represent Applicant. Tr. p. 9, lines 19-24. Counsel testified that when the case was ultimately tried, he was prepared for trial. PCR Tr. p. 98. He testified he met with Applicant at least ten times prior to trial and investigated potential defenses, including the argument that the Taser Applicant admittedly purchased at a flea market would not have worked because he did not have a key for it. Counsel testified that when he spoke to the merchant that sold the Taser to Applicant, the

merchant told him the Taser did not even need a key, a simple paper clip or hair pin would work. PCR Tr. p. 91, lines 8-19. Other than this potential defense and the use of his stepfather as an alibi, counsel testified Applicant did not provide him with any other potential witnesses or leads to investigate. PCR Tr. p. 97, lines 21-23. Counsel further testified he received discovery and went through it in detail with Applicant. PCR Tr. p. 92.

Applicant actually corroborates counsel's testimony. Applicant testified that he first met counsel the day before trial and counsel discussed the case with him although he did not have discovery. Specifically, counsel asked Applicant what he thought his chances were for trial and Applicant testified, "I basically told him that I have an alibi witness and the State actually can't place me on the scene. So this shouldn't really be a difficult case for him to try. He said okay, showed up at the trial." PCR Tr. p. 67, line 24 – p. 68, line 5. After the mistrial, Applicant admits he met with counsel "plenty of times afterwards." PCR Tr. p. 68, lines 8-9. He admitted watching the surveillance videos, discussing the alibi defense, and going over the texts with counsel. PCR Tr. pp. 72-73; p. 79, lines 20-25.

Notably, on August 8, the trial court engaged in a colloquy to ensure Applicant was comfortable with trial counsel:

Court: Mr. Salley, any complaints you want to make or any observations, not about trial, but being ready to go on Monday?

Applicant: No, sir.

Court: You satisfied with Mr. Broadwater?

Applicant: Yes, sir.

Court: You ready to go?

Applicant: Yes.

Court: Anything I can do for you?

Applicant: No, sir.

Tr. p. 14, line 20 – p. 15, line 4. Note Applicant did not disagree with trial counsel's earlier statement that he had met with Applicant "[n]o less than ten [times]." Tr. p. 12, lines 4-5.

Applicant was not prejudiced by counsel's alleged unpreparedness in May where the case was ultimately continued to allow counsel time to prepare. See also Davis v. State, 326 S.C. 283, 288 (1997) (finding circuit court erred in granting relief on claim counsel was unprepared for trial at the time of the plea because PCR applicant failed to show what additional benefits would accrue from further investigation). This Court finds the allegation lacks merit. The operative question is counsel's performance at the August 2013 trial and not his hypothetical level of preparedness for a trial that did not occur.

Subject matter jurisdiction/indictments

Applicant complains counsel should have challenged the sufficiency of indictments and subject matter jurisdiction. "The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted." State v. Means, 367 S.C. 374, 382, 626 S.E.2d 348, 353 (2006). "A defendant may waive a potential challenge to an indictment, just as he may waive any of his constitutional rights, by failing to raise the issue or by admitting the sufficiency of a particular indictment." Means, 367 S.C. at 385, 626 S.E.2d at 355. Subject matter jurisdiction is merely the power of a court to hear a class of cases. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

This Court finds the indictments are sufficient to put Applicant on notice of the charges he was facing. It is apparent from counsel's preparation of the case and Applicant's awareness

of the State's evidence that Applicant was aware of the nature of the charges he was facing. Further, the Court of General Sessions has subject matter jurisdiction over armed robbery and kidnapping. This allegation is denied.

Discovery/prepare defenses

Applicant makes various allegations of counsel on the basis that counsel was ineffective for failing to review discovery and failing to prepare potential defenses. It is noteworthy to this Court that Barry Thompson, Applicant's first attorney, testified he was prepared for trial when counsel appeared in the courtroom and took over Applicant's case. Thompson noted the prosecution's evidence was "very strong" and there was very little helpful to Applicant's case in the discovery. He described the chances of acquittal as "very low." PCR Tr. pp. 20-22. Thompson admitted he did not have specific memories of his preparation for the case, but testified, "[I]f he would have discussed with me an alibi or would have discussed with me some type of piece of evidence that would support a not guilty verdict, then yeah, I would have looked into that." PCR Tr. p. 24. No testimony was presented that Thompson prepared a defense or was ready to introduce evidence that counsel, in turn, did not ultimately pursue. There is no evidence Thompson was better prepared for the contemplated May trial than counsel was for the August trial.

Counsel testified he was prepared for the August trial. He subpoenaed Applicant's stepfather as a potential alibi witness. He investigated Applicant's claim that the Taser Applicant admitted purchasing was inoperable. Counsel went through discovery with Applicant and presented a witness to provide stills of the Roses surveillance video in an attempt to place Applicant's identity as the purchaser of the backpack at Roses in doubt. This Court finds counsel was prepared for trial and investigated the leads provided by Applicant. This Court will

further examine Applicant's more specific claims concerning counsel's preparation and investigation below.

Failure to obtain or question law enforcement about possible surveillance at Quick Cash

Applicant alleges counsel should have sought video surveillance or questioned law enforcement about the lack of video surveillance at Quick Cash. Applicant, who was a customer at Quick Cash, testified the store maybe had a globe camera in the store "like at the top of the building and I believe that's it." PCR Tr. p. 79, lines 6-24. Applicant's investigator, Chris Watkins, observed a possible surveillance camera in photographs at Quick Cash. However, Applicant failed to establish that any video camera in the store at the time of the robbery was operable. Watkins testified he spoke with an employee who told him "as far as she knows" the cameras were operable since it opened. The employee told him they keep the videos for only thirty days. No footage was introduced at the PCR hearing. Further, Applicant testified it was about a month before he was appointed an attorney and of course, he did not hire Broadwater until long after thirty days from the robbery. This Court finds this allegation too speculative and finds Applicant has not met his burden of proving either prong of Strickland. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1999) (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Possible Days Inn video surveillance

Applicant references "police chatter" discussing possible video surveillance from Days Inn where the robbers loitered prior to the robbery. However, no evidence was presented that surveillance from Days Inn would have shown the robbers or that such surveillance footage was available during the course of Broadwater's representation. The Applicant's investigator testified his understanding was that Days Inn had video cameras, but he did not recall if any were on the exterior of the building. 2d PCR Tr. p. 44, lines 2-10. Finally, no surveillance footage was submitted. Therefore, this allegation is too speculative to support relief and is denied.

Spoilation instruction

Applicant alleged counsel should have requested a spoliation charge. This Court finds Applicant failed to prove deficiency as case law does not currently require a spoliation charge in a criminal trial in response to an allegation of lost or destroyed evidence. State v. Batson, 261 S.C. 128, 138, 198 S.E.2d 517, 522 (1973) ("[W]e entertain grave doubt as to the propriety, in a criminal case, of the rule of an adverse inference from the failure to produce a material witness."); see also State v. Simmons, 267 S.C. 479, 482, 229 S.E.2d 597, 598 (1976) ("Even greater caution should be exercised by the courts in permitting an adverse inference comment in criminal proceedings than in civil proceedings.") (citations omitted); State v. Breeze, 379 S.C. 538, 547, 665 S.E.2d 247, 252 (Ct. App. 2008) (citing Simmons favorably but declining to decide whether a spoliation charge was warranted; instead this Court found no prejudice from any error in declining spoliation charge). Further, this Court does not believe a spoliation instruction was reasonably likely to alter the result and finds Applicant was not prejudiced by the lack of such an instruction. This allegation is denied.

Instruction on eyewitness identification

Applicant alleges counsel was ineffective for failing to request an instruction on eyewitness identification. This claim fails because a special instruction for eyewitness identification is not required. State v. Jones, 273 S.C. 723, 735, 259 S.E.2d 120, 126 (1979) (finding the trial judge's instruction on the credibility of the witnesses' testimony sufficiently covered the believability of the victim's identification and rejecting the request for the instruction found in United States v. Telfaire, 469 F.2d 552 (D.C. App. 1972)); State v. Patterson, 337 S.C. 215, 234-35, 522 S.E.2d 845, 854-55 (Ct. App. 1999) (finding no error in judge's decision to decline the requested instruction based on Telfaire and suggesting the instruction would be an unconstitutional instruction on the facts.).

