

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Jan 28 2026**  
S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

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DARRELL L. GOSS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001705

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APPENDIX

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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

DANIELLE DIXON  
Assistant Attorney General  
PO Box 11549  
Columbia, SC 29211  
(803) 734-3970

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 avenue, trying to get you there. But what are the things  
2 she does tell you? She tells you about the car out  
3 there, multiple people use it, okay? She wouldn't be  
4 surprised if Darrell Goss would use it, but lo and  
5 behold, he would never drive it. What did she say?  
6 Because of a driver's license. She said DUS, driving  
7 under suspension. That shows you one other time before  
8 when he was suspended he was driving, so that doesn't  
9 hold a whole lot of water about him not having access to  
10 that automobile.

11 They mentioned in the trial about Andy  
12 logging items. The man has been beaten, brutally beaten,  
13 in the hospital. He's got clothes all over the place.  
14 Of course he's not going to log items. He doesn't know  
15 exactly what was stolen. The sunglasses, and now they're  
16 trying to get you off of the facts.

17 Remember what Andy said, just like Jim said:  
18 No sunglasses were stolen in the store that day. But we  
19 have Ben Goss's thumbprint on there. Well, I would hope  
20 his prints would be in his own house. He lives there.  
21 That has no link to the crime scene, absolutely no  
22 relevance at all.

23 We go to the automobile. Who's in the house?  
24 Ben and Darrell Goss, right outside the driveway, his  
25 automobile that we've been told multiple people use it in



1 the house. Okay? There's a weapon in there. What else?  
2 Before I get too far ahead of myself, also in the room is  
3 a pair of Nikes. Look at the pictures. I know that they  
4 objected because I tried to get Hallman to say they were  
5 new, but look at the inserts. Obviously, common sense  
6 will tell you those are brand knew.

7           Pair of Nikes in the room, pair of Nikes in  
8 the trunk of the car. Look at the pictures when you get  
9 back there of the crime scene. There are boxes of those  
10 same Nikes that have been gone through several times.  
11 You can see that. Same pair of Nikes the day after the  
12 crime, in the house, Darrell Goss is there, with a car  
13 right outside, and, of course, we put the DMV lady on  
14 there to show, one, that they couldn't argue to you that  
15 we don't know whose car that is. It could have been some  
16 random friend that pulled up there, but no, where does  
17 the car come back to? That residence. It's there.  
18 Darrell Goss was there.

19           The testimony, now, put James Hill on there.  
20 Old pistol, couldn't trace it. We wanted to be able to  
21 tell you who it came back to; otherwise, they would say,  
22 We don't know whose gun that is. It could be anybody's  
23 gun. They ran fingerprints on it. Three came back.  
24 They weren't identifiable. There is nothing you can do  
25 about them. It's what they tried to do.

1                   And, of course, as Catherine Leisy told you,  
2 there is blood on it. Now, remember, look at the  
3 pictures of the crime scene. There is blood splatters  
4 all over there, drops of blood. When he's down on the  
5 ground, getting beat with the gun, he says he sees the  
6 pistol. That is where the blood came from. He didn't  
7 get hit by the pistol. That is his blood. He's going to  
8 try to explain that away.

9                   He couldn't do it. Ladies and gentlemen:  
10 The latent prints on the front door, they're wet. It's  
11 just as good as a facial identification. It takes the  
12 guessing game out, okay? It makes it easier on y'all,  
13 and there is two theories. There is only two ways to  
14 look at this for Darrell Goss: One: Monday, he was in  
15 the store. We heard that in testimony, so Tuesday goes  
16 by, Wednesday goes by, all day Thursday goes by.

17                   Somehow those prints weren't cleaned at all,  
18 and they stayed wet the whole time. We know that is not  
19 possible. Second theory is by chance the man with the  
20 worst luck of any man alive, worst luck of any man alive,  
21 stumbles upon a robbery in progress, walks up to the  
22 window, throw his hand up on there, doesn't go in,  
23 leaves, goes back to his house, the next night, police  
24 show up there, I'm just going to randomly hide. I'm just  
25 going to randomly have all these tags in the room right

1 beside me. I'm just going to randomly have two pair of  
2 Nikes, hadn't been hardly touched, got the inserts in the  
3 things, and just randomly, right outside in my driveway,  
4 is a pistol that has got the victim's blood on it. That  
5 is a lot of hurdles for Mr. Smiley to jump. And I tell  
6 you what --

7 MR. SMILEY: Your Honor, I'm going to object.

8 THE COURT: Overruled. Go ahead.

9 MR. LAWTON: Our standard is beyond a  
10 reasonable doubt. He wants you to put a standard that is  
11 beyond all doubt, and that is not it. You just need to  
12 be firmly convinced of Darrell Goss's guilt, ladies and  
13 gentlemen, and he also wants you to believe that a hand  
14 to one, hand of all doesn't apply.

15 We might as well put the AK47 in Darrell  
16 Goss's hand. It doesn't matter. He was there,  
17 participating in the crime that led to the kidnapping of  
18 David and the beating of Andy and the armed robbery.

19 Ladies and gentlemen: I want to thank y'all  
20 for being here this week. I know four days of being away  
21 from your family, your jobs and everything is tough, but  
22 this is the best judicial system in America, in the  
23 world. Nobody does any better than us, okay? This is  
24 the way it should be, letting jurors decide guilt and  
25 innocence. I wouldn't have it any other way. Put the

1 burden on us. Put the burden on the state to stop these  
2 hardened criminals from doing things like this in our  
3 community.

4 I don't back down one bit, and that is why  
5 we're here today. Ladies and gentlemen: Perfectly fine.  
6 I love it that every defendant comes in here with a  
7 presumption of innocence, and that is the way it should  
8 be here in America, and I can tell you, at the same time  
9 that every defendant, just like these two that ever, ever  
10 walked into a courtroom or any courtroom in America, have  
11 had that same presumption of innocence, that cloak of  
12 innocence draped over their shoulders, but, ladies and  
13 gentlemen, we've met our burden. That presumption has  
14 been lifted. These guys are guilty of these heinous,  
15 senseless crimes. Please, I ask you, please do not let  
16 them get away with it. Thank you.

17 THE COURT: Mr. Apostolou?

18 MR. APOSTOLOU: Thank you. As briefly as I  
19 may, a single accusation, a single accusation is a  
20 powerful, powerful thing: I saw him, he did it, and it's  
21 a powerful, powerful thing, and that is why we're here.  
22 You take that single accusation and you combine it with  
23 zero supporting evidence, absolutely zero supporting  
24 evidence. Then you add in a stream of inconsistencies,  
25 and then you add in the defendant's own words, I mean the

1 victim's own words: I don't think I can identify the  
2 guys if I see them again. Those are from that night,  
3 6/14/2007, the day of the robbery. That is what the  
4 victim said that night.

5           You factor in absolutely no other evidence at  
6 all. You factor in the inconsistencies that we've seen  
7 throughout the testimony, and you factor in the  
8 defendant's words, and you take that single acquisition.  
9 Instead of being a powerful, powerful thing, it becomes a  
10 dangerous and it becomes a scary thing.

11           What happened to Andy is a tragic thing.  
12 Everybody in this courtroom is going to agree on that.  
13 He's brand new in this country. He's starting a business  
14 right away, and what happens to him is a terrible thing.  
15 But that doesn't relieve us of our burden to make sure  
16 that we convict the right people for that crime. We're  
17 not going to give Andy justice by convicting anybody for  
18 that crime. We're here to convict the people that the  
19 state has proven to you beyond a reasonable doubt were  
20 the ones that committed this crime.

21           So I agree with Mr. Lawton: We're here for  
22 justice, we're here for Joy Mack's justice, because he's  
23 the one that is on trial today.

24           Analyzing Joy Mack's case is really a  
25 two-part analysis. The first part is you're going to

1 analyze the victim's version of what happened. The  
2 second part of it is you're going to analyze the accuracy  
3 of the identification. I would suggest to you that you  
4 have to believe beyond a reasonable doubt the victim's  
5 version of the events to even get to the second version,  
6 because if you don't believe the victim's versions of  
7 events, the accuracy of identification is not possible.  
8 So let's talk about the victim's versions of the events.

9 Now, bear in mind, the police report, we  
10 learned from the police report, that there is another  
11 version of what happened that night, that four black  
12 males entered the store, that the fifth black male came  
13 in afterwards, and that the man with the AK47 was light  
14 skinned, wore a red shirt. That is in the police report.  
15 That is the information we got from the police report.

16 But let's talk about Andy's version. It's  
17 different from that version. Okay? Now, it's been kind  
18 of hard for me to wait all the way through this trial to  
19 talk about this version, but Andy's version was that the  
20 door opened. He sees Joy Mack walking down, gets to him,  
21 he pulls out a gun, gets within five feet, and pulls out  
22 a gun. Having the defendant walking to him and pulling  
23 out a gun does not do justice to Andy's version of the  
24 events. If Andy said he had a pistol that is what the  
25 defendant pulled on him, I would say that makes sense.

1 If he walks up, pulls a pistol out, that's fine. But  
2 that's not what he's saying. He's saying that he's got  
3 an AK47 machine gun in his pants.

4 Stop and think about that for a second. He's  
5 got an AK47 hidden in his pants, and he walks 70 feet  
6 over there. Andy is watching him the whole time. What  
7 was Andy's testimony? Nothing unusual about the way he  
8 was walking. Mr. Smiley asked him if he was limping when  
9 he was walking there. No, he wasn't limping. Absolutely  
10 nothing distinguishable about the way he was walking up  
11 to him. The only thing that was distinguishable is when  
12 he gets there he pulls out an AK47 out of his pants.

13 How in the world is somebody going to sneak  
14 up on somebody that is being watched with a machine gun  
15 in their pants, a three to four foot long rifle, was his  
16 testimony? I mean, just think about that. But we know  
17 that he didn't run, so I'm going to let you think about  
18 that, and you can analyze that version of it, but I would  
19 suggest to you that somebody with an AK47 in their pants  
20 doesn't sneak up on anybody.

21 Look at the other version. That makes a  
22 little bit more sense. The four guys come in, the man  
23 with the AK47 comes in afterwards. If you believe the  
24 second version is possible, it's possible, then you can't  
25 come back with a guilty verdict against Joy Mack, because

1 that's not the version of the events that Andy talked  
2 about. He talked about this guy walking straight towards  
3 him. He saw his hands. His hands were down by his  
4 sides. He wasn't carrying anything to hide that AK47,  
5 but somewhere in his pants is an AK47 that he doesn't see  
6 walking until it gets right there. I suggest to you,  
7 ladies and gentlemen, that is really basically an  
8 impossibility.

9 But I'm going to let y'all analyze that when  
10 y'all get back in the chambers, and y'all can think about  
11 that for a little bit more. So let's talk about the  
12 accuracy of the identification.

13 Andy makes an identification on Joy Mack.  
14 Doesn't do it that night. This is what he said that  
15 night: I don't think I can identify him if I see him  
16 again.

17 What testimony did he have that night? Well,  
18 he testified while he was sitting there that he saw Joy  
19 Mack starting to walk towards him. I think Mr. Lawton  
20 started at that rail and started walking towards him. I  
21 think that's probably not 70 feet. We kick it out a  
22 little bit more. How long does it take to walk that  
23 distance, five, eight seconds, tops? That's how long he  
24 had to look at Joy Mack.

25 Once he's in the store, he testified that



1 he's down on the ground. He said the robbery lasted  
2 three to five minutes, but most of that time he was down  
3 on the ground. He wasn't looking. So that's the  
4 distance that he had to look at Joy Mack. Well, what  
5 impressions did he have that night? What did he tell us?  
6 He said he had black jeans, he had a red shirt, and he  
7 had a gray skull cap.

8 He said he was a little taller than me.  
9 That's what he said in his statement, made two hours  
10 afterwards. O.J. Faison got on the stand and told us  
11 that they want to take a statement from the victim as  
12 soon as possible because they want it as fresh as they  
13 can get because the way that human's perception works is  
14 it goes down over time. They want to get it as soon as  
15 it happens to understand, so that is what they got. They  
16 got black pants, red shirt, gray skull cap. Defendant, a  
17 little taller than me. I don't think I would be able to  
18 recognize him if I saw him again.

19 Well, he took the stand and testified at the  
20 trial that he was wearing a black hoody, he was wearing a  
21 black snow cap. We don't even know what that is, black  
22 snow cap, and black jeans. Mr. Smiley asked him a  
23 question, he said, Didn't you have a different  
24 identification, the night of the robbery?

25 And Andy said, Yeah, I did. You know what?

1 I did, and what I said at the time of the robbery was  
2 right. So it's already been brought to his attention.

3 But then I asked him how he was wearing the  
4 hoody that night, and he was explaining where the hoody  
5 was up on him and where the snow cap is. So Andy went  
6 through a traumatic event. This is a terrible thing that  
7 happened to him. His impressions, obviously, were off,  
8 but he still doesn't know what happened that night.

9 This is a year and a half later. He still  
10 can't tell us specifically what happened, and if he  
11 doesn't know specifically what happened, how can you  
12 possibly know what happened? Andy is eager to find  
13 something, to find what happened.

14 His wife testified that he was scared. He  
15 was nervous. It's got to be a terrible, terrible thing.  
16 His business caters to young black males. He was robbed  
17 by five young black males. Every time that door opens,  
18 he's hitting the panic button. He's nervous; he's  
19 scared. Is this guy going to do it? That is going to  
20 put somebody on edge, so let's talk about the actual  
21 identifications. Let's talk about the first  
22 identification that he's got.

23 He sees Joy Mack pull up to his door. He  
24 sees him through the window. Doesn't do anything about  
25 it. Okay? He sees him at the store. He's outside of

1 the store. That is the first time he sees him. Doesn't  
2 do anything about it. Why not, we ask him. Because he's  
3 scared. Does that make any sense? Eighteen hours after  
4 the robbery, he's already seen another alleged defendant  
5 coming into that same store. Eighteen hours after the  
6 robbery he's already called police, seeing somebody that  
7 was connected with the crime.

8 He follows him out of the store, and he takes  
9 their tag number. He gives it to the police. We also  
10 heard testimony that he may have been over at the Dollar  
11 Tree, trying to detain the suspect. That is not very  
12 consistent with somebody who is scared. Mr. Lawton has  
13 talked about hand of one, hand of all, and Andy has  
14 talked about the fact that he wasn't scared of that guy  
15 because that guy didn't have the AK47.

16 Well, you're going to be scared of all five  
17 of these guys. The solicitor is right: All five of  
18 these guys that are involved with it are bad guys.  
19 You're going to be scared of all five of them. So if  
20 he's not scared to chase this guy out of the store, but  
21 he is scared to chase Andy out of the store, I would  
22 suggest the reason he didn't call the police was because  
23 he didn't really know. He wasn't sure.

24 That is one week after the defendant said, I  
25 don't think I could identify the guys. That is the first

1 encounter, is one week. Another week goes by for the  
2 second encounter. The second encounter occurs inside the  
3 store, in cars, in that mall again, so now this is two  
4 weeks after Joy Mack allegedly robbed this store, two  
5 weeks after Joy Mack's codefendant, Darrell Goss, has  
6 been arrested, could have been given information to the  
7 police.

8 Most armed robbers are going lay low if their  
9 codefendant got picked up a day after the robbery. Most  
10 armed robbers that are in a conspiracy like that are  
11 going to avoid where the robbery took place, but that is  
12 not what Joy Mack did. Joy Mack went right back inside  
13 the store. The solicitor said witness intimidation,  
14 they're trying to scare him, or something like that.

15 I asked Andy if they had any conversation at  
16 all. He said no. He Joy came in, he looked, he shopped,  
17 and he left. Andy also said something else important  
18 that day. He said, I think that's the guy. I'm almost  
19 sure.

20 This is 6/29/07. That is what he said he  
21 told his wife: I think that's the guy, I'm almost sure.  
22 6/29/07, two weeks after he said he couldn't identify him  
23 he's still not sure. Look at the way this identification  
24 is going. What did O.J. Faison tell us? That memory and  
25 identifications go down. His is going up. He sees him

1 the first time, doesn't do anything about it, but the  
2 seed gets planted. He starts thinking. Second time, I  
3 think that might be the guy. I think that's the guy who  
4 robbed me. I'm almost sure, calls the police that day.

5 Joy Mack is there. He's going around the  
6 business. He's not doing anything, so that brings us up  
7 to the third identification, happens the day after that.  
8 Where does it happen? Again, same mall.

9 Now we're two plus weeks after the victim has  
10 said, I couldn't identify him if I saw him. Two weeks  
11 after Darrell Goss has been in custody, couldn't have  
12 been given information about his codefendants if, in  
13 fact, they were actual actually codefendants.

14 So where does the third one occur? It occurs  
15 right there. Well, Officer Singletary is the one that  
16 talked to us about that. He said that he's standing  
17 there in a North Charleston police uniform, that he's  
18 standing there with the victim of the armed robbery on  
19 the walkway, and Joy Mack comes walking right out of the  
20 store and walks right up to him.

21 He also told us that there was a back door to  
22 that business that Joy Mack was in. I would suggest to  
23 you, ladies and gentlemen of the jury, a guilty man sees  
24 a North Charleston police officer and the victim of an  
25 armed robbery talking right in front of the store, a

1 guilty man goes out the back door. The innocent man  
2 walks out the front door, and I didn't say a not guilty  
3 man, I said an innocent man, because I think the evidence  
4 shows that Joy Mack is innocent of this entire thing,  
5 that this identification is wrong.

6 And whether it's deliberate, I don't think  
7 it's deliberate, I'm not going to suggest it's  
8 deliberate, but it doesn't matter to Joy Mack. It's  
9 wrong. That's what you have to determine, whether it's  
10 wrong, not whether it's deliberate or why or anything  
11 like that. So what is that third identification? Joy  
12 Mack comes walking right up to him. He's not running,  
13 he's not avoiding.

14 Officer Singletary says, yeah, he was polite,  
15 nice. Officer said, I put him on trespass notice. Joy  
16 said okay, went about his business. Is that consistent  
17 with a guy who has just had an armed robbery? No, it's  
18 not.

19 What did Officer Singletary also tell us? He  
20 told us that he wanted to arrest him on the spot because  
21 of identification, but he called and he talked to other  
22 officers that were more familiar with the case, and they  
23 told him, Don't arrest him, just put him on trespass  
24 notice.

25 What does that tell you about the North

1 Charleston police department's assessment of this?  
2 They've already gotten one call, the day after the  
3 robbery, and now he's calling about somebody else? What  
4 does that tell you about that?

5 The fourth encounter, Charleston police  
6 department takes warrants out to Joy Mack. Doesn't know  
7 anything about it. They publish his photo in the  
8 newspaper. The defendant cuts it out, keeps it. He  
9 comes into this courtroom and identifies Joy Mack, after  
10 he's been holding onto the article for a year and a half,  
11 showing a picture of Joy Mack. So those are the  
12 identifications, four different identifications, that  
13 they've had on that.

14 Look at how they're built. It starts with  
15 nothing happening. It goes to, I think that's the guy.  
16 I'm almost sure, to number three where he's positive.  
17 It's growing. That's not the way that humans work.  
18 Officer Faison told us that people's memories go down  
19 every time. He's building. What he's done,  
20 unfortunately, is he's convincing himself, and I can  
21 understand why. He went through a traumatic event, and  
22 it is a terrible thing, but Joy Mack didn't do it, so  
23 it's not Joy Mack's fault.

24 Joy Mack didn't take the stand to testify  
25 against you. That is why I get to talk to you last,

1 because Joy Mack didn't put up a defense. Joy Mack  
2 doesn't have to put up a defense. There is no burden on  
3 this. Mr. Lawton, commendable, he stood up and said the  
4 burden is on us. That is how the American justice system  
5 works. The burden is on the state to prove to you beyond  
6 a reasonable doubt that the defendant's version of what  
7 happened, Joy Mack walks 70 feet toward him with an AK47  
8 hidden in his pants somewhere, pulls it out when he gets  
9 five feet from him, and that identification is 100  
10 percent accurate.

11 They have the burden, but Joy Mack doesn't  
12 have to prove anything to you, and the judge is going to  
13 tell you that you cannot hold the fact that Joy Mack did  
14 not testify against him at this trial. That is his  
15 right. That doesn't mean anything, but I would suggest  
16 to you that Joy Mack has communicated to you already two  
17 different things: One, we're in a trial, so he's already  
18 told you he didn't do it, or he says he didn't do it, and  
19 y'all are going to ultimately make that determination.

20 But the second thing that Joy Mack has told  
21 you during this whole trial is look at his conduct. Is  
22 this the conduct of a guilty person at all? If you look  
23 at it, his conduct is best characterized as oblivious.  
24 He doesn't have any idea what's going on. He doesn't  
25 have any idea what the factors that are swirling around



1 him are. He's shopping in the store, looking at clothes,  
2 the same store that he's allegedly robbed a week earlier  
3 without a mask while his codefendants already been picked  
4 up. That is not the actions of a guilty man. He's  
5 completely oblivious. The 29th when he's there, he goes  
6 into the store. He leaves. The police are called. He  
7 comes back. He comes back to the mall. If he was really  
8 running, he would be out of the way, but that's not the  
9 actions of it.

