



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

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Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 1, 2012

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC. 29211

RECEIVED

MAR 01 2012

S.C. Supreme Court

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

Samuel T. Johnson v. State of South Carolina

2/29/2012

I would appreciate you beginning our time limits from the above date, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,

Loriene French
Legal Services Coordinator

1 **DEP. SOL. THORNTON:** Your Honor, may it please the
 2 Court? We are before you on the State v. Travis Samuel
 3 Johnson. Mr. Johnson is here. He's represented by his
 4 attorney, Mr. Beach. ~~Mr. Johnson is here on several counts,~~
 5 Judge: 2008-GS-15-425, burglary in the first degree. ~~2008-~~
 6 ~~GS-15-426, which is armed robbery.~~ 2008-GS-15-427; 428, 429
 7 and 430; all for kidnapping. 2008-GS-15-446, which is
 8 escape, or attempted escape.

9 The State, Your Honor, for the record, is nol prossing
 10 2008-GS-15-431, 432, 433, 434, which are assault with intent
 11 to kills, and a criminal conspiracy charge at 447.

12 **THE COURT:** All right. There are three kidnappings?

13 **DEP. SOL. THORNTON:** Four kidnappings, Your Honor.
 14 427, 428, 429 and 430.

15 **THE COURT:** Four kidnappings, one armed robbery, one
 16 burglary first, and one escape?

17 **DEP. SOL. THORNTON:** Yes, sir.

18 **THE COURT:** All the other charges are being nol prossed
 19 against Mr. Johnson?

Start → 20 **DEP. SOL. THORNTON:** As a result of this incident, yes,
 21 sir. And I have two requests to change the indictment, which
 22 Mr. Beach has indicated he did not object to. On indictment
 23 number ~~2008-GS-15-426,~~ the indictment had 43 Copperheat
 24 Court, and it should be Copperhead, that change has been
 25 made. And Tanaya Finley, the spelling of her name in 2008-

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OCT 21 2011

S.C. SUPREME COURT

1 GS-15-428, has been changed. All of that I've already
2 talked to Mr. Beach.

3 THE COURT: Any objection to the motion to amend the
4 indictments to reflect the changes expressed on the record
5 by Mr. Thornton, Mr. Beach?

Failure to object

6 MR. BEACH: None, Your Honor.

7 THE COURT: So ordered, without objection.

8 DEP. SOL. THORNTON: Your Honor, I'll hand the Court
9 the sentencing sheets and the indictments.

10 THE COURT: Are there any negotiations or
11 recommendations, Mr. Thornton?

12 DEP. SOL. THORNTON: There is, Your Honor. This would
13 be a negotiated sentence of 20 years, and of course, it is
14 violent. There are several, almost all the charges are
15 violent, and most serious, but that has been marked on your
16 sentencing sheet, Your Honor. But it would be for a
17 negotiated 20-year sentence to run concurrent.

18 THE COURT: Concurrent? All right. Now, let me ask
19 you this, Mr. Thornton, obviously, I'm not sure about the
20 escape, but it would be a concurrent sentence, what does it
21 carry?

22 DEP. SOL. THORNTON: I think it carries up to 10,
23 Judge.

24 THE COURT: I think it carries up to 15.

25 DEP. SOL. THORNTON: I believe it's been placed on top

1 Court, which is here in Colleton County. I gave you the
2 facts in the co-defendant's case yesterday who pled and were
3 ready to testify, if necessary, but I will go over them
4 briefly again.

5 On April the 29th, 2008, Mr. Johnson, along with co-
6 defendant, Mr. Ricardo Hall, went into the home of Mr. Brown
7 and Ms. Finley, who are seated here with us in the jury
8 room, and basically, Judge, when they walked in, they went
9 into the living room. Mr. Johnson had a pistol; I believe

10 it was a Lorcin pistol 9mm.

11 **THE COURT:** Spell the name for the court reporter for
12 the record.

13 **OFFICER BUCHANAN:** Yes, sir. It's Lorcin, L-O-R-C-I-N.

14 **THE COURT:** You're welcome. All right. Go ahead.