Failure to request an instruction on intent

Applicant also complains counsel should have requested an instruction on criminal intent. The two charges Applicant was convicted for were kidnapping and armed robbery. For kidnapping, the trial court instructed the jury that the State was required to "prove beyond a reasonable doubt that the defendant knowingly and unlawfully seized or confined another person without authority of law." Tr. p. 233, lines 9-11. The trial court explained, "Knowingly means with knowledge, consciously, not accidentally." Tr. p. 233, lines 13-14. Therefore, the intent required to prove kidnapping was charged to the jury. As to armed robbery, it seems extremely hard to accidentally or without criminal intent to commit an armed robbery. Certainly in the instant case, in which there was a completed crime, there is no issue as to whether or not a robbery occurred and as to whether the robbers in fact intended to commit a robbery. Accordingly, counsel was not ineffective for failing to request any further instructions on criminal intent.

Failure to obtain Victim's EMS records

Applicant alleges counsel was ineffective for failing to obtain Victim's EMS records. Victim testified one of the robbers lifted the back of her shirt and deployed a Taser on her back. She fell to the ground and was incapacitated as the robbers left the store. At trial, Applicant admitted purchasing a Taser from a flea market, but claimed it was inoperable because it did not have a key. Applicant's codefendant testified they returned to the flea market to get a key for the Taser. Counsel's own independent investigation revealed that a key was not necessary to make the Taser operable. Counsel testified he viewed pictures of the victim after the robbery which showed the injury caused by the Taser. He did not consider attaining Victim's EMS records. PCR Tr. pp. 132-33. This Court finds counsel's investigation was reasonable since the photograph corroborated that a Taser was used. Further, Applicant failed to introduce records at the PCR hearing that would challenge Victim's contention she was struck by the Taser. Moreover, because Applicant's codefendant used an altered BB gun, which was clearly the representation of a weapon, evidence supports armed robbery even without evidence or testimony that a Taser was employed in the robbery.

This Court finds Applicant's investigation was reasonable given the corroboration in the photograph of Victim's injuries, the absence of any real reason to doubt Victim's credibility on the matter, and the fact that Applicant's primary defense was alibi. Therefore, this Court finds Applicant failed to prove either prong of Strickland and denies this allegation.

Failure to request hearing on the Roses clerk's identification

Applicant alleges counsel was ineffective for failing to request a hearing challenging Virginia Jackson's in court identification. Jackson testified she was never shown a photographic lineup by law enforcement. Tr. p. 133. She identified Applicant in court. Tr. p. 132. She

watched the surveillance video at Roses and testified it showed her checking Salley's driver's license photo for the credit card purchase. Tr. pp. 134-36.

"An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created 'a very substantial likelihood of irreparable misidentification.'" State v. Tisdale, 338 S.C. 607, 611, 527 S.E.2d 389, 392 (Ct. App. 2000) (quoting Manson v. Brathwaite, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977)). Tisdale noted the purpose of a strict rule barring evidence gained from unnecessarily suggestive confrontations is to deter law enforcement from using less reliable procedures where a more reliable one is available. Tisdale, 338 S.C. at 612, 527 S.E.2d at 392 (citing Neil v. Biggers, 409 U.S. 188, 199, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972)).

A trial judge should only exclude identification evidence if there is "a very substantial likelihood of irreparable misidentification." Perry v. New Hampshire, ___ U.S. ___, 132 S. Ct. 716, 720 (2012) (citation omitted). Indeed, the exclusion of evidence is a "drastic sanction" and should be "limited to identification testimony which is manifestly suspect." Harker v. Maryland, 800 F.2d 437, 443 (4th Cir. 1983).

"[R]eliability is the linchpin in determining the admissibility of identification testimony . . ." Manson v. Brathwaite, 432 U.S. 98, 114 (1977). However, the United States Supreme Court has made clear:

We are content to rely upon the good sense and judgment of American juries, for evidence with some element of untrustworthiness is customary grist for the jury mill. Juries are not so susceptible that they cannot measure intelligently the weight of identification testimony that has some questionable feature.

Manson, at 116.

Because law enforcement did not seek an out-of-court identification, this Court does not believe a Neil hearing was required. Further, the trial transcript indicates Jackson's identification was reliable because she looked at Applicant's identification and compared it to Applicant, providing her opportunity to view Applicant. Of course, this identification process at Roses was the result of store procedure, not police suggestiveness. See generally Tisdale, 338 S.C. at 612, 527 S.E.2d at 392 (Neil analysis is inapplicable to media identifications of an accused). This Court does not believe that a pretrial hearing on the identification was reasonably likely to lead to suppression of the identification. Further, even without Jackson's in-court identification, the evidence was overwhelming. Additionally, Jackson was able to verify she was checking the subject in the video against the subject's driver's license and the credit card used, and based on the receipt, it was Applicant's credit card being used to purchase the backpack. This allegation is denied as this Court finds Applicant failed to prove either prong of Strickland.

Failure to impeach cooperating codefendant with deals or expectations in exchange for testimony.

Applicant alleges counsel was ineffective for failing to cross-examine codefendant Carlos Williams with his expectations or bias from testifying against Applicant as a State's witness.

Counsel admitted he did not know if Carlos Williams was offered any deals for his cooperation. Counsel also admitted he did not ask Williams about any deals or what his expectations might be for his cooperation. PCR Tr. pp. 135-36.

Williams claims he was promised a ten-year plea deal for his testimony against Applicant. Williams actually received thirteen years imprisonment. However, this Court finds, as explained later in this order, that Williams' testimony is not credible and there was not a promise from the prosecution at the time of trial.

Instead, the operative question is whether counsel was ineffective for failing to explore Williams' bias as a witness: the bias obviously would be his interest in receiving a benefit by aiding the prosecution's case against Applicant.

At trial, Williams testified he was housed at the county jail and agreed he had pending charges for armed robbery and kidnapping. He testified he was not promised anything for this testimony and no deals were made. Tr. p. 89, lines 4-17. He freely admitted he participated in the armed robbery at Quick Cash with a gun and he proceeded to detail the planning and execution of the robbery. Tr. pp. 89-93.

Counsel began cross-examination by addressing Williams by his apparent nickname, "Choppa G." Tr. p. 122, lines 9-10. Counsel elicited testimony from Williams that Applicant wore cargo pants, not army fatigue pants as described by another witness, thereby impeaching the State's evidence. Tr. p. 122, lines 20-25. He elicited testimony that Williams had a brother named David Garvin for purposes of alluding to a third party defense. Although later backtracking on the answer, Williams initially agreed with counsel that Williams and Applicant agreed not to do the robbery. Tr. pp. 124-25. Additionally, counsel questioned Williams about the failure of law enforcement to have Williams assist them in finding the latex gloves Williams and Applicant used in the robbery. Tr. pp. 126-28.

On direct Williams testified he had been offered no deal in exchange for his testimony against applicant. While failing to cross examine on this topic may have been ineffective assistance it would be on the basis of counsel failing to highlight bias. Although Williams testified at the PCR hearing that he was offered 10 years in exchange for his testimony, that testimony is not credible for two reasons. First, one must assume he would directly contradict his

testimony on direct and second and importantly, when he ultimately pled guilty Mr. Williams received thirteen years not ten.

Even assuming ineffectiveness, this Court finds Applicant has not met his burden of proving prejudice. First, the codefendant's testimony was significantly corroborated. Applicant agreed Williams and Quarles stopped at his house the morning of the robbery. He agreed he was aware Williams wanted to rob the store even if he denied he was intending to become involved in the robbery. Applicant agreed he purchased a Taser and agreed he intended to return to the flea market to purchase the key for the Taser. Applicant agreed at trial he purchased the BB guns with Williams. Applicant was identified purchasing the backpack at Roses by the store clerk. Applicant's credit card was used to make the purchase. While law enforcement relied heavily on Williams's cooperation to investigate the case, the prosecution did not rely on Williams's testimony alone, abundant evidence outside of Williams' testimony established Applicant's involvement in the robbery and corroborated Williams' trial testimony.

Second, this Court, in light of the corroborating evidence, does not believe that cross-examination of Williams for bias based on his expectations for his assistance was likely to elicit testimony sufficient to create a reasonable probability of a different result. This ground is therefore denied.