10 On the third time, the officer and the  
11 detective -- the officer and the victim are standing  
12 there. He's wearing a uniform. What do you think  
13 they're talking about? They're obviously talking about  
14 the robbery, but Joy Mack just walks right up to him  
15 because he doesn't have any idea what's going on. He's  
16 totally oblivious, and his obliviousness is very  
17 consistent with his innocence, and that is what he's been  
18 communicating to you throughout the trial.

19 These gentlemen are codefendants. When this  
20 trial started, I told you, the most important thing I'm  
21 going to tell you, it's two trials, it's not one. It's  
22 two. You're going to have to make a determination based  
23 off the evidence they presented against one and the  
24 evidence they presented against two, and, fortunately,  
25 this is an easy case to do that because there is no

1 evidence overlapping whatsoever. And, in fact, there has  
2 been no connection between Joy Mack and Darrell Goss at  
3 all. Have you seen anything to show any contact between  
4 Joy Mack and Darrell Goss at all? Absolutely not. There  
5 hasn't been one iota of evidence. It's their burden of  
6 proof.

7           This is a single witness identification case.  
8 Those are scary. You probably have the highest rate,  
9 because what do we know? We know that sometimes people  
10 are just wrong. They're not trying to be malicious,  
11 they're not trying to be evil, but sometimes they're just  
12 mistaken, and that is what this is, a single witness  
13 identification. The judge is going to do something.  
14 He's going to send the jury charge in there with you, and  
15 he's going to tell you to look. He's going to give you  
16 the ability to look at the jury charges and show you what  
17 the state has to prove in a single witness identification  
18 case.

19           Officer Faison told us they've developed a  
20 suspect. They turned the full power of the North  
21 Charleston police on him. They do search warrants. They  
22 do go out and look for other witnesses. They do all the  
23 things, they focus the entire full force of North  
24 Charleston police department on it, and this is the best  
25 they got. They got nothing else other than that

1 identification.

2           So the judge is going to tell you that the  
3 jury instructions say to scrutinize with great care when  
4 it's a single witness identification and that the state  
5 has the burden to prove the accuracy of that  
6 identification beyond a reasonable doubt.

7           If you think it's possible that there is a  
8 mistaken identity at the end of this trial, you have a  
9 reasonable doubt, and you have to come back with a not  
10 guilty against Joy Mack.

11           But you don't have to take my word for it,  
12 ladies and gentlemen. You have the words of Andy, the  
13 victim, the night of the robbery: I don't think I could  
14 identify the guys if I see them again, yet two and a half  
15 weeks later, he makes an identification. 6/29/07: I  
16 think that's the guy that robbed me. I'm almost sure.

17           Yet, the next day, he makes an  
18 identification, so you don't have to take my words for  
19 it, you have his words. You also have the words of the  
20 other gentleman that is in there, Davuthan Kilic. You  
21 also have his words and the actions of his words, because  
22 Mr. Smiley is absolutely right: If he ever identified  
23 either one of these people, he would be in the courtroom  
24 today.

25           So you are the finders of fact. You will

1 make the ultimate decision. I'm asking you to end this  
2 nightmare for Joy Mack and come back with a not guilty  
3 verdict.

4 Thank you.

5 THE COURT: You want to take your chart down,  
6 if you would, please. Thank you.

7 Madame forelady and members of the jury: The  
8 state of South Carolina charges the defendant Joy Mack  
9 with one count of armed robbery, one count of assault and  
10 battery with intent to kill, and one count of kidnapping.  
11 The state of South Carolina also charges the defendant  
12 Darrell Lee Goss with one count of armed robbery, one  
13 count of assault and battery with intent to kill, and one  
14 count of kidnapping.

15 I will give you copies of these instructions  
16 in written form. During your deliberations, you may  
17 refer to the instructions to guide your decision-making.  
18 You must consider the instructions as a whole and not  
19 follow some and ignore others. Madame forelady, after  
20 you finish with the break, I will give you the charge  
21 book back.

22 Now, as to these indictments, the defendants  
23 have entered a plea of not guilty, which places upon the  
24 state the burden of proving the defendant guilty. A  
25 person charged with committing a crime in South Carolina

1 is never required to prove himself innocent. I charge  
2 you that it's a vital, important rule of the law of  
3 evidence that a defendant in a criminal trial, no matter  
4 how great or serious may be the offense with which he is  
5 charged, must always be presumed innocent until his guilt  
6 has been proven beyond a reasonable doubt.

7 This presumption of innocence remains with  
8 the defendant at all times. From the moment of his  
9 appearance in this court, throughout the trial until you  
10 the jury have, upon the testimony and evidence presented,  
11 reached a verdict of guilty beyond a reasonable doubt.  
12 For it is the solemn duty of the jury, if not clearly  
13 convinced of his guilt beyond a reasonable doubt, to  
14 acquit the defendant, so the burden of proof is upon the  
15 state to establish by evidence to your satisfaction the  
16 guilt beyond a reasonable doubt of these defendants.

17 And what is reasonable doubt? A reasonable  
18 doubt is the kind of doubt that would cause a reasonable  
19 person to hesitate to act. If you have such doubt as to  
20 the guilt of the defendant, then he would be entitled to  
21 a verdict of not guilty. Reasonable doubt may arise from  
22 the evidence which is in the case or from the absence or  
23 lack of evidence in the case.

24 You alone must make the determination of  
25 whether or not reasonable doubt exists as to the guilt of

1 the defendant. The term reasonable doubt should be given  
2 its everyday plain and ordinary meaning. Proof beyond a  
3 reasonable doubt is proof that leaves you firmly  
4 convinced of the defendant's guilt.

5           There are very few things in this world that  
6 we know with absolute certainty, and in criminal cases  
7 the law does not require proof that overcomes every  
8 possible doubt. If, based on your consideration of the  
9 evidence, you're firmly convinced the defendant is guilty  
10 of the crime charged, you must find him guilty. On the  
11 other hand, if you are not firmly convinced of the  
12 defendant's guilt, you must give him the benefit of the  
13 doubt and find him not guilty.

14           The evidence from which you will decide the  
15 facts consists of the sworn testimony of witnesses, both  
16 on direct and cross-examination, regardless of who called  
17 the witness; the exhibits that have been received into  
18 evidence; any facts which the lawyers have agreed to  
19 stipulate.

20           Certain things are not evidence. You may not  
21 consider them in deciding what the facts are. I will  
22 list them for you: Arguments and statements by lawyers  
23 are not evidence. The lawyers are not witnesses. What  
24 they've said in opening statements, closing arguments,  
25 and at other times is intended to help you interpret the

1 evidence, but it is not evidence. If the facts as you  
2 remember them differ from the way the lawyers have stated  
3 them, your memory controls.

4 Questions and objections by lawyers are not  
5 evidence. Attorneys have a duty to their clients to  
6 object when they believe a question is improper under the  
7 rules of evidence. You should not be influenced by the  
8 objections or by the Court's ruling on the objection.  
9 Testimony that has been excluded or stricken, or that  
10 you've been instructed to disregard, is not evidence and  
11 must be disregarded. Anything you may have seen on  
12 television, read in the newspaper, or heard from others  
13 when the court was not in session is not evidence. You  
14 are to decide the case solely on the evidence received in  
15 trial.

16 Under the constitution and laws of South  
17 Carolina, you, the jury, can make the findings of facts  
18 in this case. I'm not permitted to indicate to you how I  
19 may feel about testimony and evidence which has been  
20 presented throughout the trial. It's been my intention  
21 to be fair and impartial toward each of the parties  
22 involved.

23 To determine the facts in this case, you will  
24 have to evaluate the credibility, which means the  
25 believability of each witness. Some of the things you

1 may consider as you decide whether or not to believe a  
2 witness's testimony about a particular matter include  
3 what was the manner and appearance of the witness who  
4 testified? Was he or she hesitant or straightforward?  
5 Was the testimony of witnesses consistent or  
6 inconsistent? How did a witness come to know the facts  
7 that he or she testified to? Was the person present  
8 during the incident, or did he happen on the scene after  
9 it occurred?

10 Is there some reason a witness would want to  
11 give testimony which would help or hurt one side or the  
12 other? In other words, was the witness biased or  
13 prejudiced? Was the witness strengthened or weakened by  
14 other testimony in evidence?

15 You may believe as much or as little of each  
16 witness's testimony as you think proper. You may believe  
17 the testimony of single witness against that of many or  
18 just the opposite. Of course, you do not determine the  
19 truth merely by counting the number of witnesses  
20 presented by each side. Throughout this process, you  
21 have but one objective: To seek the truth, regardless of  
22 its source.

23 The same constitution and laws which  
24 designate and make you the finders of the facts, as I  
25 just explained, also make me the sole instructor of the



1 law. You should accept the statements of the law as I  
2 give them to you. The attorneys are not the instructors  
3 of the law. Please base your decision-making on what the  
4 law is and not what you think the law should be.

5           There are two types of evidence which are  
6 generally presented in a trial, direct evidence and  
7 circumstantial evidence. Direct evidence is the  
8 testimony of a person who asserts or claims to have  
9 actual knowledge of facts, such as an eyewitness.  
10 Circumstantial evidence is proof of a chain of facts and  
11 circumstances indicating the existence of a fact. The  
12 law makes absolutely no distinction between the weight or  
13 value to be given to either direct or circumstantial  
14 evidence, nor is a greater degree of certainty required  
15 of circumstantial evidence than of direct evidence.

16           You should weigh all the evidence in a case  
17 on a contested issue. You may find some direct and some  
18 circumstantial evidence. To determine the facts in this  
19 case, you will have to evaluate the credibility, which  
20 means the believability of each witness.

21           The rules of evidence ordinarily do not  
22 permit witnesses to testify to opinions or conclusions.  
23 An exception to this rule exists with witnesses we call  
24 expert witnesses, a witness who by education and  
25 experience has become expert in some art, science,

1 profession, may give an opinion as to the subject the  
2 witness claims to be an expert in and may also give the  
3 reasons for the opinion.

4           You should consider any expert opinion given  
5 by a witness, and like any other evidence, give it the  
6 weight you think it deserves. If you decide an expert  
7 witness's opinion is not based on sufficient education  
8 experience, or if you decide that the reasons given to  
9 support the opinion are not sound or that the opinion is  
10 outweighed by other evidence, you may disregard the  
11 opinion entirely.

12           An expert witness's testimony is to be given  
13 no greater weight than that of other witnesses simply  
14 because the witness is an expert. You do not have to  
15 accept the expert's opinion even though it's  
16 uncontradicted. An expert's opinion that is otherwise  
17 helpful to the jury should not invade the province of the  
18 jury just because it is an opinion on the ultimate issue  
19 to be decided. The jury still retains the power and duty  
20 to judge the credibility of the expert and the weight to  
21 be given to his or her opinion.

22           Ladies and gentlemen: I charge you further  
23 that the fact that the defendants elect not to testify on  
24 their behalf cannot and must not be considered against  
25 them under any circumstances or in any manner whatsoever.

1 The decision of any defendants not to take the witness  
2 stand or testify in his own behalf does not create any  
3 inference against him. I tell you now that you must not  
4 permit to weigh in even the slightest degree against such  
5 defendants. You should not permit this fact to enter  
6 into the discussions or deliberations of the issues in  
7 the case.

8 I charge you that it's the law of this state  
9 that if a crime is committed by two or more persons who  
10 have acted together in the commission of an offense, the  
11 act of one is the act of all. By way of illustration,  
12 two people can be guilty of killing another of murder  
13 only when one of the two had a pistol and only one  
14 bullet. If both together, acting together, assisting  
15 each other in the crime of the offense, the law says that  
16 under those circumstances the act of one is the act of  
17 all, and, as it is sometimes said, the hand of one is the  
18 hand of all.

19 I charge you there are two defendants in this  
20 case, each of whom is charged with armed robbery, assault  
21 and battery with intent to kill, and kidnapping.  
22 Whatever verdict you find does not have to be the same as  
23 to both defendants. You take each defendant, consider  
24 the evidence as to him, and write your verdict in  
25 accordance and in conformity with the evidence in the

1 case and the instructions I've given to you and will  
2 hereafter give you. That is to say, where more than one  
3 person is charged with a crime, if the evidence warrants  
4 it, you may convict one and acquit the other, or you may  
5 acquit both, or you may convict both. It will depend  
6 upon your view of the testimony and evidence, which you  
7 alone are to act on.

8           An issue in this case is the identification  
9 of the defendant as the perpetrator of the crime charged.  
10 The state of South Carolina has the burden of proving  
11 identity beyond a reasonable doubt. It's not essential  
12 that the witness himself be free from doubt as to the  
13 correctness of his statement; however, you, the jury,  
14 must be satisfied beyond a reasonable doubt that the  
15 accuracy of the identification the defendant before you  
16 may convict him.

17           Identification testimony is an expression of  
18 belief or impression by a witness. In appraising the  
19 identification testimony of a witness, you may consider  
20 the opportunity the witness had to observe the alleged  
21 offender at the time of the offense and to thereafter  
22 make an identification, and in doing so, you may consider  
23 matters such as how long or short a time was available,  
24 how far or close the witness was, and how good were  
25 lighting conditions.

1           You must also consider the witness's degree  
2 of attention. You must consider the accuracy of the  
3 witness's prior description of the criminal. Finally,  
4 you may also consider the level of certainty demonstrated  
5 by the witness at the confrontation. It is for you, the  
6 jury, to determine the accuracy of the identification of  
7 the defendant.

8           If the identification by the witness may have  
9 been influenced by the circumstances under which the  
10 defendant presented to him for identification, you should  
11 scrutinize the identification with great care. You may  
12 also consider the length of time that elapsed between the  
13 occurrence of the crime and the next opportunity of the  
14 witness to see the defendant, as a factor bearing on the  
15 reliability of identification.

16           You must consider the credibility of each  
17 identification witness in the same way as any other  
18 witness. You may consider his or her truthfulness as  
19 well as the capacity, opportunity, and circumstances of  
20 the observation of matters about which he or she  
21 testified.

22           What is armed robbery? The crime of armed  
23 robbery includes all the elements of larceny and robbery.  
24 First I would like to explain to you what is meant by  
25 larceny and what is meant by robbery.

1           What is larceny? I charged you that there  
2 are four elements which must be present and established  
3 beyond a reasonable doubt to make out the crime of  
4 larceny. These four elements are: That there was a  
5 taking; that the taking was of the personal property;  
6 that after being taken the product was carried away; that  
7 the taking and carrying away of the property was done  
8 with the intent to steal.

9           Robbery includes each of the four elements  
10 I've just explained. In addition to these four elements,  
11 two other elements are necessary to make out the crime of  
12 robbery.. Those elements are the property must be taken  
13 from the person of another or in his presence, and that  
14 the taking and carrying away of the property must have  
15 been accomplished by placing the other person in fear, by  
16 violence or threats of violence, so as to make that  
17 person surrender that property without their consent and  
18 against their will.

19           Therefore, the crime of armed robbery  
20 includes all the elements of larceny and robbery. In  
21 order to make out the crime of armed robbery, however, an  
22 additional element must be proved. The robbery must have  
23 been committed while armed with a deadly weapon. The  
24 person committing the robbery must have had and used a  
25 deadly weapon with which he obtained possession of the

1 property or placed the one possessing the property in  
2 fear in order to obtain the property.

3 Section 16-11-338(A) of the code of laws of  
4 South Carolina provides a person convicted for the crime  
5 of robbery while armed with a pistol, dirk, slingshot,  
6 metal knuckles, razor or some other deadly weapon commits  
7 armed robbery.

8 Assault and battery with intent to kill: The  
9 defendants are charged with assault and battery with  
10 intent to kill. In order to prove assault and battery  
11 with intent to kill, the state must prove beyond a  
12 reasonable doubt that the defendant, with malice  
13 aforethought, unlawfully attempted or offered to commit a  
14 violent injury upon another person and the present  
15 ability to complete the attempted injury.

16 An assault is the intentional creation of a  
17 reasonable fear of immediate bodily harm. It's not  
18 necessary that the attempted injury or harm actually take  
19 place. For example, if I walk up to you, and when we are  
20 within arm's reach I draw back to hit you, that is an  
21 assault.

22 A battery is the unlawful touching of another  
23 person by a person who has committed the assault. An  
24 unlawful touching can be caused by a part of the  
25 accused's body or by any object the accused puts in

1 motion. .

2 A battery is the completion of the assault by  
3 using or applying force to another person, however  
4 slight, in a rude, angry, or resentful manner without  
5 legal justification for doing so. Using my earlier  
6 example, if I carry through the assault by hitting you,  
7 then that is a battery.

8 Malice is hatred, ill will, or hostility  
9 towards another person. It the intentional doing of a  
10 wrongful act without just cause or excuse with an intent  
11 to inflict injury or under circumstances that the law  
12 will infer an evil intent. Malice aforethought does not  
13 require that malice exists for any particular time before  
14 the act is committed, but malice must exist in the mind  
15 of the defendant just before and at the time the act is  
16 committed. Therefore, there must be a combination of the  
17 previous evil intent and the act.

18 Malice aforethought may be express or  
19 inferred. These terms express and inferred don't mean  
20 different kinds of malice but merely the manner in which  
21 malice may be shown to exist. That is either by direct  
22 evidence or by inference from the facts and circumstances  
23 which are proved.

24 Express malice is shown when a person speaks  
25 words which express hatred or ill will for another or



1 when the person prepared beforehand to do the act which  
2 was later accomplished; for example, lying in wait for a  
3 person or any other acts of preparation going to show  
4 that the deed was within the defendant's mind would be  
5 express malice.

6 Malice may be inferred from conduct showing a  
7 total disregard for human life. Inferred malice may also  
8 arise when the deed is done with a deadly weapon. A  
9 deadly weapon is any article, instrument, or substance  
10 which is likely to cause death or great bodily harm.  
11 Whether the instrument has been used as a deadly weapon  
12 depends on the facts and circumstances of each case.

13 The following are examples of instruments  
14 which may be deadly weapons: A pistol, a shotgun, a  
15 rifle, a dirk, a dagger, a knife, a slingshot, metal  
16 knuckles, a razor, gasoline, a fire bomb or a Molotov  
17 cocktail, and lighter fluid.

18 If facts are proved beyond a reasonable doubt  
19 sufficient to raise an inference of malice to your  
20 satisfaction, this inference would be simply an  
21 evidentiary fact to be considered by you, the jury, along  
22 with the other evidence in the case, and you may give the  
23 weight you decide it should receive.

24 A specific intent to kill is not an element  
25 of assault and battery with intent to kill, but there

1 must be a general intent to commit serious bodily injury.  
2 Intent means intending the result which actually occurs,  
3 not accidentally or involuntary. Intent may be shown by  
4 acts and conduct of the defendant and other circumstances  
5 from which you may naturally and reasonably infer intent.

6 Evidence of the character of the assault, the  
7 character of the instrument used, the manner in which it  
8 was used, the purpose to be accomplished, and the  
9 resulting wounds or injuries may be considered in  
10 determining the intent with which the assault was  
11 committed. Intent may be inferred when it is  
12 demonstrated that the defendant voluntarily and willfully  
13 commits an act, the natural tendency of which is to  
14 destroy another's life.

15 Kidnapping: The defendants are charged with  
16 kidnapping. The state must prove beyond a reasonable  
17 doubt that the defendants knowingly and unlawfully  
18 seized, confined, inveigled, decoyed, kidnapped, abducted  
19 or carried away another person without authority of law.

20 Knowingly means with knowledge or  
21 consciously, not accidentally. Seize means to take hold  
22 of suddenly or forcibly. Confine means to limit,  
23 restrict, or enclose within bounds, imprison, or shut or  
24 keep in. Inveigle means to lure, entice, or lead astray  
25 by false representations, promises, or other deceitful

1 means.

2 Decoy means to lure by, or as if by, decoy.

3 A decoy is something to entice a person into a trap.

4 Kidnap is to remove a person against his will by unlawful  
5 force or by fraud. Abduct means to carry off secretly or  
6 by force for an illegal purpose. Carry away means to  
7 remove. The state does not have to prove that the  
8 defendant did all of these things. Instead, if you find  
9 beyond a reasonable doubt that the defendant did any of  
10 these things, you may find the defendant guilty of  
11 kidnapping.

12 Something done without the authority of law  
13 is something that the law does not sanction, permit,  
14 allow, condone, or provide justification for. The  
15 kidnapping does not have to be for any personal or  
16 monetary gain for any illegal purpose but may be for any  
17 reason whatsoever.

18 You have been selected as fair and impartial  
19 jurors to impartially try and determine the facts of the  
20 case, and when you comply with your oath to do so, then  
21 no one will have a right to criticize your verdict, and  
22 you will have fully discharged your duty as jurors. You  
23 are to decide this case according to the testimony that  
24 you have heard from the lips of the sworn witnesses,  
25 along with other evidence introduced.

1 I charge you that as jurors you must decide  
2 the issues in this proceeding without bias and without  
3 prejudice to any party. You cannot allow yourself to be  
4 governed by sympathy, by prejudice, by passion, by public  
5 opinion or any other arbitrary factor.

6 Both the state and the defendant have the  
7 right to expect that each of you will carefully and  
8 impartially consider all the evidence in the case and  
9 that you will follow the law as I have explained it to  
10 you.