15 **DEP. SOL. THORNTON:** Mr. Johnson was armed with that
16 pistol when he went in; Judge. Mr. Johnson proceeded to
17 grab the kids and they took them to the back part of the
18 home where the bathroom was, where Ms. Finley was taking a
19 bath. He forced her to get out of the bathtub, would not
20 allow her to put any clothes on. Mr. Johnson and Mr. Hall,
21 at that point, I believe, removed a shotgun and a
22 Playstation III from the home and in the process of leaving,
23 Mr. Brown had gone to get help. He saw them when they came
24 in, he ran next door and got help, and as Mr. Johnson and
25 Mr. Hall were leaving the main part of the house to go out

I've sent documents of my 380 Registered gun so this show and prove I was framed with this gun! This violated my 4th, 8th amendment!

He framed me with this gun! I proved this issue at my P.C.R. Hearing it violated my 14th, 8th amendment!

Date: 5/20/08
Time: 14:53:35

COLLETON COUNTY SHERIFF'S OFFICE
INCIDENT REPORT

Page: 15
Program: CMS301L

1-08-002169 (Continued)

WHEN HE ASKED HIM WEAR WAS HIS MONEY. MR. HALL STATED THEY THEN LEFT AND WENT TO "T'S" HOUSE. MR. HALL STATED THEY TURNED OFF OF A PAVED RD AND MADE A RIGHT ON A DIRT RD. MR. HALL STATED THEY WENT TO THE END OF THE ROAD AND STOPPED THE VEHICLE AND HIM AND SAM GOT OUT. MR. HALL STATED THEY WALKED UP TO THE SHED FIRST AND PEAKED IN AND SAW SOMEONE SLEEPING. SAM THEN KEPT TELLING HIM "LETS GO IN THE HOUSE". MR. HALL THEN STATED THEY WALKED UP THE BACK STEPS SAM TAPPED ON THE BACK DOOR. MR. HALL STATED TIM'S SON ANSWERED THE DOOR. MR. HALL STATED SAM PUT THE GUN TO HIS HEAD AND WALKED HIM BACK IN THE RESIDENCE. MR. HALL STATED SAM THEN GRABBED TIM'S TWO LITTLE GIRLS AND PUT THE GUN TO THERE HEADS. MR. HALL STATED THEY THEN TOOK ALL THREE TO THE MASTER BEDROOM WHERE THERE MOTHER WAS TAKING A BATH. MR. HALL STATED SAM WENT IN THE BATHROOM AND PUT THE GUN TO TIM'S WIFE'S HEAD AND MADE HER GET OUT OF THE TUB. MR. HALL STATED SAM TOLD WHERES THE MONEY AT OR I'M GOING TO START STOOTING. MR. HALL STATED SAM WAS ALSO SEARCHING THE ROOM AND UNDER THE BED. MR. HALL STATED SAM TOLD HIM TO GO LOCK THE DOOR. MR. HALL STATED HE THEN RAN OUTSIDE AND AROUND THE HORSE SWING. MR. HALL STATED HE RAN DOWN THE ROAD AND TO A TRAILER PARK WHERE HE WENT TO RANDOLPHS HOUSE. MR. HALL STATED HE TRIED TO TELL HIM WHAT WAS GOING ON BY MR. RANDOLPH PULLED A GUN ON HIM AND TOLD HIM TO LEAVE. MR. HALL STATED HE LEFT AND WENT TO PAUL JR'S HOUSE. MR. HALL STATED HE SAW MS. YOLANDA AND ASKED HER FOR A RIDE TO JANICE'S HOUSE. MR. HALL STATED ONCE HE GOT THERE HE WAITED THERE FOR LAW-ENFORCEMENT TO ARRIVE. FURTHER INVESTIGATION TO FOLLOW.

***** N A R R A T I V E # 7 *****
JOHNSON INTERVIEW Reported By: SCOTT, JEFFREY S. 5/02/08
Entered By.: SCOTT, JEFFREY S. 5/02/08

ON APRIL 30, 2008 I DET. SCOTT CONDUCTED AN INTERVIEW WITH SAMUEL JOHNSON AT THE SHERIFF'S OFFICE/ ANNEX. AFTER ADVISING MR. JOHNSON OF HIS MIRANDA WARNING I STARTED THE INTERVIEW. MR. JOHNSON STATED HE COULD AFFORD TO HIRE AN ATTORNEY BUT HE WANTED ONE. I THEN CONCLUDED THE INTERVIEW.