Failure to call Timothy Davis as a witness

Applicant alleges trial counsel was ineffective for failing to present Timothy Davis as a witness at trial. Davis is Applicant's stepfather. Applicant resided with Applicant's mother and Davis. Davis testified Davis woke up about 10:00 or 10:30 a.m. on the day of the robbery. Davis testified he started to cook breakfast and Applicant came into the living room. They then ate breakfast together. PCR Tr. p. 26. Around 11:00 to 11:30 a.m., Applicant left to take a nap

and then went to work at 2:00 p.m. PCR Tr. p. 27. Davis admitted receiving a text message from Applicant later that day telling him to say Applicant was with him at the time of the robbery. PCR Tr. pp. 30-31; see Trial Tr. p. 155 (testimony about text from Applicant telling Davis to tell the police he had been home all day). Law enforcement later searched the residence after Applicant was arrested. Davis consented to the search. PCR Tr. p. 28. Davis testified that trial counsel told him that if he testified, the State would arrest him for perjury. PCR Tr. p. 30.

On cross-examination, Davis admitted he was asleep at 9:00 a.m. and had no idea if Applicant could have been at the Quick Cash around 9:00 a.m. PCR Tr. p. 32. Davis also admitted he had a prior conviction for possession of ice or crack from 2008. PCR Tr. pp. 32-33.

At the PCR hearing, Applicant testified the morning of the robbery, he saw the codefendants, Michael Quarles and Carlos Williams at 9 a.m., but stayed at the house and did not leave with them. He stayed home and ate breakfast with his stepdad. PCR Tr. pp. 75-76.

Victim testified she arrived at Quick Cash around 8:45 a.m. and the store opened at 9 a.m. Tr. p. 53. She testified three customers came into the store that morning. The third person was a black male in a white hoodie who inquired about how to get a loan. He left and Victim saw two black males in dark hoodies she considered suspicious. The mailman pulled up to the store and the two black men wandered towards the Days Inn hotel. At the mailman's suggestion, she called the police. The two men returned and robbed the store. She called 911. Tr. pp. 52-59.

The mailman, Wayne Brinegar, testified he pulled up to the store. He explained "it was like 10:15 [a.m.] or so, ..." Tr. p. 67, lines 11-17. Sheila Fulmer, who worked at a daycare near Quick Cash, testified a little after 10:00 a.m., maybe 10:15 or so, she saw the silver truck that the robbers drove park nearby. Tr. p. 74.

Virginia Jackson testified Applicant purchased a backpack at her register at Roses department store the morning of the robbery. The receipt indicates the purchase was made at 10:04 a.m. Tr. p. 140, line 13 – p. 141, line 9. The time stamp on the Roses video correlates closely, but not exactly with this time frame.

Counsel testified he reviewed the Roses surveillance video with Applicant. On the video, the purchaser of the backpack handed the store clerk a red credit card. Applicant told counsel he purchased the knapsack. PCR Tr. p. 94, lines 14-15. Applicant admitted he used the credit card but claimed he actually loaned the credit card to one of the other codefendants. Counsel understood that codefendant Carlos Williams was going to be a witness against Applicant. However, counsel interviewed the other co-defendant, Quarles, who also would implicate Applicant if he were to testify. PCR Tr. pp. 94-95. Counsel further testified that Applicant's explanation, that he loaned the credit card to a co-defendant, in his view was unusual and would not be readily believed by the jury. PCR Tr. pp. 100-01. The 911 call was at approximately 10:30 a.m.

Counsel testified Davis did not want to testify because he felt the State would come after him for his criminal record. Counsel testified Davis actually left the courtroom during trial to avoid being called as a witness. Counsel testified he did not believe Davis's testimony would help the defense. PCR Tr. p. 97.

First, it is questionable whether Davis' testimony offers a complete alibi. Davis testified he got up at 10:15 to 10:30 a.m. and Applicant came into the living room afterwards. Additionally, Applicant's text to Davis calls into question the potential alibi testimony. Counsel opined Davis' testimony would not help the defense, considering: (1) Davis appeared reluctant to

testify at trial, (2) Davis was Applicant's stepfather and therefore a close relation with a bias,¹ (3) Davis had a criminal record, and (4) Davis was ostensibly asked by Applicant to provide an alibi, this Court finds counsel's decision not to call Applicant as a witness was reasonable trial strategy. Dunn v. Reeves, __ S.Ct. __ (Op. No. 20-1084, 2021 WL 2742771 at 4, decided July 2, 2021) ("[E]ven if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen.") (citation and internal quotation marks omitted). This Court did not find Davis' PCR testimony convincing. Further, this Court does not believe Davis' testimony was reasonably likely to affect the outcome of trial, especially in light of the overwhelming evidence of guilt. This allegation is denied.

Failure to admit Applicant's account information at Quick Cash

Applicant alleges counsel was ineffective for failing to seek admission of business records that Applicant was a customer at Quick Cash. At trial, Applicant testified he held an account at Quick Cash and therefore, he would not have tried to rob the store because he would be recognized. Applicant alleges the documentation would corroborate his testimony that he had an account and therefore support his rationale as to why he would not have robbed the store. It is noteworthy that applicant failed to provide any such documentation at the PCR hearing. The court finds without proof that such documentation existed (exists) that this ground fails to be meritorious. To the extent counsel's failure to seek or admit these records could potentially be

¹ See Maxwell v. Gilmore, 37 F.Supp.2d 1078, 1089 (N.D. Ill. 1999) ("But Maxwell's attorneys may well have thought – and surely reasonably so – that Maxwell's mother and girlfriend would not be credible alibi witnesses, given their obvious personal interest in his acquittal (certainly less of a problem with the presumably more neutral girlfriend's mother)"); Bergmann v. McCaughy, 65 F.3d 1372, 1380 (7th Cir. 1995) ("Nor will we second-guess trial counsel's decision not to call Bergmann's step-father . . . to testify that Bergmann's guns were at home at the time of the crime. As a matter of trial strategy, counsel could well decide not to call family members as witnesses because family members can be easily impeached for bias").

considered to fall below professional norms, this Court does not believe there is adequate proof of prejudice. This ground is denied.

Failure to object to 911 call

Applicant alleges counsel was ineffective for failure to object to the recording of the robbery victim's 911 call. This court does not believe any such allegation would have been sustained. This Court finds the call carries substantial probative value. Victim, still under the duress of the freshly committed robbery, describes the perpetrators and their clothing and the events that freshly transpired. Rule 803(2), SCRE; see State v. Sims, 348 S.C. 16, 21, 558 S.E.2d 518, 521 (2002) (defining excited utterance). It also reflects her demeanor, which makes the call admissible as an excited utterance. This Court believes the danger of unfair prejudice would not outweigh the 911 call's probative value. Therefore, this Court does not believe counsel was ineffective for failing to object to the call as the objection was unlikely to be sustained. Further, this Court does not believe there was a reasonable likelihood the absence of the 911 recording was reasonably likely to affect the outcome of trial. This Court finds Applicant did not prove either prong of Strickland.

Failure to impeach codefendant with jailhouse communications

Applicant alleges counsel was ineffective for failing to use notes allegedly written by codefendant Carlos Williams to Applicant. The first reads: "Jay, you need to let me know everything you told the officers cuz you lookin like you snitched. I already told you I told Mike to disappear so just keep to you story! Write me back asap."

The second note reads, "Man they rippin not giving us a bond. But that let me know you aint telling. The only evidence they got is Mike driving my truck, so we straight cuz he gone. Im [sic] sorry I dragged you into this but shit I can't go down by myself. If I get off, I'll tell the

cops I was lying and you ain't have nothing to do with it. You should be straight away cuz you wasn't ever around me when it happened. Just get Tim or you mama to testify. Shit you wuz proley wit Kali. They want me to tell you did everything but I ain't go do you like that. Ima put it on Mike since they can't find him then me and you will be straight. Just keep me informed when they talk to you."

The first statement fails to be helpful to Applicant. It tells Applicant to stick to his "story." The second also implies Applicant has knowledge of the robbery because Williams believes Applicant is not "telling." It is not clear whether Williams is saying Applicant was not around when "it" happened, or whether that is what Williams will say if he "gets off." The suggestion Williams will "put it on Mike" suggests that Williams intends to tell law enforcement something that is not truthful in Applicant's favor.

Further, Williams did not testify as to these texts. Therefore, this Court does not know what Williams would have testified to if confronted with these statements. No evidence adduced at the PCR hearing indicates these statements would have been admissible.

The notes appear to show Applicant has significant knowledge of the crime that Williams does not want Applicant to disclose. Williams appeals to Applicant to "keep to yo story" indicating Applicant is not intending to be truthful about his knowledge or involvement in the robbery. Further, the statement indicates Williams is going to blame Mike implicitly because Mike cannot be found by law enforcement.

As to these statements applicant has failed to show counsel's conduct fell below professional norms. This Court denies this allegation.