11 Nothing I may have said or done during the  
12 course of this trial has been in any way intended to  
13 express or suggest a view of the case or an opinion as to  
14 the facts, the weight of the evidence, or the credibility  
15 of the witnesses. If any of my actions or words have  
16 seemed to so indicate, you will disregard such and form  
17 your own opinion as to these matters.

18 Madame forelady, ladies and gentlemen of the  
19 jury: I have prepared three verdict forms for each  
20 defendant, and as you've been charged, I laid out the  
21 elements of each crime. Each crime is independent of the  
22 other and the state has a responsibility to prove the  
23 defendant guilty on each crime beyond a reasonable doubt,  
24 and I have prepared one verdict form on each defendant as  
25 to each charge.

1 First verdict form has the state versus  
2 Daniel Lee Goss. We, the jury, unanimously find the  
3 defendant Darrell Lee Goss guilty of armed robbery. We,  
4 the jury, unanimously find the defendant Darrell Lee Goss  
5 not guilty of armed robbery. Second says we, the jury,  
6 unanimously find the defendant Darrell Lee Goss guilty of  
7 assault and battery with intent to kill; we, the jury,  
8 unanimously find the defendant Darrell Lee got not guilty  
9 of assault and battery with intent to kill; and we, the  
10 jury, unanimously find the defendant Darrell Lee Goss  
11 guilty of kidnapping; we, the jury, unanimously find  
12 defendant Darrell Lee Goss not guilty of kidnapping. I  
13 have prepared identical verdict forms from the defendant  
14 Joy Mack. It has the same information on it for the  
15 armed robbery, the assault and battery with intent to  
16 kill, and the kidnapping, has a place for the forelady to  
17 sign and date.

18 Ladies and gentlemen: You can find both  
19 defendants guilty of all three; you can find one  
20 defendant guilt of one charge, the rest innocent.  
21 Whatever you determine to be the facts in the case will  
22 apply as to the not guilty or the guilty verdict of each  
23 defendant, if you find both defendants guilty of all,  
24 acquit both defendants of all, or whatever combination  
25 you determine, based upon the facts that you determine as

1     you apply the law, which I just charged you.

2             Ladies and gentlemen: I will tell you as the  
3     verdict form says, your verdict has to be unanimous. All  
4     12 of you have to agree. I would tell you that it's a  
5     collective reasoning process. I would ask you to listen  
6     to each other's opinion, look at the evidence, discuss  
7     the evidence, and arrive at a fair and just verdict based  
8     upon your view of the facts and the law as I have charged  
9     you.

10            Madame forelady, what I'm going to do is ask  
11     you to go to the jury room, and before you begin  
12     deliberations, I have to take my charge up with the  
13     attorneys. I may have to bring you back and add  
14     something or take something away. So don't begin your  
15     deliberations until the bailiff brings the verdict forms,  
16     the charge book, and I will send back to the jury room  
17     along with all the exhibits, and instruct you to begin  
18     your deliberations.

19            Madame forelady and the two alternates, I  
20     believe Ms. Mikell and Ms. Jarrell, if you just keep your  
21     seats, Madame Forelady and other members of the jury may  
22     follow the bailiff to the jury room.

23            (Jury leaves the courtroom at 11:28 a.m.)

24            THE COURT: All right. Exception to the  
25     charge from the state?

1 MR. LAWTON: No, Your Honor.

2 THE COURT: Any exceptions to the charge from  
3 the defendants?

4 MR. SMILEY: No, Your Honor.

5 MR. APOSTOLOU: No, Your Honor.

6 THE COURT: All right. If you would, come up  
7 and make sure all the exhibits are present, put on the  
8 record from the state that all your exhibits are present  
9 and the defendants' exhibits are present.

10 MR. SMILEY: Yes, sir.

11 THE COURT: I'll tell the jury to begin their  
12 deliberations.

13 (Recess taken.)

14 (In open court, jury not present.)

15 THE COURT: All right.

16 I received two notes from the jury, one note  
17 requesting they want to see the police reports, another  
18 note requesting Andy's testimony and the initial police  
19 report. I informed the jury that the police report is  
20 not admissible into evidence, and they would like to  
21 listen to the entire testimony, Andy's entire testimony.

22 We are in the big courtroom. The acoustics  
23 in this courtroom are not that good from a recording  
24 standpoint. What the attorneys have told me and all the  
25 parties have agreed is that the court reporter can go in

1 the jury room and play Andy's testimony, and I will sent  
2 a deputy in the jury with her, and I will instruct the  
3 jury not to talk during the testimony but to listen, and  
4 if, in fact, they reach a point where all 12 jurors do  
5 not want to listen anymore, she can stop and come back to  
6 the courtroom and continue with deliberations.

7 Is that everyone's understanding, Mr. Smiley?

8 MR. SMILEY: Yes, Your Honor.

9 THE COURT: Mr. Apostolou?

10 MR. APOSTOLOU: Yes, Your Honor. Originally  
11 we had requested that replaying the tape be done in the  
12 big courtroom, which the Court was amenable to, but due  
13 to the acoustics, or lack thereof, we are now agreeing to  
14 take them into the jury room.

15 THE COURT: Does the state agree with that?

16 MR. LAWTON: They're going to start it from  
17 the beginning?

18 THE COURT: Yes. Only thing I'm saying is if  
19 the jury, all 12, decide they've heard everything they  
20 want to hear, then the court reporter can stop. I'll put  
21 the deputy in the jury room to make sure that they don't  
22 deliberate or talk while they're listening to the tape.

23 Does that answer your question?

24 MR. LAWTON: Yes, sir.

25 THE COURT: All right. Which deputy wants to



1 go?

2 (Recess taken.)

3 THE COURT: All right.

4 (4:54 p.m. In open court, jury not present.)

5 THE COURT: The forelady said they had  
6 reached a decision on one defendant, and they requested a  
7 break, which I have given them a break, and the  
8 foreperson has given the Court verdict forms on the one  
9 defendant.

10 Now, do you want me to bring the defendant up  
11 when I read them, or do you want me to wait and put them  
12 on the record and postpone any type of --

13 MR. SMILEY: You're looking at me.

14 THE COURT: It's your client.

15 MR. SMILEY: I would like him present when  
16 you read it.

17 THE COURT: Will y'all bring Mr. Goss up.  
18 I'm looking at you now, so you know which one I'm talking  
19 about.

20 MR. SMILEY: I've already instructed his  
21 family.

22 THE COURT: All they're going to do is read  
23 the verdict. They're not going to do anything else until  
24 they reach a verdict on the other case.

25 MR. SMILEY: Yes, sir.

1 THE COURT: I understand we had this  
2 discussion and everybody agreed that we would go ahead in  
3 court and read the verdict on the one defendant. That  
4 defendant happens to be Darrell Lee Goss, and we will put  
5 everything on hold until the jury reaches a decision on  
6 second defendant; is that correct?

7 MR. SMILEY: That's correct.

8 THE COURT: Is that right, Mr. Smiley?

9 MR. SMILEY: Yes, sir.

10 THE COURT: That correct, Mr. Apostolou?

11 MR. APOSTOLOU: Yes, sir.

12 THE COURT: And from the state?

13 MR. LAWTON: Yes, sir.

14 THE COURT: On the verdict form, the state  
15 versus Darrell Lee Goss we, the jury, find the defendant,  
16 Darrel Lee Goss, guilty of kidnapping, signed by the  
17 forelady, dated February 26, 2009, indictment number  
18 2008-GS-10-10805.

19 State of South Carolina versus Darrell Lee  
20 Goss, we, the jury, unanimously find the defendant,  
21 Darrell Lee Goss, guilty of armed robbery, signed by the  
22 forelady and dated February 26.

23 Case number 2008-GS-10-10806, state of South  
24 Carolina, plaintiff, versus Darrell Lee Goss, we, the  
25 jury, unanimously find the defendant, Darrell Lee Goss,

1 guilty of assault and battery with intent to kill, signed  
2 by the foreperson, dated February 26, 2009.

3 The Court has announced those verdicts, and  
4 once the jury reaches a verdict on the second, if you  
5 want to poll the jury or whatever you want to do at the  
6 time, feel free to do --

7 MR. SMILEY: Yes, sir. And we will reserve  
8 our right.

9 THE COURT: We'll stand at ease and await the  
10 jury verdict on the second defendant.

11 (Recess taken.)

12 THE COURT: Will you go ahead and bring  
13 defendants in, please. While we're waiting on  
14 Mr. Smiley, let me see you over here.

15 Anything from the defendant before we bring  
16 the jury?

17 MR. APOSTOLOU: No, Your Honor.

18 MR. SMILEY: No, Your Honor.

19 THE COURT: Bring the jury in, please.

20 (5:48 p.m., in open court, jury present.)

21 THE COURT: Madame forelady, I understand  
22 that you have reached a verdict on Mr. Joy Mack; is that  
23 correct?

24 THE FORELADY: Yes, Your Honor.

25 THE COURT: Would you pass the verdict forms

1 to the bailiff please, ma'am. You have previously  
2 reached a verdict on Darrell Lee Goss, which we have  
3 already announced to the Court.

4 All right. State of South Carolina,  
5 plaintiff, versus Joy Mack, case number 2008-GS-10-05695,  
6 we the jury, unanimously find the defendant, Joy Mack,  
7 guilty of armed robbery, signed by the foreperson, dated  
8 today.

9 Indictment No. 2008-GS-10-05697 we, the jury,  
10 unanimously find the defendant, Joy Mack, guilty of  
11 kidnapping, signed by the forelady and dated today; and  
12 case number 2008-GS-10-05696, state of South Carolina  
13 versus Joy Mack, we, the jury, unanimously find the  
14 defendant, Joy Mack, guilty of assault and battery with  
15 intent to kill.

16 I understand the parties would like to have  
17 the jury polled; is that correct?

18 MR. SMILEY: Mr. Goss would, yes, sir.

19 MR. APOSTOLOU: Yes, Your Honor, I would like  
20 to have the jury polled.

21 THE COURT: What we'll do is we'll poll the  
22 jury separately on Mr. Goss first, since that is the  
23 first verdict we received, and then we'll poll the jury  
24 on Joy Mack.

25 THE CLERK: Ladies and gentlemen, I'll be

1 will give you then ten days if you want it.

2 MR. SMILEY: I don't think I need ten days,  
3 Your Honor.

4 THE COURT: All right. I ask Mr. Goss to  
5 hear any motions you have.

6 MR. SMILEY: As to motions I have, I renewed  
7 the motions I made at the close of the state's case for a  
8 directed verdict, based on -- or to set aside the verdict  
9 at this point this time, based on the fact of the  
10 insufficiency of the evidence.

11 I know your previous ruling and respect that,  
12 Your Honor, but I feel to protect the record, I need to  
13 make it again, but I think that would be the only motion  
14 I have.

15 THE COURT: Those motions are denied. As to  
16 Joy Mack?

17 MR. APOSTOLOU: He will take ten days.

18 THE COURT: You want ten days on Joy Mack.  
19 That's fine. I'll be happy to give it to you.  
20 Solicitor, do you have the sentence sheets?

21 MR. LAWTON: I believe Deputy Solicitor  
22 Durant is bringing those up, Your Honor.

23 THE COURT: All right. Madame forelady,  
24 ladies and gentlemen of the jury: The only thing that  
25 will remain will be sentencing of the defendants. You're

1 welcome to stay, if you want to stay, but we don't have a  
2 sentence sheets, and we're waiting for sentence sheets,  
3 and I know it's five minutes to 6:00 and you have been  
4 hard at it all day. You're welcome to go, and you're  
5 welcome to stay. It's your choice.

6 You're free to go if you want to go. Let me  
7 ask you this: I believe y'all have to walk a while down  
8 to the Cumberland parking lot; is that correct?

9 THE CLERK: Yes, Your Honor.

10 THE COURT: Do you think we could get  
11 somebody to escort them, please? I'm going to have the  
12 deputy sheriff escort you to the parking garage, okay? I  
13 enjoyed working with you this week, and thanks very much  
14 for your service. The court wouldn't be able to  
15 function. I want to thank you so very much.

16 Winston Churchill used to say the highest  
17 service that any citizen could give to its country, other  
18 than war time, is serving on a jury, and I think that is  
19 probably a true statement. You ones that would like to  
20 leave are free to go. If you'll follow the bailiff,  
21 he'll show you where to go.

22 All right. Mr. Smiley?

23 MR. SMILEY: Yes, sir.

24 THE COURT: If you, Mr. Goss, would stand,  
25 maybe you could come around and stand right here. I'll

1 be glad to hear you concerning sentencing. I know the  
2 sentencing sheet is on the way, but I would like to hear  
3 anything you have to tell me about sentencing.

4 MR. SMILEY: Yes, sir. I'm going to ask you  
5 for a minimum sentence in this case. Of course, Mr. Goss  
6 maintains his innocence with respect to the jury, but  
7 even looking at the evidence in the light most favorable  
8 to Mr. Goss, he was not shown to have struck anybody, not  
9 shown to have bound anybody in this case, and would have  
10 been one of the persons alleged to have carried away the  
11 goods, and I think that is something in mitigation I  
12 would offer.

13 I know by any stretch of the imagination,  
14 it's hand of one, hand of all is a very serious crime.  
15 Also, I would like to say he's 23 years old, Your Honor.  
16 He's a young man. A ten-year sentence is a large chunk  
17 of time in one's life, eight and a half years before he  
18 would even have an opportunity to see the light of day.

19 THE COURT: How old is he?

20 MR. SMILEY: He's 23 now. He was 21 at the  
21 time of the incident, Your Honor. He's 23 now, and I  
22 will tell you that he has had some brushes in the past.  
23 I think the most significant thing he's had on the  
24 conviction he has had --

25 THE COURT: I thought he had some motor

1 vehicle --

2 MR. SMILEY: Possession of stolen vehicles,  
3 and there was a chop shop allegation he pled guilty to in  
4 the past. He's pled guilty to all of his crimes in the  
5 past. This is the first trial he's ever had. I believe  
6 he had one ABHAN in the past, Your Honor, assault and  
7 battery of a high and aggravated nature. He hasn't had  
8 any strikes in this case, and I would ask you for a  
9 minimum sentence, or as minimal as possible as mitigation  
10 for Darrell, would offer up -- he came up in a hard  
11 household.

12 You saw his mother. You've seen the  
13 conditions that he grew up under. He does have two  
14 children, Your Honor, that he has cared for. He has been  
15 involved in their life. I've met both of them on  
16 different occasions, Your Honor. I've known Darrell  
17 since he was 16 or 17 years old. He has always, with one  
18 exception, treated me with respect, and we worked that  
19 out, and he's an intelligent young man that I would like  
20 to see get on the right course and further his life.

21 So given all those factors, I would ask you  
22 for a ten-year sentence on each of the crimes, concurrent  
23 with credit for any time served. He's been incarcerated  
24 since June 15, 2007, since this crime.

25 THE COURT: Have you figured it out?



1 MR. SMILEY: I can real quick, June 15, 2007,  
2 that would be --

3 THE COURT: Twelve months, plus, what --

4 MR. SMILEY: Twenty-one months, yes, sir.

5 THE COURT: Solicitor, do you agree with  
6 that? Or do you know --

7 MR. LAWTON: They're calculating it, Your  
8 Honor.

9 MR. SMILEY: He's been in since June 15th.

10 MR. LAWTON: Yeah, he's been in since the  
11 date of arrest.

12 THE COURT: June 15, 2007?

13 MR. SMILEY: Yes, sir.

14 THE COURT: Anything else?

15 MR. SMILEY: That would be all, Your Honor.

16 THE COURT: Mr. Goss, I would like to hear  
17 anything you would like to tell me.

18 DEFENDANT GOSS: I just ask you to just have  
19 mercy upon me right now, because I was innocent of this  
20 situation, but as Mr. Smiley said, I just wish you could  
21 just give me the minimum sentence you could. That's all.

22 THE COURT: Thank you very much. I'll be  
23 glad to hear from the state. I know you gave me his  
24 criminal record before we started trial, but can you give  
25 it to me again, please.

1 MR. LAWTON: Yes, sir, Your Honor. He has a  
2 2003 B&E; 2003 possession of a stolen motor vehicle; 2003  
3 chop shop; 2003 possession of a stolen motor vehicle; an  
4 '04 ABHAN, not going to comment on guilt or innocence.

5 I'm not sure what I'll do with this charge at this time.  
6 I haven't reviewed it, but he is out on bond, Your Honor,  
7 for kidnapping armed robbery, that was 4/27/06 so he was  
8 out on bond for armed robbery and kidnapping, Your Honor.

9 I'm not sure we'll go as far as sentencing.  
10 I'll certainly put that in your hands, Your Honor. I  
11 don't know if the victim --

12 THE COURT: You say he's got charges pending?

13 MR. LAWTON: He was out on bond for armed  
14 robbery and kidnapping.

15 THE COURT: This armed robbery and  
16 kidnapping?

17 MR. LAWTON: No, different.

18 THE COURT: So those charges are still  
19 pending?

20 MR. LAWTON: Yes, sir, and I'll evaluate what  
21 I'll do, mainly depending on his sentence.

22 THE COURT: That's up to you. You can  
23 prosecute or not prosecute.

24 MR. SMILEY: I hope you wouldn't consider  
25 that in your sentence, Your Honor. I could say a whole

1 lot about that case. I'm very familiar with it, and I  
2 would be very surprised if the state were able to reach  
3 any kind --

4 THE COURT: Well, I don't care about that.  
5 It's a charge, it's not a conviction. It was a prior  
6 conviction. All right.

7 Solicitor, I'll be glad to hear anything from  
8 you or anyone else that would like to say anything.  
9 Solicitor, would you like to say something?

10 MR. LAWTON: Your Honor, I would just -- I  
11 was talking about these solicitors sitting behind you.

12 THE COURT: Anything you would like to say?

13 MS. WILSON: Your Honor, we certainly  
14 appreciate the way you handled court this week. As far  
15 as this defendant goes, I don't know how often you've  
16 been in this circuit, but one of the things that has been  
17 a plague on this community is people who are out on bond.

18 I understand he may not be guilty of that  
19 earlier charge but he was certainly on bond where he  
20 signed a contract to get out of jail to be on his best  
21 behavior. What we do know is after he signed that  
22 contract to get out on bond, he committed a heinous armed  
23 robbery and a kidnapping.

24 We also know, unfortunately, that a -- we  
25 were very fortunate to get a conviction in this case.

1 One of the key witnesses in this case has been in grave  
2 fear of his life. We have staked out his home, his work,  
3 his school, his medical appointments, and attempts to  
4 find him to bring him to testify.

5 The witnesses for the people that he has come  
6 in contact with over the past week have said that he is  
7 shaking in fear, and that is a reason that he never  
8 appeared here in court. That is because of Mr. Goss and  
9 Mr. Mack, and anything that you can do on sentencing to  
10 ensure this community that Mr. Goss can't plague them  
11 again, we certainly would appreciate it.

12 THE COURT: Okay. Thank you very much.  
13 Solicitor Lawton, is there anything you would like to  
14 tell me?

15 MR. LAWTON: No, Your Honor.

16 THE COURT: You got the sentence sheet?

17 MR. LAWTON: Yes, sir.

18 THE COURT: All right. I guess I should have  
19 said solicitor and assistant solicitor. I apologize.  
20 Okay. Mr. Goss, indictment number 10807, that is the  
21 kidnapping, sentence of the state, department of  
22 corrections, period of 20 years as concurrent with the  
23 other indictment. Indictment No. 10805, that is armed  
24 robbery, sentence of the state, sentence of the state,  
25 department of corrections, period of 20 years as

1 concurrent with the other indictments. Credit for jail  
2 time since June 15th of '07. Indictment No. 0806, that  
3 is the assault and battery with intent to kill, sentence  
4 of the state, department of corrections, period of 20  
5 years.. That is concurrent with the other indictment,  
6 give you credit for jail time since June 15, '07.  
7 Concurrent means it runs together.

8 MR. SMILEY: Thank you, Your Honor.

9 MR. LAWTON: May I approach, Your Honor?

10 THE COURT: Yes, sir. All right. I'll be  
11 glad to hear you as to Mr. Joy Mack.

12 MR. APOSTOLOU: Thank you, Your Honor.

13 Obviously, while we respect the decision of  
14 the jury, we are disappointed. From the first moment I  
15 met Joy, he said that he wasn't involved with this. I  
16 believed him then; I still believe him. We certainly  
17 respect the verdict. It doesn't change my belief in him  
18 at all, but, obviously, the time for that has come and  
19 gone. He is 23, 24 -- 23 years old. He has a son that  
20 is six years old. He's got a girlfriend with whom he has  
21 a longstanding relationship.

22 His record is a little bit of drugs. I would  
23 suggest to you that he's not a menace to society. I  
24 don't think he's -- he hasn't accumulated a lot of  
25 charges. I would ask you for the minimum sentence,

1 Judge. I don't think that he's in the category of the  
2 Gosses, or the Goss family. I think he is -- I would ask  
3 you for the minimum sentence, and I thank you.

4 THE COURT: Let me tell you, I understand  
5 Mr. Goss had much more serious criminal record than Mr.  
6 Mack. I think he's got, what, distribution?