***** N A R R A T I V E # 8 *****
SUPPLEMENT Reported By: SCOTT, JEFFREY S. 5/02/08
Entered By.: SCOTT, JEFFREY S. 5/02/08

ON MAY 1, 2008 I DET. SCOTT RESPONDED TO 91 DALMATION CT IN REFERENCE TO PRESENTING A PHOTO LINE UP TO CATHERINE CZEZH AND HER DAUGHTER SONJA GLENN. WHEN I ARRIVED ON SCENE I SPOKE WITH MS. CATHERINE CZEZH. MS. CZEZH STATED SHE WAS AT HOME WITH HER DAUGHTER WHEN A BLACK MALE TAPPED ON THE DOOR. MS. CZEZH STATED THEY OPENED THE DOOR AND THE MALE TOLD THEM HE HAD BEEN JUMPED AND HE NEEDED HELP TO GET IN CONTACT WITH HIS FAMILY. MS. CZEZH STATED THEY OFFERED HIM THE TELEPHONE AND KEPT HIM ON THE PORCH WHILE HE USED THE PHONE. MS. CZEZH STATED AFTER HE WAS DONE USING THE PHONE THEY TOOK IT BACK AND THE MALE BEGAN TO GET AGGITATED SAYING HE DOES NOT KNOW HIS WAY OUT OF THE NEIGHBOR HOOD. MS. CZEZH STATED THEY TRIED TO EXPLAIN TO HIM HOW TO GET OUT BUT THE MALE GOT MORE AGGITATED AND SAID HE DID NOT WANT TO

Colleton County Sheriff's Office

VOLUNTARY STATEMENT

Date 4/30/08 Place 43 Copper Head Ct. Time Started 12:21 a.m.

I, the undersigned _____, am _____ years of age, having been born on _____, at _____, my social security number being _____ and my level of education is _____.

I now live at _____.

I have been duly warned and advised by _____, a person who has identified himself as an officer/deputy with the Colleton County Sheriff's Office.

I declare that the following voluntary statement is made to the aforesaid person of my own free will without promise of hope of reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency, by any person or persons whomsoever.

Q: What room were you and your kids in with the suspect?

A: Master bedroom.

Q: Did he point any weapon at you and your kids. If so what type & color?

A: Yes Pistol black & brown.

Q: Describe the suspect who pointed the pistol?

A: tall brown skinned, skinny and weared all black mouth covered hat black sneaker with green and orange at the bottom.

End of statement

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 0118 A.M. on the 30 day of April 20 08.

Sworn before me on this _____ day of _____ 20 _____.

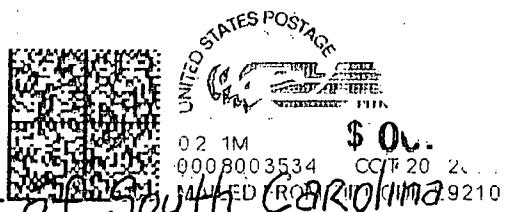
NOTARY PUBLIC FOR SOUTH CAROLINA

Victoria Janney
SIGNATURE OF PERSON GIVING VOLUNTARY STATEMENT

My Commission Expires: _____

Witness: [Signature] 391

Samuel T. Johnson # 332718
BRCI/Murray-Right-Rm-128
4460 Broad River Rd.
Columbia, SC 29210



The Supreme Court of South Carolina
Daniel E. Shearouse, Clerk of court
Post office Box 11330
Columbia, South Carolina 29211

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OCT 20 2011
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SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
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Post Office Box 11589
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Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

September 12, 2011

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SEP 12 2011

S.C. Supreme Court

Ms. Vivian Cross
Circuit Court Reporter
PO Box 492
Goose Creek, SC 29445

Dear Ms. Cross:

Please provide us with the following transcript:

Samuel T. Johnson v. State of South Carolina Case #: 09-CP-15-00517

County: Colleton Date of Trial: April 21, 2011

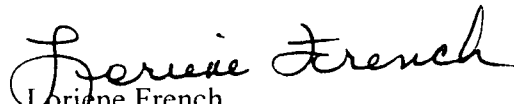
Presiding Judge: D. Craig Brown

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

Sincerely,


Lorie French
Legal Services Coordinator

cc: S.C. Supreme Court
Attorney General's Office

Samuel T. Johnson 332718

Aug, 28 2011

BRCI/ So/111

4460 Broad River Rd.

Columbia, S.C. 29210

Case number 2009-CP-15-517

Dear Mr. Daniel,

Wilson v. State, 559 S.E.2d 581 (S.C. 2002)

("When considering the state's motion for summary dismissal of a post-conviction relief application, a judge must assume facts presented by a applicant are true and view those facts in the light most favorable to the applicant.") All evidence supporting my facts was brought before Honorable D. Craig Brown, Circuit Judge. The court failed to make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment. S.C. Code Ann § 17-27-80 (1976) Hearing on application; final judgment was denied with prejudice!