Failure to utilize an expert in digital forensics

At the August 14, 2017, evidentiary hearing, Chris Watkins testified he is a private investigator, licensed through SLED, and he owns his own investigative business. He stated he studied at Midlands Technical College to pursue a degree in computer science, and he has certification as a general technician. Watkins testified that fifty to sixty percent of his practice is in digital forensics, and he has worked on about a thousand cases over the years. This Court found Watkins was qualified as an expert witness in digital forensics.

Watkins testified he produced exhibits based on extraction reports of Applicant's cell phone data. He stated he used a program called Cellebrite, which is a tool law enforcement uses to extract data from cell phones. He testified that, for purposes of his investigation, he had Applicant's attorney issue a search warrant to T-Mobile to obtain the cell site data from Applicant's cell phone records. He testified he retrieved the details for the voice calls and text messages made from Applicant's phone, and he also obtained the Verizon cell phone records from the co-defendant Carlos Williams' phone. Watkins testified he used these three sources to compile the chart he produced.

Watkins testified he uses these sources to create one big chart and to generate maps based on the cell tower locations by using a software program called CellHawk. He testified that the State's cell phone report was not a complete, detailed report. Watkins stated that the Cellebrite extraction the State turned over in discovery appeared to be a complete extraction from the cell phone, but he could not say that for certain because he had not actually seen the cell phone itself. But he opined that often law enforcement "cherry picks" the text messages they wanted to show the jury instead of including the full report. He testified Cellebrite is a commonly used program by law enforcement and is useful. He also testified that it is proper, due to the amount of cell phone data usually extracted, to create a summary report. PCR Tr. II. pp. 32-33.

Watkins testified that, based on his investigation into these cell phone records, he believes that the records do not support the testimony that Applicant went back to the flea market before the robbery to get the key to the Taser, as alleged at trial. However, he admitted that at most, the records would only show where the cell phone was located, not necessarily where Applicant was located. Watkins admitted that the reports showed no text messages sent or received during the time of the crime, and no phone calls made or received at the time of the crime.

This Court finds Applicant was not prejudiced by the alleged deficiency of counsel for failing to hire a digital forensics expert. While Watkins testified about the possibility of an incomplete extraction from Cellbrite and the tendency of law enforcement to abridge what law enforcement believes are the relevant communications, Applicant did not point to any texts or messages omitted from trial that would be beneficial for use at trial. Further, Applicant testified at trial and explained the texts, even suggesting that one of the texts shows he declined participation in the planned robbery.

As to Watkins' conclusion that the cell phone records contradict Williams' testimony that Williams and Applicant returned to the flea market the next day to obtain a key for the Taser, it does not definitively show Applicant did not return to the flea market, just possibly that his cell phone did not. Additionally, counsel was aware a key was not necessary to use the Taser. Counsel testified he investigated the defense that Applicant could not have used the Taser because he did not have the key. At most, the evidence presents limited impeachment value as to Williams' testimony. Moreover, the cell phone and text records establish Applicant's cell phone was not in use during the time of the robbery, which makes use of these records at trial potentially damaging as this period of non-use could be viewed to corroborate his involvement in

the robbery. Belmontes, 558 U.S. at 26 (“[T]he reviewing court must consider all the evidence – the good and the bad – when evaluating prejudice. . . . Here, the worst kind of evidence would have come in with the good.”). To summarize, this Court does not believe the evidence discussed by Watkins would change the result of trial.

Watkins also discussed the Roses surveillance video, and he produced photographic stills without any enhancement which Applicant alleges would have been useful to dispute identification of the Applicant as the purchaser of the book bag in the video. In this regard, counsel hired a photographer with fifty years’ experience to present the same kind of evidence at trial. Tr. p. 179. This Court sees minimal, if any difference, between the quality of the stills introduced at trial and to this Court. Accordingly, this Court does not find counsel’s performance fell below professional norms nor does this Court believe Applicant was prejudiced as the jury had the stills for comparison with Applicant present, in person, at trial.

This Court finds Applicant failed to provide any evidence that would have been likely to affect the outcome of the trial, and therefore, Applicant failed to meet his burden for the prejudice prong. On balance, the records show Applicant did not make any calls or texts during the commission of the actual crime. Further, no records were found that would be useful at trial. Despite Watkins’ description of avenues of investigation he would have taken if hired for trial, Watkins produced little evidence and the results of these avenues of investigation are generally speculative at best. Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1999) (holding trial counsel’s failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled

to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Further, this Court is not convinced counsel's performance fell below professional norms for failing to attain this kind of expert. In many cases, a range of hypothetical experts exist that a trial attorney could theoretically consult. However, a trial attorney is not expected to consult every conceivable type of expert possibly applicable to the case – such a task may turn distracting – instead counsel is entitled to formulate a focused strategy cognizant of the reasonable use of resources and time. Harrington v. Richter, 131 S.Ct. 770, 789 (2011). It simply is not foreseeable a digital expert would have been beneficial in the instant case. Counsel interviewed Quarles and found he would implicate Applicant if he testified. Counsel investigated the Taser issue, and found the absence of a key did not create much of a defense. The texts Applicant sent to his stepfather and his codefendants were damaging to the alibi defense, and Applicant did not advise counsel of texts or other records that would be beneficial. Applicant's admission his credit card was used to purchase the backpack was also concerning.

This Court finds Applicant failed to meet either prong of Strickland and denies this allegation.

Failure to make an independent request for questions to the jury for voir dire

Applicant alleges counsel was ineffective for not making any specific proposals for voir dire questions to be directed to the jury. Applicant failed to present any evidence showing that Applicant was prejudiced by the supposed deficiency of counsel.

"To protect both parties' right to an impartial jury the trial court must conduct voir dire of the prospective jurors to determine whether the jurors are aware of any bias or prejudice against a party, as well as to elicit such facts as will enable the parties intelligently to exercise their right

of preemptory challenge." State v. Coaxum, 410 S.C. 320, 326, 764 S.E.2d 242, 245 (2014) (quotation marks, brackets, and citation omitted).

Applicant suggested to counsel that he should have requested a question as to whether any of the potential jurors were victims of a violent crime; or the victim of either a robbery or kidnapping. Applicant failed to show any seated jurors would have answered those questions in the affirmative. Applicant fails to show that counsel should have requested any other specific questions which would have exposed otherwise undisclosed bias or prejudice from any jurors, or that would have aided counsel in the exercise of a potential preemptory challenge. This Court would note the trial court asked the jury, "Anybody know of any reason whatsoever why he or she should not serve as a juror in this case, particular emphasis being placed on your ability to be fair to the defendant and to the State of South Carolina? If so, please stand." Tr. p. 24, lines 21-25. No jurors stood. This allegation is denied, as it is speculative any prejudice ensued from the alleged deficiency of counsel.

Ineffective assistance of counsel for failing to file pre-trial motions

Applicant alleges counsel was ineffective for failing to file pre-trial motions. The record discloses that counsel filed a motion to suppress the items seized from Applicant's residence and a motion to suppress the search of Applicant's cell phone. The motion as to the cell phone was unsuccessful. The motion as to the search of the residence became moot when the prosecution advised it was not seeking to admit any evidence recovered from the search of the premises. This Court finds that Applicant failed to show that counsel should have raised any other pre-trial motions and failed to show any contemplated pretrial motions would be successful. This Court denies this allegation.

Ineffective assistance for failing to have a competent understanding of criminal procedure and due process

Applicant makes a broad claim that counsel did not have an adequate understanding of criminal procedure and due process. This allegation is in contravention of Strickland and its progeny that examines specific errors and omissions to determine if an applicant's right to effective assistance of counsel has been violated. The record discloses counsel understood procedure, pursued defenses, and challenged the State's evidence. In examining the totality of the record, this Court believes counsel advocated zealously for his client who was convicted on overwhelming evidence of guilt. This Court does not accept Applicant's invitation to depart from Strickland's framework of examining the record for specific errors or omissions and further finds that Applicant has failed to prove prejudice from any alleged errors or omissions. This claim is denied.

Ineffective assistance of counsel due to cumulative error.

Applicant alleges cumulative error. This Court finds that any deficiencies in counsel's performance fails to rise to the level, cumulatively, that was likely to affect the outcome of trial. This claim is denied.

NEWLY DISCOVERED EVIDENCE

Applicant alleges newly-discovered evidence warrants a new trial. In Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983), this Court held that:

A party requesting a new trial based on after-discovered evidence must show that the evidence: (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching.