7 MR. LAWTON: Yes, sir, Your Honor.

8 THE COURT: Is the only charge against him,  
9 but my concern -- I'm not going to argue with you whether  
10 he's innocent or not innocent. A jury of 12 people have  
11 found him guilty, and what concerns me is somebody is  
12 willing to put a gun in somebody's face and rob them.  
13 That is quite serious, and if he'll do that, he'll kill  
14 you. He'll hurt you, and he did hurt this gentleman. He  
15 beat him in the head with a rifle. So he is a menace to  
16 society, irrespective of his prior record, and I'm just  
17 telling you my thoughts.

18 I've really got a problem with somebody  
19 walking into a store with a gun, saying, Give me your  
20 money, and then beat him and tie him up and ransack the  
21 store.

22 MR. APOSTOLOU: I understand that, Judge, and  
23 certainly --

24 THE COURT: And this is the man, according to  
25 the testimony, that had the gun, Mr. Goss did, so -- at

1 least from the victim's testimony. I understand there  
2 was a gun there with the victim's blood, so apparently  
3 Mr. Goss and one of other three had the pistol, but this  
4 man was identified by the victim that beat him in the  
5 head with the rifle. And I understand you think that  
6 eyewitness identification is flawed, you know, but it  
7 wasn't flawed to 12 people.

8 MR. APOSTOLOU: I understand that, Judge.

9 THE COURT: So I'll be glad to hear you on  
10 that.

11 MR. APOSTOLOU: Okay.

12 THE COURT: You said he's been nice to you,  
13 he's been a nice guy, and all this kind of stuff, so I'll  
14 be glad to hear you, okay? Because I'm seriously  
15 thinking about loading him up.

16 MR. APOSTOLOU: Well, Judge, I would -- I  
17 think that Joy should get the benefit of the fact that  
18 his record isn't that bad. I understand these are  
19 serious allegations, and I understand that, you, know  
20 that the victim put him at that role, and I understand  
21 that the jury has made their decision and they've come  
22 back.

23 I would say that he is a young man that has a  
24 lot of life left in him. I understand these are serious  
25 charges, and he's certainly going to do a significant

1 amount of time on them.

2 If we're going to go with the allegations as  
3 they are, the gun was loaded. It was an AK47. This  
4 easily could have been a murder. It could have been a  
5 double murder. It wasn't. He was in the position to  
6 have killed both of them and gotten out of there and  
7 eliminated any witnesses, and, frankly, under the facts  
8 that we've got, probably would have gotten away with it.

9 So the fact that this didn't end in a murder  
10 is what ultimately led to him being convicted today, and  
11 I think that that suggests, based on the fact he has  
12 nothing violent in his history whatsoever, that he's not  
13 a killer and that he is not a menace to society -- and I  
14 understand this is a very serious charge, but the fact is  
15 it didn't go further than it did.

16 They're in the back of the store. It's  
17 closing time, and all the other stores -- they could have  
18 been in and out of there and away from all this, and the  
19 victims could have been in much worse shape than they  
20 are. The victim was treated in the hospital and released  
21 on the same day. It could have been a much worse  
22 situation, and certainly a serious situation, and we're  
23 obviously not going to stand for that, but I think that  
24 the fact that he did have a -- if he did, and, obviously,  
25 the jury found that he did had an AK47 over top of these



1 people --

2 THE COURT: He also stated what it could have  
3 been something else other than an AK47.

4 MR. APOSTOLOU: It easily could have been a  
5 much worse situation, and I think that the fact that it  
6 didn't, I think I would suggest to you that he should get  
7 the benefit of that. And I know it's a terribly serious  
8 situation, but there is nothing in his history of any  
9 kind of violence whatsoever.

10 THE COURT: How old is he?

11 MR. APOSTOLOU: He's 24 years old. He has  
12 one son, six years old.

13 THE COURT: How far did he go in school?

14 DEFENDANT MACK: I have my GED, sir.

15 THE COURT: You have your GED?

16 DEFENDANT MACK: Yes, sir.

17 THE COURT: All right. Mr. Mack -- I'm  
18 sorry, Mr. Apostolou. I was just telling you my  
19 thoughts. I was thinking out loud to you. I wanted to  
20 hear what you had to say.

21 MR. APOSTOLOU: I understand that. I do  
22 understand that, Judge. I just feel like this situation  
23 could have gone a lot worse. It's a very serious  
24 situation, but there is nothing -- it's totally out of  
25 character for his record. He's just -- it's totally out

1 of character for his record, and he should get the  
2 benefit of that. It could have been a lot worse. It's a  
3 very bad situation, but --

4 THE COURT: All right. Mr. Mack, anything  
5 you would like to tell me?

6 DEFENDANT MACK: Yes, sir. Basically --

7 THE COURT: I'm sorry. What?

8 DEFENDANT MACK: Basically, from the  
9 beginning, from the beginning of the end of the case you  
10 made on me, I basically was lost in this whole situation.  
11 I'm not disputing the fact that the jury found me guilty  
12 of these charges, I'm just basically saying my point of  
13 view on this.

14 And I respect the jury's decision on what  
15 they did, because, I mean, that was their job. They  
16 could either find me guilty or not guilty based upon the  
17 facts, and I just ask you, Your Honor, just to have  
18 leniency, have mercy on me, Your Honor, because I am  
19 innocent, but I just respect -- I respect the decision of  
20 the jury because they found me guilty. They did their  
21 job.

22 THE COURT: Okay. You got anything else, Mr.  
23 Mack? I don't want to cut you off.

24 DEFENDANT MACK: I have a son that I -- that  
25 is six years old, lives with me. I got a girlfriend

1 who -- me and her were together for a long, long time.  
2 My mother's getting old. She's sick, Your Honor. I just  
3 beg that you have leniency on me.

4 MR. APOSTOLOU: He has been in jail about a  
5 year about a half as well.

6 THE COURT: When was the arrest?

7 MR. APOSTOLOU: He was arrested July 24th of  
8 2007.

9 THE COURT: Solicitor, I'll be glad to hear  
10 from the state.

11 MR. LAWTON: Your Honor, I believe Andy would  
12 like to address the Court.

13 THE COURT: I'll be glad to hear from him.

14 MR. LAWTON: I think he decided not to, Your  
15 Honor.

16 MR. AYAZGOK: I would like to say thank you,  
17 Your Honor. Thank you for everything.

18 MR. LAWTON: Your Honor, I just want to put  
19 on the record that Mr. Apostolou approached me a while  
20 back, said his client maintained his innocence and asked  
21 to be put on a polygraph exam, and we did that and it  
22 came back as a failed exam.

23 I did that out of respect for Mr. Apostolou.  
24 I'm not willing to put somebody on trial that has a  
25 chance who was innocent, so I did that just to assure

1 that, and the results came back as deceptive.

2 THE COURT: Came back as deceptive, not  
3 unreliable, or what is the other word they use on the lie  
4 detector? Inconclusive.

5 MR. LAWTON: There was deception. Deception,  
6 yes, sir.

7 THE COURT: All right.

8 MR. LAWTON: And I just respect your  
9 decision, Your Honor. I'll put it in your hands.

10 THE COURT: Okay. Thank you very much.  
11 Solicitor, do you have anything you would like to add?

12 MS. WILSON: No, sir. I appreciate your  
13 earlier comments.

14 THE COURT: All right. Thank you.

15 Mr. Mack, you understand all these are 85  
16 percent crimes. You will not be eligible for parole, do  
17 you understand?

18 DEFENDANT MACK: Yes, sir.

19 THE COURT: All right. Mr. Mack, indictment  
20 5696, that is assault and battery with intent to kill,  
21 sentence of the state, department of corrections for a  
22 period of 20 years, concurrent with that, give you credit  
23 since July the 24th, 2007.

24 Indictment number 5698, as to kidnapping,  
25 sentence of the state, department of corrections, period

1 of 22 years as concurrent, give you credit for time  
2 served since July 24th, '07; indictment number 5695, that  
3 is armed robbery, sentence of the state, department of  
4 corrections for a period of 22 years. That is concurrent  
5 with the other indictment, and give you credit for time  
6 since July the 24th, '07.

7 And I will say to you that your lawyer has  
8 done a good job for him because I was quite frankly  
9 thinking about giving you 35 years, so your lawyer talked  
10 me down to 22. Good luck to you.

11 - - -

12 (Whereupon, the proceedings were concluded.)

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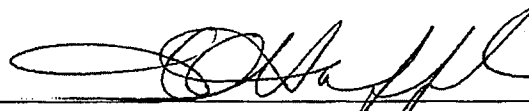
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25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 26th of February 2009.

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

May 19, 2009



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Circuit Court Reporter

564

NSW20070688189

WITNESSES

OLENTIAL FAISON  
North Charleston Police Department

AGENCY CASE NUMBER

2007024986

ARREST WARRANT NUMBER

F969629

DATE OF ARREST

2007-06-15

ACTION OF GRAND JURY

NOTICE OF BILL  
SEP 11 2007

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2007GS1010805

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS

September Term 2007

THE STATE

vs.

DARRELL LEE GOSS

Indictment for

Armed Robbery

FILED

2007 SEP 12 AM 10:34

JULIE J. ARMSTRONG  
CLERK OF COURT

BY

07-3815 (1)

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

## INDICTMENT

At a Court of General Sessions, convened on September 10, 2007 the Grand Jurors of Charleston County present upon their oath:

**Armed Robbery**

That on or about June 14, 2007, in Charleston County, South Carolina, at [REDACTED] Dorchester Road, #105, North Charleston by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant, DARRELL LEE GOSS, did take and carry away goods and/or monies from the person or immediate presence of Davuthan Kilic and/or Aytekin Ayazgok with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(A) of the Code of Laws of South Carolina (1976) as amended.

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



NATHAN WILLIAMS  
ASSISTANT SOLICITOR



566

NSW20070608189

WITNESSES

OLENTIAL FAISON  
North Charleston Police Department

AGENCY CASE NUMBER

2007024986

ARREST WARRANT NUMBER

F969630

DATE OF ARREST

2007-06-15

ACTION OF GRAND JURY

TRUE BILL

SEP 11 2007

Foreperson of Grand Jury

Date:

*Lera Cohen*

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2007GS1010806

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS

September Term 2007

THE STATE

vs.

DARRELL LEE GOSS

Indictment for

Assault and Battery With Intent to Kill

FILED

2007 SEP 12 AM 10:34

JULIE J. ARMSTRONG  
CLERK OF COURT

BY *[Signature]*

07-3815 (3)✓

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

## INDICTMENT

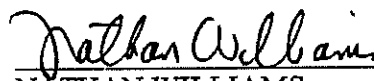
At a Court of General Sessions, convened on September 10, 2007 the Grand Jurors of Charleston County present upon their oath:

**Assault and Battery With Intent to Kill**

That in Charleston County, South Carolina, on or about June 14, 2007, the Defendant, with malice aforethought, did commit an unlawful act of a violent nature upon the victims, Davuthan Kilic and/or Aytekin Ayazgok; all in violation of the Common Law of South Carolina and Section 16-03-620 of the Code of Laws of South Carolina (1976) as amended.

---

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

  
NATHAN WILLIAMS  
ASSISTANT SOLICITOR

568

NSW20070608189

WITNESSES

OLENTHIAL FAISON

North Charleston Police Department

AGENCY CASE NUMBER

2007024986

ARREST WARRANT NUMBER

F969631

DATE OF ARREST

2007-06-15

ACTION OF GRAND JURY

FILED

SEP 11 2007

Foreperson of Grand Jury

Date:

Tina Cohen

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2007GS1010807

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2007

THE STATE

vs.

DARRELL LEE GOSS

07-3815(2)<sup>v</sup>

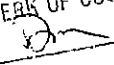
Indictment for

Kidnapping

FILED

2007 SEP 12 AM 10:34

JULIE J. ARMSTRONG  
CLERK OF COURT

BY: 

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

## INDICTMENT

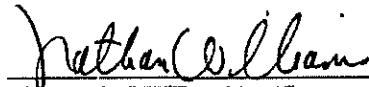
At a Court of General Sessions, convened on September 10, 2007 the Grand Jurors of Charleston County present upon their oath:

**Kidnapping**

That in Charleston County, South Carolina, on or about June 14, 2007, the Defendant, DARRELL LEE GOSS, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victims, Davuthan Kilic and/or Aytekin Ayazgok, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina (1976) as amended.

---

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

  
NATHAN WILLIAMS  
ASSISTANT SOLICITOR

570  
STATE OF SOUTH CAROLINA  
COUNTY OF Charleston  
STATE VS.  
DARRELL LEE GOSS  
AKA:  
Race: B Sex: M Age: 22  
DOB: SS#  
Address:  
DL#: SID#

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT/CASE#: 2007GS1010805  
A/W#: F969629  
Date of Offense: 6/14/2007  
S.C. Code § : 16-11-0330(A)  
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS  
TO: Armed Robbery  
in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139  
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)  
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)  
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.  
ATTEST: Lawton, Trip Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.  
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections. SINCE 6/15/07  
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
☐ set by SCDPPPS \_\_\_\_\_  
Recipient: \_\_\_\_\_  
\*Fine: \$ \_\_\_\_\_  
§ 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_  
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00  
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_  
§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
§ 35.13 (Public Def/Prob) \$500 \$ \_\_\_\_\_  
§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00  
§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ \_\_\_\_\_  
§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
3% to County (if paid in installments) \$ 3.75  
§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00  
TOTAL \$ 133.75  
\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED \_\_\_\_\_  
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_  
☐ Appointed PD or appointed other counsel, §35.13 TP  
Requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk  
Court Reporter: A. Helfenden  
PRESIDING JUDGE J. Nichols  
Judge Code: 2117  
Sentence Date: 2/26/09  
SCCA/217 (07/2008)

## STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston  
STATE VS.

DARRELL LEE GOSS

AKA: \_\_\_\_\_

Race: B Sex: M Age: 23DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]DL#: [REDACTED] SID#: \_\_\_\_\_

INDICTMENT/CASE#: 2007GS1010806

A/W#: F969630

Date of Offense: 6/14/2007

S.C. Code § : 16-03-0620

CDR Code #: 0014

## SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS  
TO: ABWIK/Assault and Battery with Intent to Kill

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45  
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature]

Lawton, Trip

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with **probation** for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections. Since 6/15/07☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_

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

Payment Terms: \_\_\_\_\_

☐ set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \$ \_\_\_\_\_

§ 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

§ 35.13 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ \_\_\_\_\_

§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in installments) \$ 3.75§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 133.75

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, §35.13 TP  
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 2117Sentence Date: 2/26/09

SCCA/217 (07/2008)

Clerk of Court/ Deputy Clerk

Court Reporter: A. Hatfield

COUNTY OF Charleston  
STATE VS.  
DARRELL LEE GOSS

AKA: \_\_\_\_\_  
Race: B Sex: M Age: 23  
DOB: [REDACTED] SS#: [REDACTED]  
Address: [REDACTED]  
DL#: [REDACTED] SID#: \_\_\_\_\_

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS1010807  
A/W#: F969631  
Date of Offense: 6/14/2007  
S.C. Code § : 16-03-0910  
CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS  
TO: Kidnapping

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095  
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45  
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)  
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.  
ATTEST: [Signature]

Lawton, Trip

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with **probation** for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections. SINCE 6/15/07  
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_

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

Payment Terms: \_\_\_\_\_

☐ set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \$ \_\_\_\_\_

§ 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

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§ 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in installments) \$ 3.75

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 133.75

[Signature]  
Clerk of Court/ Deputy Clerk

Court Reporter: A. Haffender

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, §35.13 TP  
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]

Judge Code: 2117

Sentence Date: 2/26/09

SCCA/217 (07/2008)

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTONDarrell L. Goss #305517

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

v.

State of South Carolina

2011-CP-10-3780  
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2011 MAY 27 PM 2:34  
JULIE CLERK OF COURT  
BY

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 Lieber Correctional Institution
2. Name and location of Court which imposed sentence Charleston County General Sessions
3. Name(s) of co-defendant(s) (if any) Joy Mack
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2007-GS-10-10805 / Armed Robbery
  - (b) 2007-GS-10-10806 / Assault and Battery With Intent Kill
  - (c) 2007-GS-10-10807 / Kidnapping
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) February 26, 2009 / twenty (20) Years Concurrent
  - (b) February 26, 2009 / twenty (20) Years Concurrent

Revised 3/2003



- (c) February 26, 2009 / twenty (20) years concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty Yes \_\_\_\_\_
- (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. Affirmed \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. Submitted May 1, 2011 - Filed May 17, 2011 \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UnPublished Opinion No. 2011-UP-214 \_\_\_\_\_
- 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) Violation of the Sixth Amendment to the United States Const
- (b) Violation of the fourteenth Amend. to the U.S. Const.
- (c) Violation of Article 1 Section 3 of S.C. Const.

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

- (a) Counsel was ineffective in his assistance
- (b) Counsel was ineffective in his assistance
- (c) Counsel was ineffective in his assistance

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

- iv. \_\_\_\_\_
- (d) the date of each such disposition:
- i. \_\_\_\_\_
- 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) Sixth Amend. Violations cannot be raised on appeal
- (b) fourteenth Amend. Violations cannot be raised on appeal
- (c) Article I Section 3 Violations cannot be raised on appeal

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

770

- (a) your arraignment and plea? Yes
- (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? N/A

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

- (a) the name and address of each attorney who represented you:
- James W. Smiley, IV / 178 1/2 King St., Chas, SC 29901
  - Robert M. Pachak / SCCID 1330 Lady Street, Suit 401, Columbia, SC 29201-3332
  - \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- arraignment, trial and sentencing
  - direct appeal
  - \_\_\_\_\_

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

New trial

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

No

STATE OF SOUTH CAROLINA )

County of Charleston )

VERIFICATION

I, DG, 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.

*Darrell L. Goss*  
Darrell L. Goss #365517

SWORN to and subscribed before me this 23RD  
day of May, 2011.

*Sylvia Jones* (L.S.)  
Notary Public

My Commission Expires: 1/24/2018

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

I, DL, 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.

Darrell L. Goss  
Darrell L. Goss #35517 Applicant

SWORN or affirmed to and subscribed before me this  
23rd day of May, 2011.

Sylvia Jones  
Notary Public

My Commission Expires: 1/24/2018

|                           |   |                              |
|---------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA   | ) |                              |
|                           | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON      | ) |                              |
|                           | ) |                              |
|                           | ) | 2011-CP-10-3782              |
| Darrell L. Goss, #305517, | ) |                              |
|                           | ) |                              |
| Applicant,                | ) |                              |
|                           | ) |                              |
| v.                        | ) | RETURN                       |
|                           | ) |                              |
| State of South Carolina,  | ) |                              |
|                           | ) |                              |
| Respondent.               | ) |                              |

---

The Respondent, making its Return to the application for post-conviction relief filed May 27, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the September 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-10805), assault and battery with intent to kill (ABWIK) (2007-GS-10-10806), and kidnapping (2007-GS-10-10807). James Smiley, Esquire, represented the Applicant. The Applicant proceeded to trial on February 23-26, 2009, after which a jury found him guilty as indicted. The Honorable J.C. Nicholson, Jr. sentenced the Applicant to confinement for twenty (20) years for each offense. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Pachak, Esquire, of the South Carolina Commission on Indigent Defense, represented Applicant on appeal. After full briefing by both sides, the South Carolina Court of Appeals

affirmed the conviction and sentence. State v. Goss, Op. No. 2011-UP-214 (S.C. Ct. App. filed May 17, 2010). The Remittitur was issued on June 9, 2011.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, the Final Brief of Appellant, the Final Brief of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, and the Remittitur dated June 9, 2011.

## II.

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

1. Ineffective assistance of counsel.

## III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable



professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN  
Assistant Attorney General

By: Matthew J. Friedman  
ATTORNEYS FOR RESPONDENT

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

August 17, 2011.

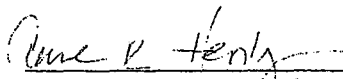
|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                              |
|                          | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON     | ) |                              |
|                          | ) |                              |
|                          | ) | 2011-CP-10-3782              |
|                          | ) |                              |
| DARRELL L. GOSS, #305517 | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) |                              |
| vs                       | ) | AFFIDAVIT OF SERVICE BY MAIL |
|                          | ) |                              |
| STATE OF SOUTH CAROLINA, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |

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

Charles T. Brooks III, Esquire  
309 Broad Street  
Sumter, SC 29150

DATED this 17th day of August, 2011

  
\_\_\_\_\_  
Anne R. Henley, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Darrell L. Goss, #305517, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO.: 2011-CP-10-3782

## ORDER OF DISMISSAL

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2011 DEC -1 AM 11:42

FILED

Presiding Judge:

Applicant's Attorney:

Respondent's Attorney:

Trial Counsel:

Date of Hearing:

Court Reporter:

Deadra L. Jefferson

Charles T. Brooks, III., Esq.

Matthew J. Friedman, Esq.

James W. Smiley, IV., Esq.