Sincerely yours,

Samuel T. Johnson

29 Aug - 2011

Eugene Kestner
JUTG

Dan -
I not clear what he wants. App. Def. has until Oct. 4th to assess indigency.
H. D.

J-57 F-0
C-01 T-
MAR 3 2011

J.D. BRYAN
ATTORNEY & COUNSELOR AT LAW

STREET ADDRESS:
209 EAST WASHINGTON STREET
WALTERBORO, SOUTH CAROLINA

TELEPHONE:
843-549-9455

MAILING ADDRESS:
POST OFFICE BOX 1111
WALTERBORO, S.C. 29488

Mon, Aug 15, 2011

Mr. Samuel Travis Johnson #332718
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

Re: Samuel Travis Johnson v. State

Our Case No: C-278.

Dear Mr. Johnson:

I have received your letter. The order is prepared by the attorney is whose favor the Court ruled. It would appear that the Court ruled on all the issues. An appeal has been filed in your case.

With highest personal regards, I remain

Sincerely,


J.D. Bryan

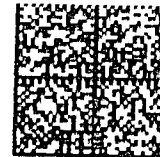
JDB/ns

cc: file

Samuel T. Johnson #332718

BRCI/ So/ 111

4460 Broad River Rd.
Columbia, S.C. 29210



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Daniel E. Shearouse
Clerk of S.C. Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

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29211+1330



PCR

J.D. BRYAN
ATTORNEY & COUNSELOR AT LAW

STREET ADDRESS:
209 EAST WASHINGTON STREET
WALTERBORO, SOUTH CAROLINA

TELEPHONE:
843-549-9455

MAILING ADDRESS:
POST OFFICE BOX 1111
WALTERBORO, S.C. 29488

Mon, Aug 15, 2011

Janet Johnson
Clerk of the South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

Re: Samuel T. Johnson; #332718, v. State
Case No. 2009-CP-15-517.

Our Case No: C 278.

Dear Ms. Johnson:

Please find enclosed a corrected Notice of Appeal and Proof of Service in the
above case

Sincerely,



J.D. Bryan

cc: client
Attorney General
Office of Appellate Defense
file

JDB/ns
enclosures

RECEIVED
AUG 16 2011
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of Common Pleas.

Honorable D. Craig Brown, Circuit Judge

CASE NUMBER 2009-CP-15-517.

Samuel T. Johnson, #332718,Appellant,


v.

The State of South Carolina,.....Respondent.

NOTICE OF APPEAL (PCR).

Samuel T. Johnson hereby appeals to the Supreme Court for the State of South Carolina from the Order of the Honorable D. Craig Brown, dated 9 May 2011, denying Post-Conviction Relief. Appellant received written notice of entry of the Amended order on 25 July 2011.

Tue, 2 August 2011.



J.D. Bryan
P.O. Box 1111
209 East Washington Street.
Walterboro, S.C. 29488
(843) 549-9455

Other counsel of record are:

Matthew J. Friedman,
Assistant Attorney General
Rembert C. Dennis Building
PO Box 11549
Columbia, SC 29211
Attorney for the Respondent.

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AUG 16 2011

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of Common Pleas.

Honorable D. Craig Brown, Circuit Judge

CASE NUMBER 2009-CP-15-517.

Samuel T. Johnson, #332718,Appellant,

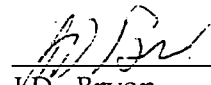
v.

The State of South Carolina,.....Respondent.

Proof of Service.

I certify that I have served the Notice of Appeal on the above-named Respondent, by depositing a copy thereof in the United States Mail, postage prepaid, to its attorney of record, Matthew J. Friedman, Assistant Attorney General, Rembert C. Dennis Building, PO Box 11549, Columbia, SC 29211, on Tue, 2 August 2011.

Tue, 2 August 2011.