Information from the private investigator

Applicant employed a private investigator for this PCR. The investigator presented testimony that showed there may have been surveillance footage available at one time from Days Inn or Quick Cash, but Applicant did not present any footage. Therefore, no evidence was produced.

Further, the Applicant presented an expert in digital analysis to present testimony concerning cell phone tower data and use software to show where Applicant and Carlos Williams' cell phones may have travelled. This evidence was addressed in the analysis of counsel's performance. Further, the evidence used for this analysis was all available at the time of trial and does not constitute after-discovered evidence. The product of the cell tower analysis suggests that Applicant, or at least his phone, never recovered the key for the Taser from the flea market in Augusta. Because the key was not necessary for the Taser to function, at best this evidence would be impeaching as to Williams' testimony that Applicant and Williams returned to the flea market to get the key for the Taser. Therefore, it would not meet the five part test for after discovered evidence.

Carlos Williams' claim he was promised a ten year deal/Prosecutorial misconduct

As mentioned before, codefendant Carlos Williams claimed prior to trial he was told he would receive the minimum ten-year sentence for armed robbery if he testified against Applicant. However, at trial, Williams agreed with the prosecutor, Kevin Molony, that he was not promised anything for his testimony. Further, at the plea, neither Williams nor his attorney asserted there was a ten-year plea agreement and the prosecutor did not make a recommendation as to the sentence Williams would receive. Molony testified during the virtual hearing that no offer was extended to Williams prior to Applicant's trial. Molony testified that the sentence was

left entirely up to the trial court, although Molony would not mind if Williams did receive the minimum sentence.

This Court does not find Williams' testimony credible and instead finds Molony's testimony that no promises were made is credible. This Court finds, therefore, that Applicant did not present a credible claim of after-discovered evidence or a discovery violation of an undisclosed plea agreement with Williams. This Court finds these claims are meritless and denied.

CONCLUSION

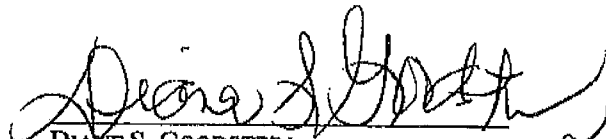
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that 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. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 17 day of Dec, 2021.


DIANE S. GOODSTEIN
Presiding Judge
Second Judicial Circuit

 South Carolina

Jamaquas Gallery
v
State of South Carolina
2014 CP 02-1848

FORM 5

2023CP0201766

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Jamaques Salley #345433)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

FILED 8-7 2023

Robert J. White
C.C.P. & G.S.Shadell Parks
Deputy Clerk
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 Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847
2. Name and location of Court which imposed sentence Aiken County Court of General Sessions, 109 Park Avenue SE, Third Floor Aiken, SC 29801
3. Name(s) of co-defendant(s) (if any) Carlos Williams, Michael Quarles
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-02-00758 - Kidnapping 2013A0220100205
 - (b) 2013-GS-02-00757 - Armed Robbery 2013A0220100171
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) August 13, 2013 - Five Years
- (b) August 13, 2013 - Thirty Years Consecutive
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list: _____
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Withdrawn
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. September 30, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

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

(a) See Attached

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? yes

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. PCR Action - 2014-CP-02-01848

ii. _____

iii. _____

iv. _____

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

i. Aiken County Court of Common Pleas, 109 Park Avenue SE, Third Floor Aiken,

SC 29801,

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Denied

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. December 27, 2021

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

- (c) _____
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
 - (c) your sentencing? yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Thomas Broadwater, Esq. P.O. Box 2708, Aiken, SC 29108
 - ii. Aimee J. Zmroczek, Esq., P.O. Box 11961, Columbia, SC 29211
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial and Sentence
 - ii. Post Conviction Relief Application
 - iii. _____
19. State clearly the relief you seek in filing this application:
Belated Appeal of PCR
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA

County of Edgefield

)
)
)

VERIFICATION

I, Jamaques Salley, 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.

Jamaques Salley

SWORN to and subscribed before me this 1st
day of August, 2023.

[Signature] (L.S.)
Notary Public

My Commission Expires: 9/22/2032

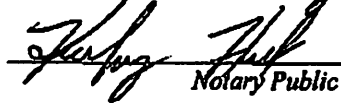
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

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

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


Applicant

SWORN or affirmed to and subscribed before me this
1st day of August, 2022.


Notary Public

My Commission Expires: 9/22/2032

PCR APPLICATION OF JAMAQUES SALLEY #345433

11. The Applicant filed a Post Conviction Relief Application on August 14, 2014. Applicant was represented by Aimee J. Zmroczek and a Post Conviction Relief hearing was held in 2017. An Order of Dismissal as filed on December 27, 2021.

The Applicant and his family requested that Ms. Zmroczek file an Appeal of the Court's denial of his PCR. They were informed and believed that this Appeal had been filed. It was only at a later date, that they realized that an Appeal had not been filed. They then contacted counsel requesting that counsel look into the status of the PCR Appeal. After determining that an Appeal had not been filed, this action ensued requesting a belated PCR appeal of the Court's Order of Denial.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Jamaques Salley, SCDC #345433,	)	Case No. 2023-CP-02-01766
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Counsel Retained)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief (PCR) action commenced by Jamaques Salley (Applicant) on August 7, 2023, the State makes this return¹:

FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Aiken County Clerk of Court. During its May 2013 term, the Aiken County Grand Jury indicted Applicant for kidnapping (2013-GS-02-00758) and armed

¹ Respondent's return to the application were due to be filed within ninety days of receipt. See Rule 12(a), SCRCPP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") Now, having completed the returns required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept these returns as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

FILED 3:22 20 24
Robert J. White
 C.C.P. & G.S.
Shadell Parks
 Deputy Clerk

robbery (2013-GS-02-00757). The case was prosecuted by Assistant Solicitor Kevin Molony. Applicant was represented by Thomas D. Broadwater, esquire.

On August 8, 2013, Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Applicant was found guilty as indicted. On August 13, 2013, Judge Early sentenced Applicant to thirty years for armed robbery and a consecutive five years for kidnapping.

Applicant filed a timely notice of appeal. By Order filed September 30, 2014, the South Carolina Court of Appeals granted Applicant's request to withdraw his appeal. The Remittitur was issued on October 16, 2014.

Applicant filed a post-conviction relief application on August 14, 2014. Respondent made its return on January 23, 2015. An evidentiary hearing was convened on May 24 and 25, 2017, at the Aiken County Courthouse before the Honorable Diane S. Goodstein. Applicant was present and represented by Aimee J. Zmroczek, Esquire. Assistant Attorney General Julie A. Coleman represented the State. On December 27, 2021, Judge Goodstein issued an Order of Dismissal denying and dismissing the application with prejudice. Applicant did not appeal.

Facts

On February 19, 2013, Applicant and his co-defendant, Carlos Williams, came into the Quick cash store in Aiken wearing gloves and black hoodies, holding fake pistols and a taser stun gun, and stole about \$450 from the cash register. During the robbery, Applicant lifted up the shirt of victim and deployed the taser into her back. The two men left the victim curled up underneath her desk and ran out of the store. (Tr. pp. 52-65).

. CURRENT APPLICATION

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

1. Austin Claim

- a. "The Applicant filed a Post Conviction Relief Application on August 14, 2014. Applicant was represented by Aimee J. Zmroczek and a Post Conviction Relief hearing was held in 2017. An Order of Dismissal was filed on December 27, 2021."
- b. "The Applicant and his family requested that Ms. Zmroczek file an Appeal of the Court's denial of his PCR. They were informed and believed that this Appeal had been filed. They then contacted counsel requesting that counsel look into the status of the PCR appeal. After determining that an Appeal had not been filed, this action ensued requesting a belated PCR appeal of the Court's Order of Denial."

Applicant requests relief as follows:

"Belated PCR appeal."

Attached to this return and incorporated by reference are the Aiken County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the records from Applicant's direct appeal, the records from Applicant's prior PCR action, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant claims PCR Counsel was ineffective for failing to file a Rule 59, SCRCP, motion and for failing to file an appeal following the denial of Applicant's prior post-conviction relief action. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC.

Respondent submits that Applicant's allegation of ineffective assistance of counsel is meritless. However, an "allegation that counsel failed to seek review [of an adverse PCR decision] sufficiently states a claim of ineffective assistance." *Austin v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991). When a PCR applicant alleges ineffective assistance of PCR Counsel, the circuit court must hold "an evidentiary hearing on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review" of the prior PCR decision. *Id.* Accordingly, Respondent requests an evidentiary hearing be held solely on this issue.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

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

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C.

Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP; see also Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. See Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

V. GENERAL DENIAL

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

[SIGNATURE PAGE FOLLOWS]

VI. CONCLUSION

WHEREFORE, Respondent respectfully requests an evidentiary hearing be scheduled, solely to address Applicant's allegation of ineffective assistance of PCR counsel for failing to file an appeal from the denial of his first PCR application.

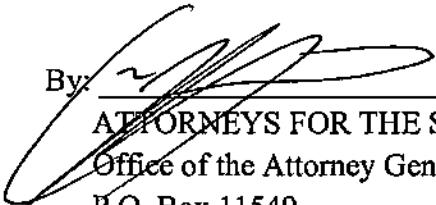
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

T. CRUISE MITCHELL
Assistant Attorney General

By: 

ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

March 19, 2024

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Jamaques D. Salley, #345433

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No.: 2023-CP-02-01766

Certificate of Service by Mail

FILED 3-22 2024
Robert L. White
C.C.P. & G.S.
Shadell Parks
Deputy Clerk

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 to the Application for Post-Conviction Relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire
PO Box 88
Irmo, SC 29063

DATED this 19th day of March, 2024.

Blake Means
Blake Means, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
TRANSCRIPT OF RECORD
CASE NO. 2014-DR-02-01848
2023-DR-02-01766

PCR HEARING

July 16, 2024

BEFORE: The Honorable Brian M. Gibbons

Jamaques Deundray Salley,

Plaintiff,

vs.

State of South Carolina,

Defendant.

APPEARANCES:

Tommy Arthur Thomas, Esq.
Attorney for the Plaintiff

Zachary Jones, Esq.
Attorney for the Defendant

Official Court Reporter/Transcriber
Cynthia D. Weaver

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I-N-D-E-X

WITNESS/DESCRIPTION**PAGE NUMBER****AIMEE ZMROCZEK**

Direct by Mr. Thomas.....6

JAMAQUES SALLEY

Direct by Mr. Thomas.....8

SHANETTA SALLEY

Direct by Mr. Thomas.....14

NO EXHIBITS

Court Reporter Certificate.....18

1 (COURT REPORTER'S NOTE: Due to remote platform
2 interruption and audio interference throughout the
3 hearing, those instances are denoted with
4 (inaudible) in the transcript.)

5 P-R-O-C-E-E-D-I-N-G-S

6 THE COURT: All right. Call your next case.

7 MR. JONES: Thank you, Your Honor. This is the
8 Jamaques Salley versus the State of South Carolina. Based
9 on 2023-CP-02-01766. I am Zachary Jones with the State of
10 South Carolina.

11 Mr. Salley is present as well as his attorney
12 Tommy Thomas.

13 THE COURT: All right.

14 MR. JONES: Mr. Salley was indicted by the Aiken
15 County Grand Jury here in the May 2013 term for armed
16 robbery and kidnapping. Those indictment numbers are
17 2013-GS-02-757 and -758. On August 8th, 2013, Mr. Salley
18 proceeded to a jury trial before Judge Hurley and was found
19 guilty as indicted. On August 13, 2013, Judge Hurley
20 sentenced him to 30 years for armed robbery and a
21 consecutive five years for kidnapping.

22 He filed a timely notice of appeal any by an order
23 filed September 30, 2014, the South Carolina Court of
24 Appeals granted his request to withdraw his appeal. A
25 remitter was issued on August 16, 2014. He filed his post

1 conviction application on August 14, 2014. And that hearing
2 convened on May 24th and 25th of 2017 at the Aiken County
3 Court House before Diane Goodstein.

4 Mr. Salley was present and represented by Aimee
5 Zmroczek and on December 27th, 2021, Judge Goodstein issued
6 an order of dismissal, denied and dismissing the application
7 with prejudice. Mr. Salley did not appeal. This subsequent
8 application was filed on August 7, 2023. And with that I'll
9 turn it over to Mr. Thomas.

10 THE COURT: All right, Mr. Thomas.

11 MR. THOMAS: Your Honor, if it pleases the Court?

12 THE COURT: Yes, sir.

13 MR. THOMAS: Tommy Thomas, I'm here for
14 Mr. Salley. Just in a housekeeping thing, I have, which may
15 be part of the record, but I made copies of it anyway, the
16 amended application for post conviction back in 2014. There
17 is a prior post conviction. The only reason I wanted to
18 submit it to the court is that it outlines a number of
19 different issues that were presented.

20 And, also, I don't know if you have a copy of the
21 order and to be frank, it's one of the best orders I have
22 seen as far as detail and how it was written and I'd like to
23 hand those up to the Court.

24 THE COURT: Yes, please. I don't have a copy of
25 anything right now.

1 MR. THOMAS: Okay.

2 THE COURT: Do you have a packet for me?

3 MR. JONES: Yes, Your Honor.

4 THE COURT: I always -- I usually don't get the
5 packets until the day of the hearing, you're always taking
6 them under advisement.

7 MR. JONES: Thank you. Your Honor, may I
8 approach.

9 THE COURT: Yes, sir. Okay. Yes, sir.

10 MR. THOMAS: Your Honor, if it pleases the Court?

11 Just in opening very briefly, what we're asking
12 the Court for today is delay the appeal of a Post Conviction
13 Relief action. One of the reasons for submitting the
14 Court's order is that we do we believe that there are number
15 of viable issues that were presented to the court and also
16 that were ruled upon the Court which makes it a situation to
17 where he should be taken a bite at that apple, Your Honor,
18 to be able to appeal those issues and take the Court's
19 ruling either to the Court of Appeals or to the Supreme
20 Court for a final determination.

21 THE COURT: Alright.

22 MR. THOMAS: Your Honor, with that we would -- we
23 want to call Aimee Zmroczek to the stand first.

24 THE COURT: All right. Ms. Zmroczek.

25 AIMEE ZMROCZEK, after being duly sworn,

MS. ZMROCZEK DIRECT BY MR. THOMAS

1 testified as follows:

2 THE WITNESS: It's Aimee Jendrzewski Zmroczek,
3 A-I-M-E-E, J-E-N-D-R-Z-E-J-E-W-S-K-I, is my middle name,
4 last name, Z-M-R-O-C-Z-E-K.

5 MR. THOMAS: May it please the Court, Your Honor?

6 THE COURT: Yes.

7 DIRECT EXAMINATION

8 BY MR. THOMAS:

9 Q. Ms. Zmroczek, you had an opportunity to represent
10 Mr. Salley?

11 A. I did.

12 Q. Okay. And you represented him in a post
13 conviction relief rehearing?

14 A. That's correct.

15 Q. And you carried that relief, that action through
16 receiving a decision from the Court on the issues presented?

17 A. That's correct.

18 Q. Okay. If I may, were you asked by the family or
19 by Mr. Salley to pursue an appeal of those issues?

20 A. I was.

21 Q. And were you able to file that appeal?

22 A. So I did not because so there was some confusion
23 on when the order was actually --

24 Q. Right.

25 A. -- signed and delivered to me. And then when it

1 finally was I was ill and thought it had been done and i
2 simply did not do it.

3 Q. You were actually hospitalized, I think, for a
4 period of time?

5 A. I was, yes.

6 Q. Okay. And as a result you were unable to file the
7 appeal?

8 A. That's correct.

9 Q. But you were asked by -- do you remember speaking
10 with his mom about it?

11 A. Oh, absolutely, and with him.

12 Q. And with him?

13 A. And I fully intended to do it until outside
14 circumstances prevented me to do it.

15 Q. A difficult case?

16 A. Very.

17 Q. And I think you did a great job.

18 A. Thank you.

19 Q. Do you think that there are viable issues
20 contained in that order that would be appropriate for the
21 court on an appeal?

22 A. I do. I remember hiring experts and having
23 multiple days of testimony regarding this case and I do
24 believe that there are issues that the Court could review.

25 Q. Matter of fact the record was left open a number

MR. SALLEY DIRECT BY MR. THOMAS

1 of times?