September 16, 2011

Amanda Haffenden

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 27, 2011. The Respondent filed its Return on August 18, 2011. An evidentiary hearing into the matter was convened on September 16, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, James W. Smiley, IV. Esquire also testified at the hearing. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, the Final Brief of Appellant, the Final Brief of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, the Remittitur dated June 9, 2011, the PCR application, the State's Return thereto, a jail visit log,

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and two letters from Applicant to trial counsel.

### PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the September 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-10805), assault and battery with intent to kill (ABWIK) (2007-GS-10-10806), and kidnapping (2007-GS-10-10807). James W. Smiley, Esq., Esquire, represented the Applicant. The Applicant proceeded to trial on February 23–26, 2009, after which a jury found him guilty as indicted. The Honorable J.C. Nicholson, Jr. sentenced the Applicant to confinement for twenty (20) years for each offense. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Pachak, Esquire, of the South Carolina Commission on Indigent Defense, represented Applicant on appeal. After full briefing by both sides, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Goss, Op. No. 2011-UP-214 (S.C. Ct. App. filed May 17, 2011). The Remittitur was issued on June 9, 2011.

### ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
  - a. Failed to investigate.
  - b. Failed to call rebuttal witnesses.
  - c. Failed to present an alibi defense.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the hearing. This Court has further had the opportunity to

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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).

The Applicant testified he retained trial counsel, who represented him for two (2) years prior to trial. He asserted he only met with counsel one (1) time to discuss a guilty plea. He testified it was his decision to reject the plea offer for twelve (12) years non-violent because he had no involvement in the incident. He testified counsel did not hire a private investigator. He further testified he sent counsel two (2) letters requesting to discuss his case and requesting Rule 5 materials, but counsel never responded. Applicant testified counsel never reviewed discovery with him. He testified he filed a complaint against counsel as a result.

Applicant testified he gave counsel the names of witnesses to contact, including witnesses who saw Applicant's mother buy clothes and a witness who would testify the gun was found in his car and was bought from the same people selling clothes. The Court took judicial notice of the testimony of the following witnesses who were present at the PCR hearing: (1) Clifford Hartwell, Applicant's brother, would testify his mother, Thomasina Goss, and Sharon Goss bought the alleged stolen clothes from guys in front of the family home, and (2) Sharon Goss, Applicant's cousin, would testify he bought the gun and clothing from the guys in front of the family home and that the gun was found in his car.<sup>1</sup>

Applicant also asserted he had alibi witnesses who would have testified Applicant was at his son's baby shower on Dorchester Road on June 14, 2007 between 7:00 PM and 9:00 PM. Specifically, Applicant named Angelique Gaskins, the mother of his child, Lucretia Douglas, a friend, Bernard Godfrey, an uncle, and Felicia Henderson, a friend. The Court took judicial

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<sup>1</sup> The trial transcript reflects the spelling of Applicant's cousin as Sharon Goss. (Tr. 464:24.) However, to clarify the sex of Applicant's cousin as a male, the Court notes the phonetic spelling of the name is Sharone.

notice of the potential alibi witnesses' alleged testimony. Applicant testified he informed counsel of these witnesses during jury selection, and these witnesses were present at trial ready to testify, but counsel never called these witnesses. Counsel only called his mother as a witness, knowing his mother's testimony could be impeached due to her prior criminal record. He asserted he tried to discuss the alibi defense with counsel, but counsel shut him down and told him not to say anything about the crime. Applicant testified counsel discussed his right to testify at trial and informed him it was not a good idea due to his prior convictions. Applicant testified it was his decision not to testify.

Trial counsel testified he had known the Goss family several years. He asserted the State's case against Applicant was circumstantial consisting of three (3) pieces of evidence: (1) Applicant's partial palm print from the exterior front door of the store, (2) a gun with the victim's DNA on it recovered from a car at the Goss's residence, and (3) a large quantity of clothing with tags attached found at the Goss residence. Counsel testified Applicant went to trial with his co-defendant, and the State had a good case against the co-defendant. He asserted he had no legal basis to move to sever the Applicant's trial.

Counsel testified he did not recall how many times he met with Applicant, but it was more than one (1) time. He testified Applicant had another set of charges for armed robbery, kidnapping, and burglary from eighteen (18) months earlier. He contended Applicant got out of jail on those charges, but then went back to jail when he was arrested on these charges. Counsel testified Applicant had nineteen (19) pending indictments at the time of trial. He testified when meeting with the Applicant he told Applicant he would discuss his potential defenses after determining the State's case, but the two had a volatile disagreement and counsel never got to that point. He testified the Applicant sent a letter to Chief Justice Toal, regarding his right to a

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speedy trial, who subsequently instructed counsel and the solicitor to respond to her regarding Applicant's complaint. Counsel testified letters were submitted to Chief Justice Toal, and the complaint was dismissed.<sup>2</sup> Counsel recalled a hearing on Applicant's Motion to be Relieved, but stated the two parties "made-up" and his representation of Applicant continued. Counsel testified he had trouble communicating with Applicant throughout his representation. He further testified Applicant became argumentative and angry when he tried to explain matters with him, because he was adamant in his desire for a trial. He further testified he had an ethical obligation to disclose any plea offers to the Applicant, but that in doing so, the Applicant became more agitated.

Counsel testified he did not know about an alibi defense or about Applicant's cousin Sharon purchasing a gun until after trial. Counsel asserted even if he had known about a potential alibi defense at the time of the trial, he would not have presented it unless it was an airtight defense. He opined the risk of such a defense would be too great, because if it failed, he risked the jury not listening to the rest of his argument regarding the case. He testified it would have been helpful to have a time stamped photo placing Applicant at the baby shower on the date and time of the crime. Based on his knowledge of the Goss family, counsel stated a few of the potential alibi witnesses have a record but he could not testify as to whether their records would have discounted their testimony. Counsel testified he thought they could beat the circumstantial evidence without an alibi witness, and he testified he tried a good case even without the alibi defense. He testified he explained the print on the door, explained that the car in which the gun was found did not belong to Applicant, and explained the clothing through Applicant's mother's testimony. He testified he thought the jury came to the wrong result. He testified Sharon's

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<sup>2</sup> Applicant was in the Charleston County Detention Center for approximately twenty (20) months prior to the call of his case. However, a bond was set on his case.

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testimony would have been detrimental if he had known about it, but he probably would have elicited the information from Thomasina Goss's testimony rather than calling Sharon as a witness, although it still could have implicated Applicant. He testified he was not positive Sharon's testimony would have made a difference because he is a family member, and juries are always skeptical of the veracity of a family member's testimony. He asserted Applicant's mother, nor Applicant, never mentioned Sharon purchasing the gun. Counsel testified he does not think he would have done anything differently, and he asserted he would not have hired an investigator even if he knew about the potential alibi defense.

Counsel testified he knew about the witnesses who could testify about Thomasina Goss buying clothes, but he made a strategic decision to only call Ms. Goss as a witness. He admitted Ms. Goss had a prior record, but she was persuasive and credible and he felt confident in her testimony. Counsel testified he used her testimony to explain the clothes in the Goss residence and argued the tags on the clothing were not unique to the store that was robbed. He also argued the victim did not give an inventory to the police of what was stolen, as well as the fact there was clothing in the Goss residence that did not originate from the victim's store. Counsel testified he spent a lot of time with Ms. Goss and trusted what she told him. He asserted she knew everyone in the neighborhood, but she could not identify the people who sold her the clothes.

Counsel testified he did not hire an investigator. He asserted he lost money on the case. He testified he received around One Thousand and 00/100 (\$1,000.00) Dollars and was limited to taking discovery and determining a valid defense. Counsel asserted had he known about a potential alibi, he still would not have hired an investigator due to the lack of funds. Counsel testified he did not recall telling Applicant not to tell him anything about the case. He testified he advised Applicant of his theory of the case. He testified they had some problems

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communicating, because the Applicant did not want to hear what counsel had to say. He asserted he took a plea offer of twelve (12) years to Applicant, and Applicant was upset that counsel was talking about a plea. Counsel testified he reviewed the discovery with Applicant, but he did not give Applicant a copy of the discovery because he was incarcerated. He testified it is his general practice not to give a client a copy of discovery if they are incarcerated, but he reviews every page of the discovery with the client. Counsel testified he was prepared for trial.

### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. 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, 442, 334 S.E.2d 813, 814 (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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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 prevailing professional norms."

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Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

This Court finds Applicant's testimony is not credible while also finding trial counsel's testimony is credible. This Court finds counsel is a trial practitioner who has approximately eighteen (18) years of experience in the trial of serious offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, discovery, Applicant's constitutional rights, and possible defenses or lack thereof.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant failed to meet his burden of proof. This Court finds counsel 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, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, reviewed the discovery with Applicant, and was thoroughly competent in his representation. This Court finds counsel's representation did not fall below an objective standard of reasonableness.

This Court finds counsel made a valid strategic decision to only call Applicant's mother as a witness at trial. "There is a strong presumption that counsel rendered adequate assistance

and exercised reasonable professional judgment in making all significant decisions in a case.” Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Where trial counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Counsel's strategy will be reviewed under “an objective standard of reasonableness.” Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002).

Here, counsel testified he thought Applicant's mother's testimony was convincing. This Court finds any further testimony regarding Ms. Goss buying clothes would have been cumulative to her testimony. This Court finds neither Applicant nor Applicant's mother informed counsel that Applicant's cousin purchased a gun from the same people from whom Ms. Goss allegedly purchased the clothing. They enjoyed a close relationship and bond that had developed over many years. Counsel knew the Goss family for several years and trusted Thomasina Goss. The Court finds Ms. Goss's failure to inform counsel that her nephew purchased the gun implausible, particularly if she witnessed the purchase and testified to everything but the fact her nephew purchased the gun. Moreover, Ms. Goss was not called to testify at the PCR hearing that she witnessed her nephew purchase the gun. Further, the Court finds counsel's testimony credible that had he known Sharon allegedly purchased the gun, he would have elicited the information through Ms. Goss's testimony rather than calling Sharon as a witness. The Court finds this would have been a reasonable and valid strategy given a jury's skepticism of the veracity of a family member's testimony. Thus, counsel was not ineffective for failing to call Sharon Goss or the other named witnesses at trial.

In addition, this Court finds neither Applicant nor Applicant's mother informed counsel of a potential alibi defense. This Court finds counsel's testimony credible that he had trouble

communicating with Applicant and did not learn of a potential alibi until after the trial ended. This Court further finds it implausible that neither the Applicant, nor one of his family members, could find a way to inform counsel of a potential alibi if one in fact existed. The Applicant testified he sent counsel two (2) letters requesting to meet with him and to request Rule 5, SCRCrimP documentation. The opportunity existed for Applicant to inform counsel of an alibi, but Applicant failed to do so until after the trial ended. Counsel testified even if he knew about a potential alibi, he would not have presented an alibi defense unless it was airtight which the Court finds credible. Nevertheless, even if counsel called Applicant's alibi witnesses at trial, the Court finds it would not likely have made an appreciable difference in the outcome of the case given that the majority of the witnesses were family or had a prior criminal record. Moreover, the record reflects a fresh, moist partial palm print was found and lifted from the exterior of the front door of the victim's store which was later identified as belonging to the Applicant. (Tr. 260:15-261:5, 294:2-8, 314:16-19, 315:2-19, 316:9-21.) Testimony of the latent print examiner revealed that although there is no way to determine the age of the print, it had to be recent since it was still wet when found. (Tr. 327:1-5.) Given the conflicting evidence in the record and the fact the alibi witnesses were either close friends or family of the Applicant, counsel was not ineffective for failing to pursue the alibi witnesses.

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 counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

#### All Other Allegations

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

#### CONCLUSION

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

This Court advises the Applicant 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 23<sup>rd</sup> day of November 2011.

  
The Honorable Deadra L. Jefferson  
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

Darrell L. Goss, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2016-002186

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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Appeal from Charleston County  
J. C. Nicholson Jr., Trial Court Judge  
Deadra L. Jefferson, Post-Conviction Relief Judge

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Opinion No. 27843  
Heard June 12, 2018 – Filed October 17, 2018

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**REMANDED**

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Appellate Defender David Alexander, of Columbia, for  
Petitioner.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General Julie Amanda Coleman, both of  
Columbia, for Respondent.

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**JUSTICE JAMES:** Darrell L. Goss was convicted of kidnapping, assault and battery with intent to kill (ABWIK), and armed robbery. In this post-conviction relief (PCR) matter, the PCR court denied relief, and the court of appeals affirmed. *Goss v. State*, Op. No. 2016-UP-382 (S.C. Ct. App. filed July 27, 2016). We



granted Goss's petition for a writ of certiorari to review the decision of the court of appeals. We remand to the circuit court for a de novo PCR hearing.

### **Facts and Procedural History**

Goss was charged in connection with the armed robbery of Urban Wear, a clothing store in North Charleston. The store owner, Andy Ayazgok, reported that five unmasked black males entered the store through the main storefront door at about 7:30 p.m., just before closing time, and proceeded to beat him, tie him and his employee up, and flee after stealing merchandise and cash. Of the five assailants, Andy was able to identify only Joy Mack as one of the assailants. Goss and Mack were tried jointly. Andy did not identify Goss as a perpetrator but identified him as having been in the store the week before the robbery.<sup>1</sup>

Sergeant Al Hallman was a member of the crime scene unit that processed the scene and was qualified by the trial court as an expert in fingerprint identification. He testified that when he arrived on the scene, he observed what he described as "wet" prints on the exterior of the glass storefront door; specifically, Sergeant Hallman testified the prints were a "simultaneous impression" of three fingers and a palm. The door from which the prints were lifted was the door through which the perpetrators gained entry and was also the door used by customers. Sergeant Hallman testified the prints were wet from either sweat or some other substance, which indicated to him the prints were fresh. He waited until the prints were dry and lifted them for possible later comparison. Andy testified at trial that he customarily cleaned the inside and outside of the storefront door each morning, and he testified he did so when he opened the store on the morning of the robbery.

Within hours after the robbery, a man named Lorenzo Johnson advised lead detective O.J. Faison that petitioner Goss and his brother, Benjamin Goss, were two of the perpetrators. Detective Faison relayed this information to Sergeant Hallman. Hallman compared the prints he lifted from the storefront door to inked impressions from petitioner Goss; he testified the prints matched. After the prints were matched to Goss, law enforcement obtained a warrant to search Goss's residence and any vehicles on the premises. The warrant was executed at approximately 9:30 p.m. the night following the robbery. A .357 Magnum

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<sup>1</sup> Andy's proffered trial testimony detailing his recollection of seeing Goss in the store the week before the robbery was that Goss was shoplifting and Andy ran him off. The trial court granted Goss's motion to exclude these details from Andy's testimony before the jury.

handgun with blood on the barrel was found in a car parked in the yard of the residence occupied by Goss and eight or nine other people, including several black males. DNA testing established the blood was Andy's. Clothing with tags was found in a bedroom in the residence, and Andy identified some of the clothing as being part of the merchandise stolen during the robbery.

Goss's mother, Thomasina Goss, was trial counsel's primary contact prior to trial because trial counsel had known her for many years and because Goss was in jail the entire twenty months before trial. She was the only defense witness called at trial and testified to the following: Goss lived in the house with her and eight other people, she bought the stolen clothing from some unidentified men in the street in front of her house on the same day law enforcement searched her home, she knew the clothes were likely stolen, she had never seen Goss drive or ride in the car in which the bloody gun was found, and everyone who lives in the house uses the bedroom in which the stolen clothing was found. The State impeached her with a shoplifting conviction and two convictions for giving false information to the police.

As noted above, the jury found both Goss and Mack guilty as indicted; the trial court sentenced Goss to three concurrent twenty year sentences. The court of appeals affirmed Goss's convictions in *State v. Goss*, Op. No. 2011-UP-214 (S.C. Ct. App. filed May 17, 2011). Goss subsequently commenced this action for PCR.

Goss testified at the PCR hearing he retained trial counsel two years before trial and was in jail that entire time. He further testified he met with trial counsel only once during that time and claimed that meeting was to discuss a plea offer. Goss claimed he tried to tell trial counsel of his innocence but trial counsel told him not to tell him anything because "whatever you tell me, I'm stuck with." This led to Goss cursing at trial counsel and telling him he did not want trial counsel to represent him. Goss testified he wrote trial counsel a letter apologizing for his conduct and that he did want trial counsel to represent him.

Goss testified that if he had been given the opportunity to properly consult with trial counsel before trial, he would have told trial counsel he was at his unborn child's baby shower during the time the robbery was committed. He claimed he would have given trial counsel the names of alibi witnesses. Goss also testified that during jury selection, he gave trial counsel the names of four witnesses he wanted trial counsel to have testify. These witnesses were Angelique Gadsden (the mother of his unborn child), Sha'ron Goss, Clifford Hartwell, and Benny Goss. Petitioner Goss claimed Sha'ron Goss, Gadsden, and Hartwell were present at trial. During jury qualification, the trial judge called the names of Angelique Gadsden

and Clifford Hartwell as potential witnesses, and trial counsel corrected the trial judge's pronunciation of Gadsden's first name.

Goss testified his cousin Sha'ron would have testified that he—Sha'ron—bought the bloody gun the day after the robbery from one of the men selling clothes in the street. Goss testified Angelique Gadsden would have corroborated Thomasina Goss's testimony that she bought the clothes from the men in the street. According to Goss, his brother Clifford Hartwell would also have corroborated this testimony. Goss also testified his brother Benny Goss would have testified at trial that he saw men selling clothes in the street and that Thomasina Goss and Sha'ron Goss bought some.

Sha'ron Goss, Gadsden, and Hartwell were all present at the PCR hearing and were offered as witnesses by PCR counsel. Instead of hearing their testimony, the PCR court decided, with the consent of the State and PCR counsel, to take "judicial notice" that all three would have testified at trial and would have corroborated Thomasina Goss's testimony about buying clothes from the men in the street. Again with the consent of the State and PCR counsel, the PCR court also took judicial notice that Sha'ron Goss would have testified at trial that he bought the bloody gun from one of those men the day after the robbery.<sup>2</sup> Bernard Godfrey (Goss's uncle), Felicia Henderson (Goss's friend), and Lucretia Douglas (Goss's friend) were also present at the PCR hearing and were offered as witnesses. Instead of hearing their testimony, the PCR court, with the consent of the State and PCR counsel, took judicial notice that they and Angelique Gadsden would have testified at trial that Goss was at the baby shower from 7:00 p.m. until 9:00 p.m. the evening of the robbery.<sup>3</sup>

Trial counsel testified Thomasina Goss never told him anything about an alibi defense or alibi witnesses and never told him that she could testify Goss was elsewhere at the time of the robbery. Trial counsel testified that the first time he

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<sup>2</sup> The record is unclear as to whether Benny Goss was present at the PCR hearing. The PCR court's order does not reflect the PCR court took judicial notice of his purported trial testimony.

<sup>3</sup> Goss himself, not PCR counsel, objected to the PCR court not hearing the witnesses' testimony live. He stated, "I need it on the record for appeal purposes." However, the PCR court admonished Goss that the court taking judicial notice of the testimony was "better than a record" and that Goss should "let [PCR counsel] do his job."

heard about an alibi was after the case had been tried. The PCR court found trial counsel's testimony to be credible and found Goss's testimony to be not credible.

In its order denying relief, the PCR court found that even if these seven witnesses had testified at trial, their testimony would not have affected the outcome of the trial; in so finding, the PCR court concluded the credibility of these witnesses would have been too suspect in the jury's eyes because the witnesses were friends and family members of Goss. The PCR court concluded trial counsel was not deficient for not presenting an alibi defense or eliciting testimony about Sha'ron buying the gun and putting it in the car. This conclusion was based upon trial counsel's testimony, which the PCR court found credible, that trial counsel did not learn of either the alibi defense or Sha'ron's testimony until after the trial.

After the PCR court denied relief, Goss appealed, and the court of appeals affirmed in an unpublished opinion. *Goss v. State*, Op. No. 2016-UP-382 (S.C. Ct. App. filed July 27, 2016). This Court granted Goss's petition for a writ of certiorari.

### Discussion

In a PCR proceeding, the PCR court's factual findings will be upheld if there is any probative evidence in the record to support those findings. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018). The PCR court's evaluation of witness credibility is to be afforded great deference. *Simuel v. State*, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). Here, the PCR court reached certain factual conclusions that appear to be supported by probative evidence in the record. These conclusions were based primarily upon the PCR court's evaluation of the credibility of Goss and trial counsel. Again, the PCR court found Goss to be not credible and trial counsel to be credible.

Under normal circumstances, we would apply our deferential standard of review to these findings. However, here, several witnesses were present at the PCR hearing and were prepared to testify to certain facts and circumstances. Some of these facts and circumstances were pertinent to evidence Goss claims should have been presented to the trial jury. Some of these facts and circumstances may have been pertinent to the dynamic surrounding trial counsel's alleged deficient failure to interview these individuals and perhaps call them as witnesses at trial. Under ordinary circumstances, once the witnesses testified at the PCR hearing, the PCR court would normally make findings as to their credibility. Obviously, the PCR court's evaluation of witness credibility is a mental process.