J.D. Bryan
P.O. Box 1111
Walterboro, S.C. 29488
(843) 549-9455
Counsel for the Appellant.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of Common Pleas.

Honorable Perry M. Buckner, Circuit Judge

CASE NUMBER 2008-CP-15-1038.

Anthony La'Mar Brown, #251490,Appellant,

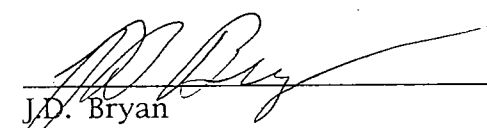
v.

The State of South Carolina,.....Respondent.

NOTICE OF APPEAL (PCR).

Anthony La'Mar Brown hereby appeals to the Supreme Court for the State of South Carolina from the Order of the Honorable Perry M. Buckner, dated 18 November 2010, denying Post-Conviction Relief, and Amended Order dated 17 December 2010. Appellant received written notice of entry of the Amended order on 26 April 2011.

Tue, Aug 2, 2011.



J.D. Bryan
P.O. Box 1111
209 East Washington Street.
Walterboro, S.C. 29488
(843) 549-9455

Other counsel of record are:

Matthew J. Friedman,
Assistant Attorney General
Rembert C. Dennis Building
PO Box 11549
Columbia, SC 29211
Attorney for the Respondent.

*returned incorrect
NOA & POS to Mr.
Bryan & he filed
corrected NOA & POS
On _____*

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of Common Pleas.

Honorable Perry M. Buckner, Circuit Judge

CASE NUMBER 2008-CP-15-1038.

Anthony La'Mar Brown, #251490,Appellant,

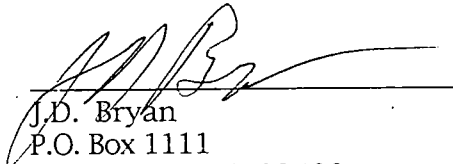
v.

The State of South Carolina,.....Respondent.

Proof of Service.

I certify that I have served the Notice of Appeal on the above-named Respondent, by depositing a copy thereof in the United States Mail, postage prepaid, to its attorney of record, Matthew J. Friedman, Assistant Attorney General, Rembert C. Dennis Building, PO Box 11549, Columbia, SC 29211, on Tue, Aug 2, 2011,.

Tue, Aug 2, 2011



J.D. Bryan
P.O. Box 1111
Walterboro, S.C. 29488
(843) 549-9455
Counsel for the Appellant.

PCR

J.D. BRYAN
ATTORNEY & COUNSELOR AT LAW

STREET ADDRESS:
209 EAST WASHINGTON STREET
WALTERBORO, SOUTH CAROLINA

TELEPHONE:
843-549-9455

MAILING ADDRESS:
POST OFFICE BOX 1111
WALTERBORO, S.C. 29488

Tue, Aug 2, 2011

Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

Re: Samuel T. Johnson, #332718, v. State
Case No. 2009-CP-15-517.

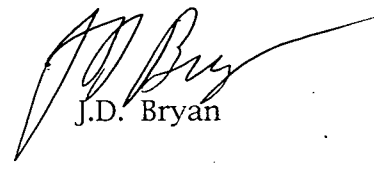
Our Case No: C 272.

Dear Sir:

Please find enclosed a Notice of Appeal in the above case. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the respondent, the State of South Carolina.
2. Copy of the order which is to be challenged on appeal.
3. An Order appointing me to represent the appellant in the lower court. The Office of Indigent Defense will be taking over this case.
4. A copy of the letter to the Office of Indigent Defense, setting forth the date of the hearing (there was only one).

Sincerely,


J.D. Bryan

cc: client
Attorney General
Office of Appellate Defense
file

JDB/ns
enclosures **RECEIVED**

AUG 05 2011

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Samuel T. Johnson, #332718,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2009-CP-15-517

ORDER OF DISMISSAL

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 MAY 13 AM 11:02

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 11, 2009. The Respondent made its Return on February 25, 2010. An evidentiary hearing into the matter was convened on April 21, 2011 at the Colleton County Courthouse. The Applicant was present at the hearing and was represented by J.D. Bryan, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Harris Beach, Esquire, also testified at the hearing. This Court had before it the records of the Colleton County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, the PCR application, Respondent's Return thereto, and statements from Sonya Glenn and Catherine Creech.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Applicant was indicted at the June 2008 term of the Colleton County Grand Jury for burglary - 1st degree (2008-GS-15-425), armed robbery (2008-GS-15-426), four counts of kidnapping (2008-GS-15-