2 A. Correct.

3 Q. And you came back and brought evidence before the
4 court?

5 A. I did, yes.

6 MR. THOMAS: Thank you, Your Honor. I have no
7 further questions.

8 THE COURT: All right. Thank you. Yes, sir.

9 MR. JONES: Nothing from the State, Your Honor.

10 THE COURT: All right. Thank you, ma'am, you may
11 step down.

12 THE WITNESS: Thank you, Your Honor. May I be
13 excused?

14 THE COURT: Yes. Any objection to her leaving?

15 MR. JONES: No objection, Your Honor.

16 THE COURT: Thank you. All right, Mr. Thomas.

17 MR. THOMAS: Your Honor, if it pleases the Court
18 we call Mr. Salley to the stand.

19 THE COURT: Okay. Mr. Salley, come on around sir.

20 JAMAQUES SALLEY, after being duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. THOMAS:

24 Q. Mr. Salley, would you please state your full name
25 for the record?

MR. SALLEY DIRECT BY MR. THOMAS

1 A. Jamaques Deundray Salley.

2 Q. All right, sir. And you're currently incarcerated
3 with the department of corrections?

4 A. Yes.

5 Q. And what are you serving time for?

6 A. Armed robbery and kidnapping.

7 Q. And what type of sentence do you have?

8 A. 30 years for the armed robbery and five for
9 kidnapping.

10 Q. So 35 total?

11 A. Yes.

12 Q. All right, sir. Do you know when you max out?

13 A. 40 something, 2040 something, I believe.

14 Q. Okay. How old will you be when you get out?

15 A. 54.

16 Q. Okay. All right. And you, of course, remember
17 your Post Conviction, is safe to say it was filed in august
18 of 2014?

19 A. Yes.

20 Q. When were you convicted?

21 A. August of 2013.

22 Q. 13, okay. And Ms. Zmroczek was appointed or was
23 she retained?

24 A. She was appointed.

25 Q. Okay. You had an evidentiary hearing?

MR. SALLEY DIRECT BY MR. THOMAS

1 A. Yes.

2 Q. And do you remember when that hearing was roughly?

3 A. It was in May of 2017 and then again in August of
4 the same year.

5 Q. It was left -- the record was left open?

6 A. Yes.

7 Q. Okay. Now, do you know the results of that post
8 conviction relief?

9 A. I think it was dismissed, I believe it was
10 dismissed.

11 Q. Denied?

12 A. Yes.

13 Q. Okay. And do you know -- so when did you find out
14 that the PCR had been denied in?

15 A. In 2022, I don't remember the exact month.

16 Q. All right. And what did you do, if anything,
17 after you found out that post conviction was denied?

18 A. At first I tried to call Aimee to figure out if an
19 appeal had been filed.

20 Q. Did you ask her to file an appeal?

21 A. Yes, I did.

22 Q. Okay.

23 A. Yes.

24 Q. And what did she tell you?

25 A. I wasn't able to get ahold of her at that time.

MR. SALLEY DIRECT BY MR. THOMAS

1 So me and my parents we just decided to hire another
2 attorney and see if one had been filed.

3 Q. Okay. Well, let's go back but you did ask her
4 to -- you requested that she file an appeal on your --

5 A. Yes.

6 Q. -- on your behalf?

7 A. Yes.

8 Q. Okay. And did your family speak with her in
9 regards to the appeal?

10 A. I believe so, yes.

11 Q. Okay. And did you have any indication as to
12 whether she was going to file the appeal or not?

13 A. She told me she would.

14 Q. Okay. She told you that she would?

15 A. Yes.

16 Q. Okay. And so then you ended up contacting my
17 office; is that correct?

18 A. Yes.

19 Q. And you actually retained me to represent you?

20 A. Yes.

21 Q. And what was the purpose of that?

22 A. Originally, it was to find out if the appeal had
23 been filed and if not to represent me on the appeal.

24 Q. Okay. And was -- were we able to provide you any
25 information in regards to the filing of the appeal?

MR. SALLEY DIRECT BY MR. THOMAS

1 A. Yes. I found out there wasn't one filed and so
2 now here we are.

3 Q. Okay. All right.

4 MR. THOMAS: Your Honor, if can beg Court's
5 indulgence?

6 THE COURT: Yes, sir.

7 BY MR. THOMAS:

8 Q. Would as far as the day that you retained me,
9 would July 18th, 2023, is that appropriate, would that be a
10 correct date?

11 A. Yes.

12 Q. Okay. And would it have been after that that you
13 received information that there was no appeal pending?

14 A. Yes.

15 Q. Okay. And your post -- and then you asked us to
16 file a Post Conviction Relief action on your behalf?

17 A. Yes.

18 Q. And is it appropriate to say that action was filed
19 8/7 of '23?

20 A. Yes.

21 Q. Same year?

22 A. Yes.

23 Q. Okay. Let me ask you about the appeal. What --
24 very briefly, can you tell us why you wanted to appeal this
25 decision?

MR. SALLEY DIRECT BY MR. THOMAS

1 A. Well, it wasn't until I retained your services
2 that I even got a copy of the order. So during the last few
3 years I've been waiting on the order and the reasons for the
4 dismissal. And a lot of things that were dismissed or
5 denied I felt like they shouldn't have been because there
6 was -- there were just things she wasn't -- she either did
7 not have at the time or she just -- or the judge completely
8 ignored regarding the decision on certain issues.

9 Q. Okay. All right. So you believe that there are
10 viable issues, you understand what I mean by "viable"?

11 A. Yes. Yes.

12 Q. There are viable issues that are subject to an
13 appeal of your post conviction?

14 A. Yes.

15 Q. Okay. And you're asking the Court to grant you
16 that ability to file that?

17 A. Yes.

18 Q. Okay.

19 MR. THOMAS: No further questions, Your Honor.

20 THE COURT: All right.

21 MR. JONES: Nothing from the State, Your Honor.

22 THE COURT: All right. Thank you, sir, you may
23 step down.

24 MR. THOMAS: Your Honor, if it pleases the court
25 we would like to call Shanetta Salley to the stand please.

MS. SALLEY DAVIS DIRECT BY MR. THOMAS

1 THE COURT: All right. Ms. Shanetta.

2 SHANETTA SALLEY DAVIS, after being duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. THOMAS:

6 Q. Ms. Davis, thank you for being here today. Your
7 relationship to Mr. Salley?

8 A. Mother.

9 Q. You're his mom. You understand that you're here
10 to tell the truth.

11 A. Yes.

12 Q. And is that what you intend to do is tell the
13 truth?

14 A. Yes.

15 Q. Okay. Let me ask you: Did you have an
16 opportunity to have a conversation with Aimee Zmrorczek?

17 A. Yes, I did.

18 Q. After this hearing and when a decision was made by
19 the Court? You knew that -- well, let me ask you this: Did
20 you ask Ms. Zmroczech that you wanted that the family wished
21 for her to appeal this decision?

22 A. Yes, I did.

23 Q. Okay. And what did Ms. Zmroczech tell you?

24 A. She told me that she was will file it and she
25 also, you know, mentioned that she was having some personal

MS. SALLEY DAVIS DIRECT BY MR. THOMAS

1 issues, but it will be filed. And she was taking -- you
2 know, sending me proof of everything she filed through the
3 mail.

4 Q. All right. Did you ever receive anything from
5 her?

6 A. No.

7 Q. Okay. Did you actually contact my office at a
8 later date?

9 A. Yes.

10 Q. Okay. And that was to look into the issue in
11 regards to the filing of the appeal?

12 A. Yes.

13 Q. Okay. And you expressed the family's desire, as
14 well as Mr. Salley's desire to appeal this case?

15 A. Yes.

16 Q. Okay. And Ms. Zmroczek indicated to you that she
17 was going to do that.

18 A. Yes.

19 Q. And send you a copy?

20 A. Yes.

21 Q. Okay.

22 MR. THOMAS: No further questions, Your Honor.

23 THE COURT: Any questions?

24 MR. JONES: Nothing from the State, Your Honor.

25 THE COURT: Thank you ma'am, you can step down.

1 MR. THOMAS: Your Honor, if it pleases the Court,
2 that's the applicant's case.

3 THE COURT: All right. Thank you.

4 THE COURT: Does the State have any witnesses?

5 MR. JONES: No, Your Honor.

6 In view of the testimony that received today I
7 think it's clear that Mr. Salley did request an appeal
8 within a timely fashion and that Ms. Zmroczek intended to
9 file one, did not have a strategic reason for not filing
10 one. But simply through circumstances existing at the time
11 was unable to file one.

12 Therefore, I think Mr. Thomas and Mr. Salley have
13 met their burden and I'm not going to contest the relief
14 they request on the form of an appeal.

15 THE COURT: All right. Somebody take a picture of
16 this, the State is actually conceding to the granting of a
17 PCR application. I appreciate you doing that. Thank you.