It was error for the PCR court to take judicial notice of the witnesses' testimony and then conclude these witnesses would not have been credible to a jury because of their relationships with Goss. We acknowledge PCR counsel did not object to this approach. However, under these unique circumstances, we are compelled to remand the matter to the PCR court for a de novo hearing. When a factfinder evaluates the credibility of witnesses, the mental process employed often requires the credibility evaluations to be based upon a consideration of all the evidence, not simply the parts the factfinder chooses to see and hear first-hand. Here, the PCR court's decision to take judicial notice of the substance of witnesses' testimony and then find those witnesses not credible diluted the process to the point where the PCR court's factual findings—and perhaps the legal conclusions arising from those factual findings—were based upon an incomplete consideration of all the evidence.

Based upon the foregoing, we **REMAND** this matter to the circuit court for a de novo PCR hearing. It will be incumbent upon Goss to secure the attendance of his witnesses for the de novo hearing, and Goss, trial counsel, and other pertinent witnesses may be presented for testimony by the parties. We emphasize the proceedings will be de novo, and neither party may rely upon testimony presented at the initial hearing which is the subject of this appeal.

**BEATTY, C.J., KITTREDGE, HEARN and FEW, JJ., concur.**

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

Darrell Goss, SCDC #: 370781 )

Applicant, )

v. )

State of South Carolina )

Respondent, )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: ~~2017-CP-10-3364~~

2011-CP-10-378a

**AMENDED RETURN**

FILED  
CLERK OF COURT  
SB

2019 JAN 10 PM 2:52

The Respondent, makings its Amended Return to the application for post-conviction relief filed May 27, 2010 and amended on May 27, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court of Charleston County. That Applicant was indicted at the September 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-10805), assault and battery with intent to kill (ABWIK) (2007-GS-10-10806), and kidnapping (2007-GS-10-10807). James Smiley, Esquire, represented the Applicant. The Applicant proceed to trial on February 23-26, 2009, after which a jury found him guilty as indicted. The Honorable J.C. Nicholson, Jr. sentenced the Applicant to confinement for twenty years for each offense. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Pachak, Esquire, of the South Carolina Commission on Indigent Defense, represented Applicant on appeal. After full briefing by both sides, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Goss, Op. No. 2011-UP-214 (S.C.Ct. App. Filed May 17, 2010). The Remittitur was issued on June 9, 2011.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, the Final Brief of Appellant, the Final Brief of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, and the Remittitur date June 9, 2011.

Applicant filed a Petition for Writ of Certiorari on July 23, 2012. The Petition was granted and the Supreme Court ordered the case be remanded to the Circuit Court for a de novo evidentiary hearing. The Remittitur was issued on November 2, 2018.

## II.

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

1. Violation of the Sixth Amendment to the United States Constitution
2. Violation of the Fourteenth Amendment to the United States Constitution
3. Violation of Article 1 Section 3 of the South Carolina Constitution

## III.

Applicant alleges he received ineffective assistance of counsel. Nevertheless, Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in his or her application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). Because Applicant's claims of ineffective assistance of counsel are



not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

#### **State's Assertion and Reservation of Rights**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. 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. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

#### **Request for Evidentiary Hearing**

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to the claims regarding the General Session Court's alleged lack of Subject Matter Jurisdiction and the alleged violations of Applicant's Fourth Amendment rights, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

#### **Conclusion**

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

BENJAMIN HUNTER LIMBAUGH  
Assistant Attorney General

By: *Benjamin Limbaugh*  
ATTORNEYS FOR RESPONDENT

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

January 8, 2019

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Darrell Goss, #305517

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

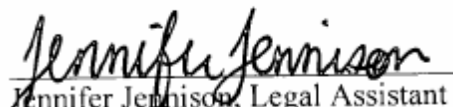
Case No.: 2011-C~~P~~-10-3782

Affidavit of Service by Mail

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

Christopher L. Murphy, Esquire  
Murphy Law Offices, LLC  
234 Seven Farms Drive, Suite 128  
Charleston, SC 29492

DATED this 8<sup>th</sup> day of January.

  
Jennifer Jennison, Legal Assistant  
For Respondent

FILED  
2019 JAN 10 PM 2:52  
CLERK OF COURT  
BY 

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTONDarrell L. Goss #305517

Plaintiff,

vs.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

9th JUDICIAL CIRCUITCASE NO.: 2011-CP-10 - 3783MOTION AND ORDER INFORMATION  
FORM AND COVERSHEETPlaintiff's Attorney: Darrell L. Goss #305517\_\_\_\_\_, Bar No. Lieber Corr. Inst.Address: P.O. Box 205Phone: \_\_\_\_\_ Fax Ridgville, SC 29472

E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

Defendant's Attorney: William Joseph Maye\_\_\_\_\_, Bar No. S.C. Attorney General's OfficeAddress: P.O. Box 11549Phone: \_\_\_\_\_ Fax Columbia, SC 29211

E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

## SECTION I: Hearing Information

Nature of Motion: Motion to AmendEstimated Time Needed: 15minCourt Reporter Needed: ☒ YES / ☐ NO

## SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Darrell L. GossSignature of Attorney for ☒ Plaintiff / ☐ Defendant7/31/20

Date submitted

## SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ \_\_\_\_\_☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☒ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_

☐ Other: \_\_\_\_\_

## JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_

Date: \_\_\_\_\_

## CLERK'S VERIFICATION

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

☐ MOTION FEE COLLECTED: \$ \_\_\_\_\_☐ CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. : 2011-CP-10-3783

Darrell L. Goss #305517,

Petitioner,

Vs.

State of South Carolina,

Respondent.

## MOTION TO AMEND

BY

JULIE J. ARNSTROM  
CLERK OF COURT

2020 AUG -6 AM 11:09

FILED

NOW COMES Petitioner, Darrell L. Goss, pro se, and respectfully moves this Honorable Court, pursuant to Rule 15(a), S.C.R. Civ. P., to issue an order granting him leave to amend his application for postconviction relief. Petitioner asserts there's no prejudice to Respondent, and leave should freely be given in the interest of justice.

WHEREFORE, premises considered, the Court should grant Petitioner's motion to amend.

Respectfully Submitted,

2011CP103782

Darrell L. Goss

Darrell L. Goss #305517

Lieber Corr. Inst.

P.O. Box 205

Ridgeville, SC 29472

July 31, 2020

BY \_\_\_\_\_

JULIE J. ANASTASIO  
CLERK OF COURT

2020 AUG -6 AM 11:09

FILED

---

## CERTIFICATE OF SERVICE

---

I, Darrell L. Goss, do hereby certify that I have served a true copy of the Motion to Amend upon counsel of record by depositing the same in the United States mail, prepaid postage, addressed to:

William Joseph Maye, Assistant Attorney General  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, SC 29211

Darrell L. Goss

## FORM 5

|                                                    |   |                               |
|----------------------------------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA                            | ) |                               |
|                                                    | ) | IN THE COURT OF COMMON PLEAS  |
| COUNTY OF CHARLESTON                               | ) |                               |
|                                                    | ) | C/A No. 2011-CP-10-3782       |
| Darrell L. Goss #305517                            | ) |                               |
| Full name and prison number (if any) of Applicant. | ) |                               |
|                                                    | ) |                               |
|                                                    | ) | <b>Amended</b>                |
| v.                                                 | ) | <b>APPLICATION FOR</b>        |
|                                                    | ) |                               |
| State of South Carolina                            | ) | <b>POST-CONVICTION RELIEF</b> |
|                                                    | ) |                               |

**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 Lieber Correctional Institution
2. Name and location of Court which imposed sentence Charleston County General Sessions
3. Name(s) of co-defendant(s) (if any) Joy Mack
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Armed Robbery (2007-GS-10-10805)
  - (b) Assault and Battery with Intent to Kill (2007-GS-10-10806)
  - (c) Kidnapping (2007-GS-10-10807)
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 20 years (February 26, 2009)
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
yes
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. Affirmed
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. May 17, 2011
- 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) see Memorandum
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see Memorandum
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Post-Conviction Relief Application
  - ii. Petition for Writ of Certiorari
  - iii. Petition for Writ of Habeas Corpus
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. Charleston County Court of Common Pleas
  - ii. South Carolina Supreme Court
  - iii. United States District Court for South Carolina
  - iv. \_\_\_\_\_
- (c) the disposition thereof:
- i. Denied
  - ii. Remanded
  - iii. Dismissed

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. December 1, 2011

ii. October 17, 2018

iii. January 31, 2020

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) Not the proper forum

(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? \_\_\_\_\_
  - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
  - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_
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. James W. Smiley
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the proceedings at which each such attorney represented you:
    - i. Trial
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
19. State clearly the relief you seek in filing this application:  
vacate conviction
20. Are you now under sentence from any other court that you have not challenged?  
No

STATE OF SOUTH CAROLINA                    )  
                                                           )  
 County of                                         )

## VERIFICATION

I, \_\_\_\_\_, 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.

*Danell A. Isers*

SWORN to and subscribed before me this \_\_\_\_\_  
 day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
*Notary Public* (L.S.)

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Darrell L. Goss #305517,

Petitioner,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2011-CP-10-3782

MEMORANDUM OF LAW IN  
SUPPORT OF PETITIONER'S  
AMENDED APPLICATION  
FOR POST-CONVICTION  
RELIEF

FILED  
20 AUG -6 AM 11:09  
JULIE J. ARMSTRONG  
CLERK OF COURT

NOW COMES Petitioner, Darrell L. Goss (hereinafter referred to as "Petitioner" or "Goss"), pro se, who respectfully submit this Memorandum, and exhibits attached thereto, in support of his Amended Application for Post-Conviction Relief and would show unto this Honorable Court:

PRELIMINARY STATEMENT

For over 13 years, Darrell L. Goss has been in prison for crimes that he has consistently declared that he did not commit.

## PROCEDURAL HISTORY

### Trial

Petitioner is currently incarcerated at Lieber Correctional Institution pursuant to an order of commitment from the Charleston County Clerk of Court. A Charleston County Grand Jury indicted Petitioner in the September 2007 term for Armed Robbery (2007-GS-10-10805), Assault and Battery with Intent to Kill (2007-GS-10-10806), and Kidnapping (2007-GS-10-10807). Petitioner was represented at trial by James W. Smiley, Esq., before the Honorable Judge J.C. Nicholson and a jury. At trial, the State was represented by Assistant Solicitors Trip Lawton and Kevin Hales. Petitioner's trial was adjudicated along with his alleged co-defendant Joy Mack. Following the conclusion of the trial, the jury returned a guilty verdict for all charges against Petitioner. Judge Nicholson then sentenced Petitioner to twenty (20) year sentences for each charge, to run concurrently.

### Direct Appeal

Petitioner filed and perfected his direct appeal

in the South Carolina Court of Appeals on February 1, 2010. Petitioner raised two issues for appellate review:

1. Whether the trial court erred in overruling defense counsel's objection to the solicitor's burden shifting closing argument?
2. Whether the trial court erred in refusing to allow defense counsel to impeach the victim with a pending charge of counterfeiting goods?

By Unpublished Opinion, filed May 17, 2011, the South Carolina Court of Appeals affirmed the conviction and sentence of Petitioner.

### Post - Conviction Relief

Petitioner next filed his *pro se* Application for Post - Conviction Relief on May 27, 2011. His Application set forth verbatim, three grounds for relief:

- a) Violation of the Sixth Amendment to the United States Constitution

b) Violation of the Fourteenth Amend. to the U.S. Const.

c) Violation of Article 1 Section 3 of S.C. Const.

The Applicant then set forth " Counsel was ineffective in his assistance " as the factual basis for each ground. The State made its Return to the Application on August 17, 2011. A PCR evidentiary hearing was conducted on September 16, 2011, before the Honorable Deadra L. Jefferson. At the PCR evidentiary hearing, Petitioner was represented by Charles T. Brooks, Esq. ( hereinafter " Mr. Brooks " ), and the State was represented by Matthew S. Friedman, Esq. Contemporaneous to his evidentiary hearing, Petitioner submitted various exhibits including a Memorandum in support of his Application, photographs, and a list of proposed affidavits of witnesses.

The Memorandum and testimony offered at the hearing indicate that Petitioner sought relief on the grounds that his attorney had failed to present his alibi defense. Petitioner claimed that due to his counsel's failure to adequately meet with Petitioner, Petitioner was



never offered an opportunity to inform Mr. Smiley of his alibi witnesses. Present at the evidentiary hearing were Angelique Gadsden, Lakriesha Douglas, Benard Godfrey, Phylicia Henderson, and Sha'ron Goss, whom Mr. Brooks identified as being able to corroborate Petitioner's alleged alibi. After confirming that each witness was either a friend or family member, the PCR Court took judicial notice that each witness would testify that Petitioner was at a baby shower between the hours of 7:00pm and 9:00pm, the same time frame for which the crimes occurred. The Court likewise took judicial notice of the substance of Sha'ron Goss's testimony, whom Mr. Brooks identified as being able to testify that he purchased the bloody gun from a nearby street vendor. Mr. Brooks then proceeded with Petitioner's testimony; the friends and family members present at the hearing did not testify, in lieu of the Court's judicial notice as to the content of their testimony.

Following the completion of the hearing, the PCR Court did not find that the Applicant had met his burden, but withheld judgment until the filing of a formal order. Judge Jefferson issued her Order of Dismissal on November 23, 2011, and it was filed with the Charleston

County Clerk of Court on December 1, 2011 .

### PCR Appeal

Petitioner sought to appeal the denial of his PCR Application, and perfected that appeal with the filing of his Petition for Writ of Certiorari in the South Carolina Supreme Court. Therein, Petitioner raised a single issue asking "whether Petitioner's Sixth Amendment right to effective assistance of counsel was violated by trial counsel's failure to investigate and present an alibi defense?". The State made its Return to the Petition for Writ of Certiorari, on November 26, 2012. The matter was transferred and considered by the South Carolina Court of Appeals, which granted certiorari on November 21, 2014, and ordered further briefing from the parties, and held oral arguments. The Court of Appeals, by Unpublished Opinion filed July 27, 2016, affirmed the denial of post-conviction relief. Petitioner filed a Petitioner for Rehearing, which was also denied.

Petitioner then sought certiorari to the South Carolina Supreme Court, so as to appeal the Court of Appeals affirmation of his denied PCR Application. The

State made its Return on December 30, 2016. The Supreme Court of South Carolina granted certiorari on October 19, 2017; the parties submitted further briefing and held oral arguments before the Court. Following oral arguments, the South Carolina Supreme Court issued its Published Opinion, *Goss v. State*, 425 S.C. 101, 820 S.E.2d 373 (2018), wherein it remanded Petitioner's matter to the PCR Court for a *de novo* hearing, finding that it was in error for the PCR Court to take judicial notice of the testimony of available witnesses.

### Habeas Corpus Relief

Petitioner then filed a *pro se* Petition for Writ of Habeas Corpus in the United States District Court on October 26, 2018. Following the filing of his Petition for Writ of Habeas Corpus, Petitioner filed a "Motion to Stay Proceedings" on January 7, 2019 in the PCR Court, wherein he asserted that he was seeking federal relief "on the same claims already raised and ruled on in this case and he's requesting a new trial or judgment." Petitioner then filed a "Motion Rejecting Appointment of Counsel and Requesting to Proceed Pro Se" on January

15, 2019. The Honorable Roger M. Young, Sr. reviewed and granted Petitioner's motion to proceed pro se on the same date: January 15, 2019. Petitioner's Motion for Stay was granted on January 21, 2019, and filed on January 29, 2019.

In his *pro se* Petition for Writ of Habeas Corpus, Petitioner made the following claims of error:

Ground One: Due Process Violation

Supporting Facts: There has been excessive and unjustified delay in the disposition of Petitioner's postconviction remedy proceedings.

Ground Two: Ineffective Assistant of Counsel

Supporting Facts: Trial counsel was ineffective in failing to investigate Petitioner and discover and present an alibi defense and rebuttal witnesses.

In a *pro se* Amended Petition for Writ of Habeas

Corpus, Petitioner made the following claims of error:

Ground Three : Equal Protection Violation

Supporting Facts : The State courts discriminated against Petitioner by inordinately delaying his postconviction appeal because of his indigent status, or other reasons .

The State made its Return, along with a Motion to Dismiss Without Prejudice, to the Petition for Writ of Habeas Corpus on March 31, 2019. The state argued dismissal was appropriate because Petitioner failed to exhaust his state court remedies, as required under 28 U.S.C. § 2254 (b)(1) (A), because the South Carolina Supreme Court remanded Petitioner's PCR case for a *de novo* review. Petitioner then sought summary judgment, wherein he asserted that he had properly exhausted his state court remedies because " he fairly presented his ineffective - assistance - of - counsel claim to the state highest court twice ". The matter was considered by United States Magistrate Judge Mary Gordon Baker, where she issued a Report and Recommendation on June 16, 2019 recommending that the District Court

grant the State's motion to dismiss and deny Petitioner's motion for summary judgment. The Honorable Bruce Howe Hendricks, by order filed January 31, 2020, adopted the Magistrate's report and dismissed Petitioner's petition for writ of habeas corpus.

### Habeas Appeal

Petitioner has sought to appeal the dismissal of his petition for writ of habeas corpus by filing a notice of appeal in the United States Court of Appeals for the Fourth Circuit on February 5, 2020. This appeal is currently pending before the Fourth Circuit.

### De Novo PCR Hearing

Petitioner has now move the PCR Court to lift the stay, and to expedite his de novo PCR hearing that was ordered by the South Carolina Supreme Court.

### LEGAL ARGUMENT

At the onset of this matter, Petitioner opposes a de novo review on the issue of "whether his trial

lawyer was ineffective for failing to investigate and present an alibi defense? ". This same claim has already been heard and ruled upon in both the State and Federal courts, and is currently pending before the Fourth Circuit Court of Appeals. see, Darrell L. Goss v. Charles Williams, C/A No. 2018-cv-2938-BHH, No. 20-6181. Petitioner contends that since the South Carolina Supreme Court's opinion did not explicitly vacate the judgment of the PCR Court or the Court of Appeals, its order to remand for a *de novo* review of this issue violates the doctrine of *res judicata* and *collateral estoppel*, and the Full Faith and Credit Clause of the United States Constitution which bars relitigation of claims adjudicated on the merits in a prior proceeding. South Carolina Public Interest Foundation v. Greenville County, 401 S.C. 377, 737 S.E.2d 502 ( Ct. App. 2013) ( *Res judicata* bars relitigation of the same cause of action while *collateral estoppel* bars relitigation of the same facts or issues necessarily determined in the former proceeding ) ; Orca Yachts, LLC v. Mollicam, Inc., 287 F.3d 316 (4th Cir. 2002); and Allen v. McCurry, 101 S.Ct. 411 (1980).

Moreover, Petitioner asserts due process concerns because his alibi witnesses are no longer available or

accessible to present their live testimony at the new PCR hearing, and even if they were, Petitioner contends that they all would suffer from memory loss seeing that the alibi event took place over 13 years ago.

I. Trial Counsel was ineffective in failing to prepare Petitioner's case and object to the "hands of one, hands of all" theory.

In State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999), the Supreme Court held:

To admit evidence under the "hands of one, the hands of all theory", the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown.

Here, the State did not even attempt to offer any evidence (direct or circumstantial) to prove "the existence of a common design" between Goss and his alleged co-defendant Mack to commit the crimes in this case. Yet, it was allowed to admit



evidence under the "hand of one, hand of all" theory and successful gain two convictions. This was in error. State v. Woomer, 276 S.C. 258, 277 S.E.2d 696 (1981).

Even trial counsel himself conceded to the solicitor relying on this theory. see, Exhibit A, Trial Transcript, p. 437-438, lines 20-23; and 6-9 ("So the only theory which the State can then go forward on would be the hand of one is the hand of all theory to show that he was either a planner", "If that is the case, Your Honor, the only theory the cases could survive on on that basis would be the hand of one is the hand of all, if my client is a planner or some kind of accessory").

The trial judge agreed with Mr. Smiley telling the solicitor ;

THE COURT : Only thing you got against him on kidnapping is, really, the hand of one, hand of all, on all three of them.

And the solicitor's response was ;

MR. LAWTON : Yes, sir, and that is the theory we're going on. Obviously, Jay Mack is the guy that did that.

Trial Transcript, p. 444, line 13-18.

Had trial counsel properly prepared Goss' case for trial, he would have known that the State lacked key evidence to try Goss under the "hand of one, hand of all" accomplice liability theory, and counsel would have been prepared to lodge an objection — and not a concession — to the State's reliance on that theory.

Consequently, Goss was wrongfully convicted at trial.

## II. Due Process Violation

In Bailey v. State, 393 S.C. 422, 709 S.E.2d 671 (2011), the Supreme Court explained:

It is a rule of universal observance in administering the criminal law that a defendant

must be convicted, if convicted at all, of the particular offense charged in the bill of indictment.

The court went on to say :

When a conviction results from an indictment that facially charges a complete offense but the State presents evidence which convicts under a different theory than that alleged, such conviction violates principles of due process because the State has failed to prove beyond a reasonable doubt every fact necessary to constitute the crime with which a defendant was charged.

In this case, the indictments charging Goss with armed robbery, kidnapping, and assault and battery with intent to kill specifically alleged that "Goss" by use of force, threats or intimidation and while armed with a deadly weapon did take and carry away goods and/or monies from the person or immediate presence of [victim] with the intent to permanently deprive him of possession ; unlawfully seize, confine, inveigle, decoy,

Kidnap, abduct or carry away the [victims] ; and with malice aforethought, did commit an unlawful act of a violent nature upon the [victims]. see, Exhibit B, Indictments.