427-430), and attempted escape (2008-GS-15-446). Harris S. Beach, Esquire, represented the Applicant. On January 13, 2009, the Applicant pled guilty as indicted. The State also dismissed five charges in exchange for the plea, including four counts of assault with intent to kill (AWIK) and criminal conspiracy. Pursuant to a negotiated plea agreement, the Honorable Perry M. Buckner sentenced him to confinement for fifteen (15) years for attempted escape and twenty (20) years for each other offense. The sentences were to run concurrently. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel in that counsel did not warn Applicant that certain charges were not indicted.
2. Involuntary guilty plea in that indicted offenses lacked probable cause.
3. Unlawful and unconstitutional sentence.
4. Prosecutor's misconduct in that prosecutor had no authority to negotiate plea.

At the hearing, Applicant alleged ineffective assistance of counsel for failure to discuss the elements of the charges, failure to inform Applicant that the State had to prove each element, failure to pursue alibi witnesses, failure to file a Brady/Rule 5 motion, and failure to object to the amendment of the indictments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

Applicant testified that he filed a speedy trial motion and wanted to go to trial. He asserted that he pled guilty on counsel's advice. He testified that he and counsel never discussed the elements of the crimes or what the State had to prove. He testified that he had statements from alibi witnesses. He admitted that these alibi witnesses were not available to testify at the PCR hearing, but he claimed that he asked his attorney to subpoena them for the PCR hearing. Applicant testified that plea counsel failed to move to dismiss based on lack of evidence and failed to move to suppress the gun. He contended that counsel failed to file a Brady/Rule 5 motion. Applicant also testified that counsel failed to properly investigate and failed to object to the amendment of the indictments.

Plea counsel testified that Applicant was facing twelve total charges, and he ultimately pled guilty to seven charges. Counsel testified that he did not object to the amendment of the indictments because the amendments merely corrected names and did not change the nature of the offense. He testified that he discussed with Applicant the elements of each charge and what the State was required to prove. He asserted that Applicant informed him of some potential alibi witnesses, but these witnesses did not pan out. Counsel testified that he requested and received discovery, and he reviewed the material with Applicant. Counsel asserted that it was Applicant's decision to plead guilty after counsel informed Applicant of the consequences of the plea and the significance of a negotiated sentence.

Ineffective Assistance of Counsel / Involuntary Guilty Plea

The Applicant alleges that he received ineffective assistance of counsel and that his plea was not entered freely and voluntarily. In a post-conviction relief action, the applicant has 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, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

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

Courts use a two-pronged test to evaluate 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." Id. at 625 (citing Strickland, 466 U.S. 668). 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." Id. at 625. When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct.

1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leake, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citations omitted).

This Court finds that counsel's testimony was credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof.

The record reflects that Applicant understood the nature of the charges and the possible punishments. At the plea hearing, he indicated that he was fully satisfied with counsel and that no one threatened him or promised him anything to get him to plead guilty. He told the court that he understood the terms of the negotiated sentence. He also admitted guilt at the plea hearing. This Court finds that Applicant's plea was entered voluntarily and intelligently with a full understanding of the consequences. This Court finds that Applicant understood the terms of the negotiated sentence and that it was Applicant's decision to plead guilty.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation

that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with Applicant, reviewed the discovery with him, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel obtained a favorable negotiated sentence of twenty (20) years for Applicant considering that Applicant was facing twelve charges, including five charges that carried a maximum sentence of thirty (30) and one charge that carried a maximum sentence of life. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel properly investigated Applicant's potential alibi witnesses. Counsel testified that these witnesses did not pan out. Moreover, these potential alibi witnesses did not appear at the PCR hearing. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the post-conviction relief hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992). An applicant's mere speculation as to what witnesses would have testified to at trial cannot, by itself, satisfy his burden of showing prejudice. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel's performance. This Court concludes the Applicant has not met his burden of

proving counsel failed to render reasonably effective assistance. See Eraser v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

All Other Allegations

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

CONCLUSION

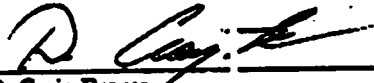
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 9th day of May, 2011.