18 MR. JONES: Thank you, Your Honor, it took a lot.

19 THE COURT: It was only after us having a hearing,
20 but I understand, I got it.

21 So, well, I was going to do it anyway based upon
22 the totality of the evidence presented, I do find that the
23 applicant is entitled to a belated appeal --

24 MR. THOMAS: Thank you, Your Honor.

25 THE COURT: -- and as such I grant this. So that

1 means you prepare the order.

2 MR. THOMAS: Be glad to.

3 THE COURT: All right.

4 END OF REQUESTED PROCEEDINGS

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF TRANSCRIBER

Case Name/Number: State of South Carolina vs. Jamaques
Salley, 2014-CP-02-01848, 2023-CP-02-01766

Date of Hearing: July 16, 2024

Court Reporter/Monitor: DCRP

I, Cynthia D. Weaver, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither Counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

November 10, 2024

Cynthia D Weaver

Cynthia D. Weaver
Official Court Reporter/Transcriber
State of South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	FOR THE SECOND JUDICIAL CIRCUIT
JAMAQUES SALLEY #345433,)	2023-CP-02-1766
Applicant,)	
v.)	CONSENT ORDER GRANTING
STATE OF SOUTH CAROLINA,)	AUSTIN APPEAL

This matter comes before the Court by way of a post-conviction relief action filed by Applicant, Jamaques Salley, on August 7, 2023, requesting a hearing only on Applicant's claim that he is entitled to belated appellate review of his first post-conviction relief action pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E. 2d 395 (1991). The State made its return on March 22, 2024. A hearing was held on July 16, 2024 before the Honorable Brian M. Gibbons. Present before the Court is Tommy A. Thomas, Attorney for the Applicant and Zachary Jones, Attorney for the Respondent.

I. Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Aiken County Clerk of Court. During its May 2013 term, the Aiken County Grand Jury indicted Applicant for kidnapping (2013-GS-02-00758) and armed robbery (2013-GS-02-00757). The case was prosecuted by Assistant Solicitor Kevin Molony. Applicant was represented by Thomas D. Broadwater, Esquire.

On August 8, 2013, Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Applicant was found guilty as indicted. On August 13, 2013, Judge Early sentenced Applicant to thirty years for armed robbery and a consecutive five years for kidnapping.

FILED

8-13 2024

Robert L. White
C.C.P. & G.S.
Shadell Parks
Deputy Clerk

- k. For failing to properly research and present an expert regarding digital images presented at trial;
 - l. For failing to file pretrial motions and have a competent understanding of the criminal procedure and due process;
 - m. Ineffective assistance of counsel due to cumulative error.
2. Newly Discovered Evidence

a. Video of all suspects together prior to robbery (enhanced video)

Respondent made its return on January 23, 2015. An evidentiary hearing was convened on May 24, and 25, 2017, at the Aiken County Courthouse before the Honorable Diane S. Goodstein. Applicant was present and represented by Aimee J. Zmroczek, Esq. Assistant Attorney General Julie A. Coleman represented the State. On December 27, 2021, Judge Goodstein issued an Order of Dismissal denying and dismissing the application with prejudice. Applicant did not appeal.

II. CURRENT PCR APPLICATION

In his second and current application for post-conviction relief, Applicant alleges he is entitled to belated appellate review of his initial post-conviction relief action pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395. In its return, the State requested a hearing on the sole claim of whether Applicant is entitled to *Austin* review of his initial post-conviction relief action.

III. TESTIMONY

Applicant

The Applicant testified that he asked PCR Counsel to file an appeal of the denial of his PCR. An Order of Dismissal was served on Counsel on February 22, 2022. The Applicant believed there were meritorious issues that could be appealed and discussed this with Counsel.



He testified that Counsel told him an appeal would be filed. The Petitioner further testified that he became concerned about the Appeal and contacted Tommy A. Thomas, Esq. to investigate the status of the Appeal. The Petitioner testified that he was advised that there was no record of an Appeal being filed. He stated after consultation he instructed Mr. Thomas to file a PCR action asking for a belated appeal. The PCR was filed August 7, 2023.

PCR Counsel

PCR counsel Aimee Zmroczek testified that she was asked to file the PCR Appeal. That during this time, she had some health issues and was hospitalized. That she failed to file the Appeal. She further testified that she believed that there were issues that could have merit on Appeal.

Respondent's Consent

Counsel for the Respondent informed the Court that the State had no objection to the granting of the Petitioner's request for a belated appeal of his previous PCR.

IV. FINDINGS OF FACT & CONCLUSIONS OF LAW

Applicant alleges he was denied the right to appeal his first post-conviction relief action. This Court agrees. Our Supreme Court has held that every PCR applicant is entitled to a full and fair opportunity to present claims in one PCR application, or one "bite at the apple." *Odom v. State*, 337 S.C. 256, 261, 523 S.E. 2d 753, 755 (1999). This "bit" includes an applicant's right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal. *Id.* At 261, 523 S.E.2d at 755-56. Accordingly, successive applications are generally disfavored "because they allow an applicant to receive more than "one bite at the apple." *Id.* At 261, 523 S.E. 2d at 755; *see generally Graham*, 378, S.C. at 3, 661 S.E.2d at 338 ("A successive PCR



application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings.”)

However, our Supreme Court has allowed successive PCR application where the applicant has been denied complete access to the appellate process. *Odom*, 337 S.C. at 261, 523 S.E.2d at 755; see *Austin*, 305 S.C. at 454, 409 S.E.2d at 396 (1991) (noting that “the right to seek appellate review of the denial of PCR is expressly authorized by state law” (citing S.C. Code Ann. § 17-27-100); S.C. Code Ann § 17-27-100 (right to appeal final judgment by post-conviction relief court). *Austin* provides for belated appellate review of the denial of a prior PCR action after the statute of limitations has expired where PCR counsel’s failure to timely appeal prevented the applicant from seeking appellate review. See, e.g., *Hope v. State*, 328 S.C. 78 n.1, 492 S.E.2d 76 n.1 (1997) (permitting an *Austin* appeal where original PCR counsel failed to appeal from the first denial of PCR); but see *Atce v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991) (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).

A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively finds either; (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. *Odom*, 337 S.C. at 262, 523 S.E.2d at 756 (citing *King v. State*, 308 S.C. 348, 348-49, 417 S.E.2d 868 (1992)). If the PCR court finds the applicant was denied his or her right to appeal the applicant can petition for certiorari and the Supreme Court will review whether he or she was prejudiced by the failure to obtain appellate review. *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. Alternatively, if the PCR court finds the applicant never in fact sought discretionary

review, the applicant may appeal the finding and the Supreme Court will review the appeal based on the normal "any evidence" standard. *Id.* At 455, 409 S.E.2d at 396 (citing *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (highlighting that "any evidence" of probative value contained in the record is sufficient to uphold the PCR judge's factual findings on appeal)), *see generally* *Drayton v. Evatt*, 312 S.C. 4, 11, 430 S.E.2d 517, 521 (1993) (explaining that this Court "gives great deference to a judge's findings where matters of credibility are involved since we lack the opportunity to directly observe the witnesses").

Here, both Applicant and the State agree that Applicant was denied the opportunity to seek appellate review of the denial of his initial post-conviction relief action. Based upon the consent of both parties, this Court finds Applicant did not knowingly and intelligently waive his right to appeal the denial of his initial post-conviction relief action and, as such, she is entitled to belated appellate review pursuant to *Austin v. State*.

V. CONCLUSION

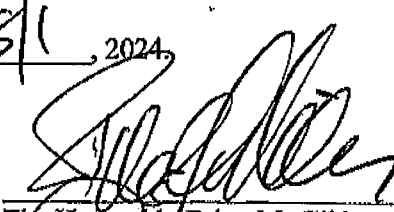
Based on all the foregoing, this Court finds Applicant may petition the Supreme Court of South Carolina pursuant to *Austin*. *See King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992) (outlining the procedure used to seek *Austin* review). Applicant must file and serve a notice of appeal within thirty days from the PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rules 203 and 243, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin*, 305 S.C. at 454, 409 S.E. 2d at 396; Rule 71.1 (g), SCRCP. Applicant is directed to Rules 203, 207 and 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:



1. Applicant is granted belated appellate review of the denial of his initial post-conviction relief action pursuant to *Austin v. State*;

AND IT IS SO ORDERED this ____ day of 8/1, 2024.


The Honorable Brian M. Gibbons
Presiding Judge
Second Judicial Circuit

✓, South Carolina