By its express terms, the indictments alleged that Goss "actions" resulted in the victims' injuries. Significantly, it did not allege that Goss' conspiracy with Joy Mack was the result of the injuries inflicted on the victims.

Thus, the indictments apprised Goss that he had to defend only against the allegation that he inflicted the physical injuries upon the victims. see, Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005) ("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. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005) ("The indictment is a notice document").

The State did not also indict Goss on a criminal conspiracy charge, but it nonetheless, pursued a conviction against him based on that theory. State v. Stuckey, 347 S.C. 484, 556 S.E.2d 403 (S.C. App. 2001) (what is needed to establish criminal conspiracy is proof the defendants intended to act together for their shared mutual benefit within the scope of the conspiracy charged); State v. Jennings, 335 S.C. 82, 515 S.E.2d 107 (S.C. App. 1999) (when several people pursue a common design to commit an unlawful act and each takes the part agreed upon or assigned to him in an effort to insure the success of the common undertaking, the act of one is the act of all and all are presumed to be present and guilty); and Stirone v. United States, 361 U.S. 312, 80 S.Ct. 270 (1960) (Courts cannot permit a defendant to be tried on charges that are not made in the indictment against him).

Consequently, Goss has been deprived of his due process rights protected by the 14th Amendment to the United States Constitution.

### III. Failure to Inform of the Nature and Cause of the Accusation.

The Sixth Amendment to the United States Constitution provides, in relevant parts :

In all criminal prosecution, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation.

In State v. Green, 269 S.C. 657 (1977), the Supreme Court explained :

" Rights of an accused under State and Federal Constitutions to be informed of nature and cause of accusations and to be confronted with witnesses against him are personal to accused and it is accused, not his counsel, who must be informed of those rights ".

Then, in State v. Sigman, 366 S.C. 552 (2005), the Supreme Court held :

" An accused's Sixth Amendment right to be informed of the nature and cause of the accusations against him is satisfied if the notice to the accused is reasonable ".

As shown above, Goss was not informed by indictment that he allegedly conspired with Joy Mack to commit the crimes convicted for.

As such, Goss was denied his 6th Amendment right to be informed of the cause of the accusations against him, which, in turn, impeded his decision on whether to plead guilty (in order to avoid a long prison sentence if convicted at a trial) or stand trial (to declare his innocence).

Consequently, Goss was wrongfully convicted at trial.

#### IV. Subject Matter Jurisdiction

A circuit court has subject matter jurisdiction if ; (1) there has been an indictment that sufficiently states the offense ; (2) there has been a waiver of indictment ; or (3) the charge is a lesser-included offense of the crime charged in the indictment. Locke v. State, 341 S.C. 54, 56, 533 S.E.2d 324, 325 (2000) ; State v. Johnson, 333 S.C. 459, 462, 510 S.E.2d 423, 424 (1999).

An indictment is sufficient to convey jurisdiction if it apprises the defendant of the elements of the offense intended to be charged and informs the defendant of the circumstances he must be prepared to defend.

Granger v. State, 333 S.C. 2, 4, 507 S.E.2d 322, 323 (1998) (citing State v. Evans, 322 S.C. 78, 470 S.E.2d 97 (1996)).

An indictment phrased substantially in the language of the statute that creates and defines the offense is ordinarily sufficient. State v. Shoemaker, 276 S.C. 86, 88, 275 S.E.2d 878, 879 (1981).

Subject matter jurisdiction may be raised at any time, including for the first time on appeal. Weinhaver v. State, 334 S.C. 327, 330, 513 S.E.2d 840, 841 (1990); Browning v. State, 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995).

Here, undisputedly, Goss was not informed of the circumstances of the allegations brought against him by the State — i.e., that he allegedly conspired with Joy Mack to commit an armed robbery crime. See, Exhibit B, Indictments. Fatally, the indictments against Goss is insufficient to convey jurisdiction. Koon v. State, 358 S.C. 359 (2004).



CONCLUSION

For all the above reasons and arguments, this Court should vacate Petitioner's conviction.

Respectfully Submitted,  
Darrell L. Goss

Darrell L. Goss #305517

Lieber Corr. Inst.

P.O. Box 205

Ridgeville, SC 29472

July 31, 2020

# EXHIBIT A

1 understanding?

2 MR. LAWTON: Yes, sir.

3 THE COURT: All right. I'll be glad to hear  
4 any motions that the state may have of any sort. I  
5 assume you don't.

6 MR. LAWTON: No.

7 THE COURT: I'll be glad to hear Mr. Goss's  
8 motion.

9 MR. SMILEY: Yes, sir, Your Honor, assuming  
10 the state rests, and I understand all that, I would make  
11 a motion for directed verdict on the charges of assault  
12 and battery with intent to kill, armed robbery, and  
13 kidnapping, the three charges that remain. I know there  
14 is only three.

15 Your Honor, from the direct testimony, even  
16 viewing it in the light most favorable to the state, the  
17 victim in this case has testified that -- in fact, I  
18 asked him directly, and he said, No, Mr. Goss was not  
19 present in the store during the armed robbery.

20 So the only theory which the state can then  
21 go forward on would be the hand of one is the hand of all  
22 theory to show that he was either a planner --

23 THE COURT: Did he say he wasn't in the  
24 store, or just didn't see him?

25 MR. SMILEY: No, sir, I asked him directly,

1 and if you look, he said he was not in the store. I made  
2 a point of it when I would ask that and wrote it down  
3 exactly as he responded, but if that be the case --  
4 because he recognized my guy. My guy had been in the  
5 store earlier that week.

6 If that is the case, Your Honor, the only  
7 theory the cases could survive on on that basis would be  
8 the hand of one is the hand of all, if my client is a  
9 planner or some kind of accessory.

10 THE COURT: The way I recall the testimony,  
11 the victim testified that the man came in, came straight  
12 towards him, pulled out a gun when he got within six or  
13 seven feet of him, got him on the floor, and he did  
14 testify at that time, but he did not see your defendant  
15 in the store, but he knew there were four black males.  
16 He didn't know who they were, okay? So I don't see how  
17 that is contradicting. What you're saying he was  
18 basically saying, yeah, he didn't see them in the store.

19 Now, it's a play on words. If you know what  
20 I'm saying, he wasn't in the store. I think you're doing  
21 a play on words there.

22 MR. SMILEY: Yes, sir, but I'll say it a  
23 different way.

24 THE COURT: Okay. Please do.

25 MR. SMILEY: Yes, sir. The state has

1 produced no evidence to place my client in the store  
2 during the robbery, none before.

3 THE COURT: We've got DNA off the gun, and  
4 we've got --

5 MR. SMILEY: And I would argue they've shown  
6 no evidence to link my client to the gun. There is blood  
7 on a gun, and I asked Mr. Ayazgok, Andy, I asked him if  
8 he had been struck by a pistol and he said no, but  
9 neither here nor there, his DNA certainly was on a pistol  
10 found in a car with the tags of Mr. Sharon Goss on it at  
11 a residence that Mr. Goss resides at; however, there has  
12 been no evidence that ever placed that gun in Mr. Goss'  
13 hands at any time in this case. There is nothing to  
14 place Mr. Goss in the car that's been presented in this  
15 case or Mr. Goss placing that gun into the car.

16 Additionally, the only thing that places him  
17 at that scene is a fingerprint on the exterior door.  
18 That is it. There is nothing from the inside. There are  
19 no witnesses that could testify that he was present  
20 during the commission of the robbery, kidnapping, or  
21 assault and battery with intent to kill.

22 It's not even arguable, and so for those  
23 facts, I don't think they get over the basic hurdle to  
24 present it to the jury when there is not any evidence  
25 that links him in any manner.

1 THE COURT: You don't think the fingerprints  
2 on the glass door? Normally, if you're going through a  
3 glass door, you put your hand on it and push it. I don't  
4 know if it swings out or in. I haven't heard any  
5 testimony about which way it swings, whether you pull it  
6 to you or push it away from you to get in, but if you  
7 push it away from you, normally you put your hand on a  
8 door and walk in. Yes or no?

9 MR. SMILEY: I don't disagree with that, but  
10 there has been no evidence to establish when that  
11 fingerprint was put there. We do have some evidence  
12 established through their witness --

13 THE COURT: Scientifically, that can't be  
14 done.

15 MR. SMILEY: Absolutely.

16 THE COURT: They can't put a time limit on  
17 the fingerprint.

18 MR. SMILEY: Exactly. But when you look at  
19 it in the light most favorable to the state --

20 THE COURT: But they also said the windows  
21 were washed every day.

22 MR. SMILEY: Yes, sir.

23 THE COURT: Because the little girl testified  
24 she wiped down every day, so based on that testimony --

25 MR. SMILEY: No, sir, if you listen to her

1 testimony, she didn't start with that company until April  
2 of '08. They may wash them every day starting in April  
3 of '08, but she wasn't there in June of '07, so I don't  
4 know the relevance of her testimony.

5 THE COURT: You didn't make the objection.

6 MR. SMILEY: I didn't need to. I'm going to  
7 make sure that jury knows she didn't start till April of  
8 '08, so if you look at it in the light most favorable, is  
9 there anything, any evidence, that places Mr. Goss inside  
10 the store at the time of the incident?

11 And I would submit to Your Honor there is  
12 none, zero. Is there any circumstantial evidence that  
13 would place Mr. Goss inside the store at the time of this  
14 incident? And I would submit to you no. Is there  
15 evidence that Mr. Goss has been to the front door of that  
16 store? Yes, sir. Is there evidence that Mr. Goss has  
17 been in that store previously? Yes, sir. Is there  
18 evidence that stolen goods, or possible stolen goods --  
19 he might have bought them, but were there goods from that  
20 store found in his home? Yes, sir. Is there evidence  
21 that a gun was found in a car outside of his home  
22 belonging to another man that had the DNA of the victim?  
23 Yes, sir, but I don't know that that gets it to the jury,  
24 and therefore I would respectfully make a motion to  
25 direct a verdict on each of the cases.

1 THE COURT: Okay.

2 MR. SMILEY: That would be my first motion.

3 If you were to deny my motion, then I don't believe there  
4 is anything to establish assault and battery with intent  
5 to kill in this case. You can assume intent to kill from  
6 the use of a weapon, but it was used by someone else to  
7 hit someone, and if they've not determined serious bodily  
8 injury or anything else in this case, then they've shown  
9 a battery. I don't know if that raises it to the level  
10 of assault and battery with intent to kill.

11 THE COURT: Before we get to that, first on  
12 the armed robbery --

13 MR. SMILEY: All three of them.

14 THE COURT: Okay. Let the solicitor address  
15 that, and then you can address the other arguments.

16 MR. LAWTON: First thing I would like to  
17 clarify, and I know for a fact with me, I asked Andy, You  
18 didn't see Darrell Goss in there, and he said no and he  
19 talked about that. I don't see anywhere in the  
20 transcript where it will say he excluded Darrell Goss  
21 from not being there, and before we get that closings or  
22 whatever, I would like to get to the bottom of that. I  
23 don't have any recollection of him saying, No, Darrell  
24 Goss was not there that day. We would not be here if  
25 that were the case.



1 THE COURT: We're not getting to the bottom  
2 of anything. Get to your argument.

3 MR. LAWTON: As far as the fingerprint, we  
4 talked about it being wet. We had three witnesses who  
5 said it was wet all at the scene. There is plenty of  
6 evidence placing that scene at the time of crime. As far  
7 as Andy, Andy testified that day he wiped the front door  
8 down. Mr. Goss, through his statement that Mr. Smiley  
9 put in, said he was at the store on Monday. We're  
10 talking about Thursday afternoon.

11 We got a wet fingerprint. It's not going to  
12 be able to be sustained for three days. Granted, I can't  
13 scientifically prove that, but through the reasonableness  
14 of the jury, and obviously so --

15 THE COURT: Which way does the door swing, do  
16 you know?

17 MR. LAWTON: I can't recall, Your Honor.

18 THE COURT: Why would he be putting his hand  
19 on it to open it?

20 MR. LAWTON: I think if you're running up to  
21 a door, stopping, pulling -- there is plenty of  
22 explanation.

23 THE COURT: You think most people run up to  
24 the door, put their hand on it, and open it?

25 MR. LAWTON: I don't know, Your Honor.

1 Obviously, there is a lot of ways to look at it. We have  
2 it wet at the scene. That is 30 minutes later, and it  
3 takes five minutes to dry. Obviously, if it only took  
4 five minutes to put a fan on it, why didn't the sun dry  
5 it up for three days, like Mr. Smiley would like them to  
6 believe?

7 But as far as the armed robbery, the hand of  
8 one, hand of all theory, he testified a guy with his  
9 rifle, with his AK47 or rifle, like they would want us to  
10 believe, pointed at him, threw him down on the ground.  
11 He was obviously in fear, intimidated, and took the money  
12 out of his thing. I believe that clearly suffices.

13 THE COURT: Only thing you got against him on  
14 kidnapping is, really, the hand of one, hand of all, on  
15 all three of them.

16 MR. LAWTON: Yes, sir, and that is the theory  
17 we're going on. Obviously, Joy Mack is the guy that did  
18 that.

19 Kidnapping, he testified his hand, his legs  
20 were tied up. He was dragged to the back, was not free  
21 to leave at that point. ABWIK, Your Honor, Ms. Bousquet  
22 talked about all the blood all over his shirt. He had 20  
23 stitches in the back of his head, more stitches on the  
24 side. I think, clearly, the butt of an assault rifle is  
25 clearly a deadly weapon in that case with the amount of

1 blood splatter.

2 As far as the amount of blood getting on the  
3 pistol, Your Honor, you can look at the pictures. There  
4 is plenty of blood splatter. He said he saw a pistol  
5 that clearly explains how that blood got on there at the  
6 scene.

7 THE COURT: How do you explain the victim's  
8 blood on him?

9 MR. LAWTON: He said he saw --

10 THE COURT: I didn't mean to give you a heart  
11 attack.

12 MR. SMILEY: I did.

13 MR. LAWTON: He said he saw a pistol, the guy  
14 getting beat with a butt of a gun. He did testify to  
15 that.

16 THE COURT: Okay. All right.

17 MR. SMILEY: We agree on that.

18 THE COURT: Anything else, Solicitor?

19 MR. LAWTON: No, Your Honor. I would just --

20 THE COURT: All right. Thank you very much.  
21 Motion denied. Make any other motions.

22 MR. SMILEY: My next motion was -- he's  
23 already covered assault and battery with intent to kill.  
24 I would say they've not shown any intent to kill in this  
25 case, they've shown a battery, and that would be the only

1 other motion I have.

2 THE COURT: Okay. That motion is denied.

3 MR. SMILEY: Thank you very much.

4 THE COURT: Thank you very much.

5 MR. APOSTOLOU: Your Honor, I would also make  
6 a directed verdict motion. I believe, although there has  
7 been some evidence regarding an identification of Mr.  
8 Mack, I think that the victim's testimony was that he  
9 wasn't sure, and almost positive. I don't think that  
10 that is enough to get it to the jury. I would ask that  
11 the Court direct a verdict against him.

12 THE COURT: That motion is denied. Anything  
13 else we need to hear before we bring the jury back?

14 MR. LAWTON: Before, briefly, I would just  
15 like to maybe pull that, because I don't think my victim  
16 Andy ever said Darrell Goss was not?

17 MR. SMILEY: I don't have a problem going  
18 with what was in the transcript. I would never  
19 mischaracterize the testimony.

20 THE COURT: If you're talking about a play on  
21 words, if his original conclusion is that saying he  
22 didn't see him, I think he could make that argument. I  
23 don't think you got to look at the transcript that would  
24 allow him to make that argument. You asked him, did you  
25 see him in there, and he said no, right?

# EXHIBIT B

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

## INDICTMENT

At a Court of General Sessions, convened on September 10, 2007 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about June 14, 2007, in Charleston County, South Carolina, at 4400 Dorchester Road, #105, North Charleston by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant, DARRELL LEE GOSS, did take and carry away goods and/or monies from the person or immediate presence of Davuthan Kilic and/or Aytakin Ayazgok with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(A) of the Code of Laws of South Carolina (1976) as amended.

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



NATHAN WILLIAMS  
ASSISTANT SOLICITOR

NSW20070608189

WITNESSES

OLENTIAL FAISON

North Charleston Police Department

AGENCY CASE NUMBER

2007024986

ARREST WARRANT NUMBER

F969629

DATE OF ARREST

2007-06-15

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

SEP 11 2007

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2007GS1010805

The State of South Carolina

County of Charleston.

COURT OF GENERAL SESSIONS

September Term 2007

THE STATE

vs.

DARRELL LEE GOSS

Indictment for

Armed Robbery

FILED

2007 SEP 12 AM 10:34

JULIE J. ARMSTRONG  
CLERK OF COURT

BY

07-3815 (1)

652

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

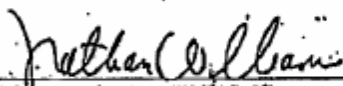
## INDICTMENT

At a Court of General Sessions, convened on September 10, 2007 the Grand Jurors of Charleston County present upon their oath:

Kidnapping

That in Charleston County, South Carolina, on or about June 14, 2007, the Defendant, DARRELL LEE GOSS, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victims, Davuthan Kilic and/or Aytekin Ayazgok, without authority of law, all in violation of Section 16-3-910 of the Code of Laws of South Carolina (1976) as amended.

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

  
NATHAN WILLIAMS  
ASSISTANT SOLICITOR



NSW20070608189

WITNESSES

OLENTHIAL FAISON

North Charleston Police Department

AGENCY CASE NUMBER

2007024986

ARREST WARRANT NUMBER

F969631

DATE OF ARREST

2007-06-15

ACTION OF GRAND JURY

FILED

SEP 11 2007

Foreperson of Grand Jury

Date

*Teria Collier*

VERDICT

Foreperson of Petit Jury

Date

INDICT.DOT

DOCKET NO. 2007GS1010807

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2007

THE STATE

VS.

DARRELL LEE GOSS

07-3815(2)<sup>v</sup>

Indictment for

Kidnapping

FILED

2007 SEP 12 AM 10:34

JULIE J. ARMSTRONG  
CLERK OF COURT

BY *[Signature]*

654

704

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

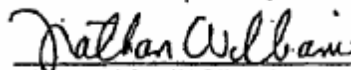
## INDICTMENT

At a Court of General Sessions, convened on September 10, 2007 the Grand Jurors of Charleston County present upon their oath:

Assault and Battery With Intent to Kill

That in Charleston County, South Carolina, on or about June 14, 2007, the Defendant, with malice aforethought, did commit an unlawful act of a violent nature upon the victims, Davuthan Kilic and/or Aytekin Ayazgok; all in violation of the Common Law of South Carolina and Section 16-03-620 of the Code of Laws of South Carolina (1976) as amended.

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

  
NATHAN WILLIAMS  
ASSISTANT SOLICITOR

NSW20070608189

## WITNESSES

OLENTHIAL FAISON

North Charleston Police Department

## AGENCY CASE NUMBER

2007024986

## ARREST WARRANT NUMBER

F969630

## DATE OF ARREST

2007-06-15

## ACTION OF GRAND JURY

SEP 11 2007

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

- INDICT DOT

DOCKET NO. 2007GS1010806

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2007

THE STATE

vs.

DARRELL LEE GOSS

07-3815 (3)✓

Indictment for

Assault and Battery With Intent to Kill

FILED

2007 SEP 12 AM 10:34

JULIE J. ARNOLD  
CLERK OF COURT

BY

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Darrell L. Goss #305517,  
Applicant,

Vs.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE 9<sup>th</sup> JUDICIAL CIRCUIT  
CASE NO. : 3011-CP-10-3782

and MOTION TO AMEND  
PCR APPLICATION

2021 AUG -4 AM 10:14  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY MM

FILED

NOW COMES Petitioner, Darrell L. Goss, pro se, and moves this Honorable Court, pursuant to Rule 15(a), S.C.R. Civ. P., to issue an order granting him leave to amend his PCR Application to include the following grounds for relief:

Ground One : Ineffective Assistance of Counsel

Supporting Facts : Trial Counsel was ineffective in failing to object to " the hand of one, the hand of all " jury charge .

Ground Two : Unfair Jury Trial

Supporting Facts : The State failed to prove each element of "the hand of one, the hand of all" accomplice liability theory beyond a reasonable doubt.

Ground Three : Due Process Violation

Supporting Facts : There has been excessive and unjustified delay in the disposition of Petitioner's PCR proceedings.

WHEREFORE, premises considered, this Court should grant Petitioner's motion to amend.

Respectfully Submitted,

Darrell L. Goss

Darrell L. Goss #305517

Lieber Corr. Inst.