D. Craig Brown
Presiding Judge
14th Judicial Circuit

Flowa, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Samuel Travis Johnson,
Plaintiff(s),
-vs-

State Of South Carolina,
Defendant(s).

IN THE COURT OF COMMON PLEAS
Fourteenth JUDICIAL CIRCUIT
CASE NO.: 2009CP1500517
APPOINTMENT OF COUNSEL OR GAL
(Select one.)

ORDER
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case
- SVP case
- Minor Name Change
- Adoption
- Custody and/or Visitation
- Other: Post Convict Rel 500
- Juvenile
- Abuse and Neglect

It appears Samuel Travis Johnson, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other:

Therefore, it is ordered that J.D. Bryan hereby is appointed as (Select one.)

counsel lead counsel (if capital PCR case) guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
July 8, 2009.

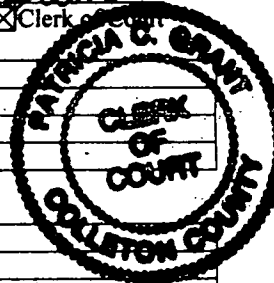
Patricia C. Grant
 Circuit Judge Clerk of Court

Plaintiff Attorney:

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Defendant Attorney:

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NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

J.D. BRYAN

ATTORNEY & COUNSELOR AT LAW

STREET ADDRESS:
209 EAST WASHINGTON STREET
WALTERBORO, SOUTH CAROLINA

TELEPHONE:
843-549-9455

MAILING ADDRESS:
POST OFFICE BOX 1111
WALTERBORO, S.C. 29488

Tue, Aug 2, 2011

Matt Friedman
Assistant Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia, S.C. 29211

Re: Samuel T. Johnson, #332718, v. State
Case No. 2009-CP-15-517.

Our Case No: C 278.

Dear Sir:

Enclosed, please find a copy of our (1) Notice of Appeal, (2) Certificate of Service of the same, (3) letter to the Clerk of Court for Colleton County, and (4) letter to the Clerk of the Supreme Court. With highest personal regards, I remain

Sincerely,



J.D. Bryan

JDB/ns

enclosures

cc: file
client
Office of Indigent Defense

J.D. BRYAN
ATTORNEY & COUNSELOR AT LAW

STREET ADDRESS:
209 EAST WASHINGTON STREET
WALTERBORO, SOUTH CAROLINA

TELEPHONE:
843-549-9455

MAILING ADDRESS:
POST OFFICE BOX 1111
WALTERBORO, S.C. 29488

Tue, Aug 2, 2011

Joe Savitz
Chief Appellate Attorney/ Division Director
S.C. Office of Appellate Defense
P.O. Box 11433
Columbia, S.C. 29211-1433

Re: Samuel T. Johnson, #332718, v. State
Case No. 2009-CP-15-517.

Our Case No: C 272.

Dear Sir:

This is to notify you that I have filed a notice of appeal in the above case, held in Walterboro before the Honorable D. Craig Brown. I was appointed by the Court to represent Mr. Johnson. Please feel free to contact me if you need any further assistance. Pursuant to the Supreme Court Rule, the hearings on the matter were as follows:

Hearing One:

1. Date of Hearing: 21 April 2011
2. Place of Hearing: Colleton County Courthouse
3. Presiding Judge: D. Craig Brown
4. Name of Court Reporter: Vivian H. Cross
5. Brief description of the nature of trial or hearing: Post Conviction Relief

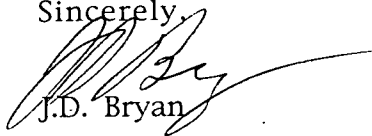
Hearing Two:

There were no other hearings.

Please find enclosed a copy of (1) the letter to Daniel E. Shearhouse, Clerk, S.C. Supreme Court, and (2) the notice of appeal and proof of service, as well as (3) a copy of the Order appointing me to represent the Appellant, (4) a copy of the cover letter to the Attorney General, and (5) copies of the Order.

With highest personal regards, I remain

Sincerely,


J.D. Bryan

cc: client
clerk, S.C. Supreme Court
file

enclosures

J.D. BRYAN
ATTORNEY & COUNSELLOR AT LAW
P.O. BOX 1111
WALTERBORO, S.C. 29038



*Amuel
J. Johnson*

The Hon. Daniel E. Shearouse
Clerk of the South Carolina
Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

2921181330-8055