P.O. Box 205

Ridgeville, SC 29472

August 2, 2021

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Darrell L. Goss #305517,  
Applicant,

Vs.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE 9<sup>th</sup> JUDICIAL CIRCUIT  
CASE NO. : 2011-CP-10-3782

CERTIFICATE OF SERVICE

2021 AUG -4 AM 10:15<sup>2nd</sup>  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY MM

FILED

I, Darrell L. Goss, do hereby certify that on this <sup>2nd</sup> day of August, 2021, I served the following and Motion to Amend PCR Application upon counsel of record in this matter by depositing the same in the U.S. mail, prepaid postage, addressed to:

Benjamin Limbaugh  
S.C. Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211

Darrell L. Goss

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Darrell L. Goss, #305517,  
Applicant,

vs.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE 9<sup>th</sup> JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-10-3782

**3<sup>rd</sup> MOTION TO AMEND  
PCR APPLICATION**

Applicant, Darrell L. Goss, pro se, hereby moves this Court, pursuant to Rule 15(c) of the South Carolina Rules of Civil Procedure, for an order allowing his third amendment to relate back to the original pleading — i.e., the first and second amended pleading. Applicant contends that the State will not suffer any prejudice if the amendment is allowed. Thus, Applicant amend his PCR Application to include the following ground for relief :

Ground One : Ineffective Assistance of Counsel

Supporting Facts : Trial Counsel was ineffective for

failing to properly argue for a directed verdict of acquittal because the State failed to meet its burden of proof as to each element of "the hand of one, the hand of all" theory of accomplice liability. Specifically, (1) the State failed to produce any evidence - direct or circumstantial - of a prior plan or scheme between Applicant and his alleged codefendants to commit an illegal act. The State presented entirely no evidence at all proving or tended to prove that Applicant joined together with any codefendant(s) to accomplish an illegal purpose ; and

(a) the State failed to produce any direct or substantial circumstantial evidence of Applicant's participation in carrying out that common plan or scheme between him and his alleged codefendants. The State presented no substantial evidence proving or tended to prove that Applicant aided, abetted, or assisted the perpetrators (in any way) during the commission of a crime pursuant to a prior common plan or scheme.

Wherefore, premises considered, this Court should allow such amendment to relate back to Applicant's first and second pro se amended pleadings which were filed before the Court on August 6,



2020, and August 4, 2021, respectively, but never ruled upon.

Respectfully Submitted,

Darrell L. Goss

Darrell L. Goss #305517

Lieber Correctional Institution

136 Wilborn Avenue

P.O. Box 205

Ridgeville, SC 29478

December 6, 2021

1       STATE OF SOUTH CAROLINA  
2               IN THE GENERAL SESSIONS  
3       COUNTY OF CHARLESTON

4       Darrell L. Goss,  
5               Petitioner,

6       vs.

Transcript of Record  
2011-CP-10-03782

7       State of South Carolina,  
8               Respondent.

9  
10  
11                       December 8, 2021  
12                       Charleston, South Carolina

13       B E F O R E:

14               The HONORABLE JENNIFER B. MCCOY

15       A P P E A R A N C E S:

16       Darrell L. Goss, Pro se

17       Samantha Weidauer, Representing the State of South  
18       Carolina

19  
20  
21                       Transcribed by SHARON G. HARDOON, CSR, III  
22                       from DCRP, Digital Courtroom Recorder Project  
23  
24  
25

1                   THE COURT: All right. Mr. Goss, we are  
2 here on your PCR application, of course. You  
3 handed me a third motion to amend your PCR  
4 application that I've taken a few minutes to  
5 review that. We are here with your current  
6 attorney, Mr. Murphy, and I'm happy to hear from  
7 you. I can see in the file that you, at one  
8 point, had moved to relieve your counsel; is that  
9 correct?

10                  MR. GOSS: Yes, ma'am, I did.

11                  THE COURT: All right. Do you still wish  
12 to relieve your counsel?

13                  MR. GOSS: Yes, ma'am, I would like to  
14 relieve him this morning.

15                  THE COURT: Okay.

16                  MR. GOSS: Could I speak?

17                  THE COURT: Sure.

18                  MR. GOSS: Yes, Your Honor. I'm moving  
19 to relieve Mr. Christopher Murphy as my attorney  
20 because yesterday was my scheduled court hearing,  
21 and yesterday I had witnesses, several witnesses.  
22 One witness in particular came from out of state,  
23 California. Her name is Felicia Henderson. And  
24 she was a witness to my alibi. Mr. Murphy didn't  
25 notify me that my family was going to be

1 attending, or anything like that. He told me that  
2 we was going to be here December 7th.

3 And, in fact, two weeks prior to him  
4 sending me notice of the hearing, he had called me  
5 down in prison and he said that he had talked to  
6 the AG, the attorney general, and that the  
7 attorney general was asking for a continuance  
8 because there was a conflict because he had  
9 represented me -- or he was appointed to represent  
10 me initially before I asked for him to be relieved  
11 the first time.

12 And so I said, okay -- I said, well I don't  
13 mind you being relieved. I said, but I don't need a  
14 continuance because I need my witnesses. I just got  
15 in contact with them about being there, and they said  
16 they were going to be there. And I said, so I'm going  
17 to object to the continuance, and I will represent  
18 myself and you can relieve yourself. He said that was  
19 okay.

20 Yesterday come, we was supposed to be  
21 having the hearing, all my witnesses were standing  
22 outside. My family, mother, and everybody took  
23 off of work to be here. The deputies would not  
24 allow my family in the court because I asked them  
25 to come talk with you, Your Honor, put it on the

1 record that these witnesses came from out of town  
2 so she can give testimony. And they sent my  
3 family back home, said, no, they can't come into  
4 the courtroom. So that caused great prejudice to  
5 my case, Your Honor, because now my alibi  
6 witnesses are no longer available to give  
7 testimony here today.

8 So that will be the basis I'm relieving  
9 him for counsel today.

10 THE COURT: Okay.

11 MR. GOSS: So I can represent myself and  
12 present my own case.

13 THE COURT: So your witness that came  
14 yesterday is not here today?

15 MR. GOSS: Yes, ma'am. She's not here  
16 today.

17 THE COURT: All right. And you want to  
18 relieve him. It sounds like it's essentially a  
19 communication problem, that's its base; is that  
20 correct?

21 MR. GOSS: Well, that too. But I will go  
22 further to say that it's also whoever granted the  
23 continuance, I would say that was a real  
24 discretion, Your Honor, because, first of all, I  
25 wasn't here. I wasn't prejudiced. That's another

1        thing I forgot to mention, is that the attorney  
2        general or my lawyer didn't send me a  
3        transportation order. I was supposed to be here.  
4        Had I been here, I would have informed the Court  
5        that this here, Your Honor, I object to the  
6        continuance. My witness is here. She's not going  
7        to be here tomorrow, you know.

8                THE COURT: But you see -- you don't -- I  
9        mean, as long as you're represented by an  
10       attorney, I mean, I take his objections as yours.  
11       You know, your attorney speaks for you.

12               MR. GOSS: Right. So he didn't mention  
13       that to the Court, so, you know, that would be  
14       ineffective claim against him.

15               THE COURT: Okay.

16               MR. GOSS: You know, so I would like to  
17       relieve him, Your Honor. I can do this myself.

18               THE COURT: All right. Well, a couple  
19       things. Do you want to go forward today?

20               MR. GOSS: Yes, ma'am, definitely.

21               THE COURT: You just told me your witness  
22       isn't here.

23               MR. GOSS: Well, I'm going to raise new  
24       issues -- well, and issue that's already in my  
25       initial application. I don't need -- the issues

1       that she was going to testify to, I don't need  
2       her.

3               THE COURT:   Then how are you prejudiced  
4       by not going yesterday if you don't really need  
5       her here?

6               MR. GOSS:   Well, I need her here, but I  
7       have other issues --

8               THE COURT:   Well, it's one way or the  
9       other.   You either need her here, and so,  
10      therefore, you're prejudiced that your case didn't  
11      go forward yesterday, or you don't need her here,  
12      you can go forward today and you weren't really  
13      that prejudiced that she wasn't here yesterday.  
14      What's your position?

15              MR. GOSS:   Your Honor, I'm going forward  
16      on the issues that's already mentioned in my  
17      application, as well as my amended.

18              THE COURT:   You want to go forward today?

19              MR. GOSS:   Yes, ma'am.

20              THE COURT:   All right.   As to your  
21      request to relieve your counsel, I know it looks  
22      like in the file, at some point in time, you have  
23      been read your Farreta Warning, we call that.  
24      You're familiar with those, probably.   And  
25      Judge Nettles, I believe, went through those with

1       you.   Do you recall that, Mr. Goss?

2               MR. GOSS:   Yes, ma'am, I do.

3               THE COURT:   All right.   Do you --  
4       understanding that you have the right to an  
5       attorney and understanding that you want to give  
6       up that right, is it still your wish to give up  
7       your right to a lawyer today?

8               MR. GOSS:   Yes, ma'am.

9               THE COURT:   All right.   Are you under the  
10      influence of any medications today, or anything  
11      that would keep you from understanding what's  
12      going on?

13              MR. GOSS:   No, ma'am.

14              THE COURT:   All right.   What I'm going to  
15      do today, sir, is tell you one more thing.   You're  
16      underlying charges -- let me hear from the  
17      assistant attorney general, what were his  
18      underlying charges?   What's he in for?

19              MR. MURPHY:   May it please the Court?

20              THE COURT:   Sure.

21              MR. MURPHY:   Applicant was indicted at  
22      the September 2007 term at the Charleston County  
23      Grand Jury for armed robbery, assault and battery  
24      with intent to kill, and kidnapping.   In his  
25      underlying general sessions case, Mr. Goss was



1 represented by James Smiley and proceeded to trial  
2 before Judge Nicholson. And a jury on February  
3 23rd through 26th of 2009, applicant was convicted  
4 as indicted, and Judge Nicholson sentenced  
5 applicant to concurrent sentences of 20 years for  
6 each offense.

7 THE COURT: 20 years, all right.

8 MR. MURPHY: Yes.

9 THE COURT: Armed robbery is zero to 30?

10 MR. MURPHY: Zero to 30.

11 THE COURT: ABWIK, we don't have that  
12 anymore, but that was what, zero to?

13 MR. MURPHY: 20.

14 MS. WEIDAUER: 20.

15 THE COURT: And kidnapping zero to 30?

16 MR. MURPHY: That's correct.

17 MS. WEIDAUER: Yes.

18 THE COURT: All right. Okay, you  
19 probably been told this as well, Mr. Goss, but  
20 it's important that I reiterate this with you,  
21 okay?

22 MR. GOSS: Yes, ma'am.

23 THE COURT: All right. And I have to do  
24 it on the record: If you are successful in your  
25 PCR, if you win, okay, you will go right back to

1 square one facing all of these charges and any  
2 charges that were dismissed also as a result of  
3 your conviction back in 2009. You will be facing  
4 up to -- just on this set of charges, 80 years,  
5 plus up to whatever the maximum amount is on all  
6 of the other charges the State dismissed back when  
7 you were convicted. And that's a win. That would  
8 be your best-case scenario if you go forward on a  
9 PCR.

10 What's your current max out date?

11 MR. GOSS: I max out '25. Three more  
12 years.

13 THE COURT: Three more years.

14 MR. GOSS: Yes, ma'am.

15 THE COURT: Okay. In three more years,  
16 you will max out on these charges.

17 MR. GOSS: Yes, ma'am.

18 THE COURT: And you will be released.

19 MR. GOSS: Uh-huh.

20 THE COURT: You would rather go forward  
21 on a PCR where a win would put you at a minimum  
22 exposure of 80 up to whatever other charges they  
23 might want to bring back.

24 MR. GOSS: Yes, ma'am.

25 THE COURT: Is that what you want to do?

1 MR. GOSS: Yes, ma'am.

2 THE COURT: Because you got several  
3 family members sitting behind you shaking their  
4 heads. Do you need time to talk to them about  
5 this?

6 MR. GOSS: No, ma'am, Your Honor. I'm  
7 innocent.

8 THE COURT: Okay.

9 MR. GOSS: I haven't committed any  
10 crimes, Your Honor.

11 THE COURT: That's fine. I just --

12 MR. GOSS: I will go forward with this  
13 PCR. I'm not giving up my right to be heard.

14 THE COURT: I understand. It's my job to  
15 make sure that you understand everything. Okay?

16 MR. GOSS: Yes.

17 THE COURT: And I have to do my job to  
18 fulfill my duties. Okay?

19 MR. GOSS: Yes, ma'am. I appreciate it.

20 THE COURT: If I didn't tell you this  
21 stuff, I wouldn't be doing my job. Okay?

22 MR. GOSS: Yes, ma'am.

23 THE COURT: All right. I just have to  
24 make sure you understand that. You've voiced to  
25 me that you want to give that up and you want to

1 go forward, and that's fine. That's your choice.  
2 No one else's choice but yours.

3 MR. GOSS: Correct.

4 THE COURT: All right.

5 All right. Well, understanding that and  
6 regarding your -- you're seeking to have  
7 Mr. Murphy relieved, I will grant the motion. I  
8 am going to ask that he remain in here and just --  
9 as your second. As a second chair, just to sort  
10 of supervise. If you happen to have a question  
11 along the way procedurally or something like that,  
12 but I'll allow you to go forward and question  
13 these witnesses yourself today.

14 I find you're making a willing and  
15 knowing and voluntarily waiver of your right to an  
16 attorney today. You've indicated to me that  
17 you're not under influence of any medicine or  
18 anything that would keep you from understanding  
19 what's going on. You certainly appear very lucid  
20 to me today and clear, so I have no problem  
21 granting your request today.

22 And with that, what I'll do now is how we  
23 start every PCR, I'll ask the State to give me,  
24 sort of, a background chronology, and then you  
25 will be able to call your first witness after

1       that.   Okay?

2               MR. GOSS:   Yes.

3               THE COURT:   Yes, ma'am, go ahead.

4               MR. MURPHY:   Following sentencing that  
5       was already placed on the record, a timely notice  
6       of appeal was filed on applicant's behalf.  After  
7       full briefing by both sides, the Court of Appeals  
8       affirmed the convictions and sentences and a  
9       remittitur was issued on June 9th of 2011.  
10      Applicant filed a post-conviction relief action on  
11      May 27th of 2011, and an evidentiary hearing was  
12      held on September 16th of 2011.

13              Judge Roger Young denied this  
14      application.  And after the denial, the Court of  
15      Appeals affirmed.  Applicant subsequently filed a  
16      petition for cert.  The petition was granted and  
17      the Supreme Court ordered the case be remanded to  
18      the Circuit Court for a de novo evidentiary  
19      hearing which we're on here today.  The remittitur  
20      was issued on November 2nd, 2018.

21              In December 2018, applicant requested the  
22      Court reject appointment of counsel and allowed  
23      separate self-representation.

24              On January 15th, 2019, chief  
25      administrative Judge Young filed an order allowing

1 applicant to proceed pro se.

2 Following that order on January 21st, 2019,  
3 this matter was stayed for one year while applicant's  
4 federal habeas case existed.

5 Subsequently, applicant filed a motion  
6 for appointment of counsel on July 26th, 2021, and  
7 the second motion for appointment of counsel on  
8 August 9th of 2021.

9 On September 8th of 2021, a hearing on  
10 the applicant's motion to appoint counsel was  
11 held. At that hearing, applicant was warned of  
12 the dangers of proceeding without representation  
13 and requested counsel and Judge Griffin ordered  
14 counsel be appointed.

15 This hearing follows.

16 THE COURT: All right. Happy to hear  
17 from you. You can call your first witness,  
18 Mr. Goss.

19 MR. GOSS: Your Honor, I really don't  
20 have a witness to call, but my first issue --

21 THE COURT: Do you want to call yourself  
22 as a witness? Do you wish to testify today?

23 MR. GOSS: Oh, yes, ma'am.

24 THE COURT: I just need to place you  
25 under oath, but you can stay where you are. Can

1       you raise your right hand for me? Do you swear or  
2       affirm the testimony you give today will be the  
3       truth, the whole truth, and nothing but the truth  
4       so help you God?

5               MR. GOSS: Yes, ma'am.

6               THE COURT: All right. Happy to hear  
7       from you.

8               MR. GOSS: Yes, Your Honor. My name is  
9       Darrell Goss. I'm proceeding pro se in this  
10      matter today, Your Honor.

11              My first issue for PCR, post conviction  
12      relief, would be that my trial lawyer, Mr. Smiley,  
13      was ineffective for failing to properly argue for  
14      the directed verdict motion. All right, that's my  
15      first issue, Your Honor.

16              THE COURT: Okay.

17              MR. GOSS: And specifically, Your Honor,  
18      Mr. Smiley, when looking through the record, Your  
19      Honor, when he argued for his directed verdict  
20      motion -- and that's would be on the transcript  
21      page 346 --

22              THE COURT: Okay.

23              MR. GOSS: -- through 446.

24              THE COURT: All right.

25              MR. GOSS: -- he's in here arguing for

1 directed verdict motion, Your Honor. His argument  
2 is not on line with what he should have been  
3 arguing. So he argued the wrong issue. He argued  
4 for a directed verdict motion based on the State  
5 failing to produce enough evidence to prove that I  
6 was guilty as a principle. The State's argument  
7 was that I was guilty, or that this case should be  
8 sent to the jury under the hand of one, hand of  
9 all saying that I was an accomplice to this crime,  
10 not a principal. So his argument was totally  
11 focused on the State's lacked evidence as a  
12 principle.

13 He went on to initiate that the only way  
14 that this case could go forward would be under the  
15 hand of one, hand of all law. Mr. Smiley  
16 mentioned that two times in his argument.

17 The State turns around, yes, we agree  
18 that's what grounds -- that's what basis we going  
19 on, is the hand of one, hand of all. We're going  
20 to present this case to the jury under that  
21 theory.

22 The trial judge also acknowledged and  
23 said that, well, the solicitor, the only thing you  
24 have against them is the hand of one, hand of all.  
25 Everybody agreed that this case is going to the



1 jury under the hand of one, hand of all law.

2 The hand of one, hand of all law states  
3 that, under the theory accomplice liability, two  
4 people join together for the purpose of an  
5 illegal -- to accomplish an illegal plan, that  
6 anything that is done incident to the execution of  
7 the plan, then this codefendant is also guilty of  
8 it. There is two elements to be proved under the  
9 hand of one, hand of all theory: One being that a  
10 common plan or scheme has to exist between the  
11 accused and his alleged codefendant; the second  
12 element would be, the State would have to prove  
13 evidence that the accomplice participated in  
14 executing that plan of common scheme. Two  
15 elements.

16 The State, in my case, proved none of the  
17 elements. The State produced no evidence  
18 whatsoever that I had a common plan or a common  
19 scheme between me and my alleged codefendant, or  
20 any other person to commit an illegal act. No  
21 evidence whatsoever, direct or circumstantial,  
22 Your Honor.

23 THE COURT: Okay.

24 MR. GOSS: There was no evidence  
25 presented to show a plan.

1                   Secondly, there was no evidence produced  
2                   to show how I participated in that plan. What did  
3                   Darrell Goss do to help carry out a plan? No  
4                   evidence was presented at the trial to show what I  
5                   done to participate in that plan; or, did I  
6                   participated in the crime in any manner.

7                   So the State failed to produced evidence  
8                   sufficient to send the case to a jury under the  
9                   hand of one, hand of all law, which was their  
10                  argument in the first instant. It was not that I  
11                  was a principal in the crime. Okay?

12                  So, Mr. Smiley's arguments wasn't focused  
13                  on what it should have been focused on. Okay?

14                  And then -- excuse me, Your Honor. Give me a  
15                  second.

16                  THE COURT: Take your time.

17                  MR. GOSS: Yes, Your Honor.

18                  Oh, so I want to deal with the issue -- I  
19                  want to deal with the evidence. I want to talk  
20                  about the evidence that the State did have, that  
21                  the trial judge allowed to go to the jury.

22                  Your Honor, there's three pieces of  
23                  evidence in this case. One evidence -- the first  
24                  evidence was a wet fingerprint found at the crime  
25                  scene. This wet fingerprint was found on the

1 outside of the glass door to the store in which  
2 the armed robbery occurred. An expert gave  
3 testimony at trial that this -- that the wet  
4 substance on the fingerprint was sweat. That was  
5 his expert opinion. Okay? But he also testified  
6 that it could have been anything other than sweat.  
7 So the State argued that, hey, this is a sweaty  
8 fingerprint on the outside of the glass to the  
9 store. That's the first piece of evidence.

10 The second piece of evidence was a gun  
11 that had the DNA of the victim. That gun was  
12 found at my residence where I reside with my  
13 mother in a car that doesn't belong to me, but  
14 belongs to another man by the name of Sharon Goss,  
15 which in actuality is my cousin. It was found in  
16 his car. All right?

17 THE COURT: Yes.

18 MR. GOSS: So they found the bloody gun.  
19 That's the second piece of evidence.

20 The third piece of evidence was clothing  
21 items that was found inside the residence of my  
22 mother's house. Those clothes items, several  
23 pieces of clothes items was found in a room that I  
24 didn't reside in. Actually, it was my sister's  
25 room. And this is all part of the transcript

1 record.

2 So those are the three pieces of evidence  
3 that the State had against me; a fingerprint, a  
4 gun, a bloody gun, and clothing items from the  
5 crime scene.

6 Your Honor, I would argue that none of  
7 that evidence shows or tends to show a common plan  
8 or my participation in carrying out the common  
9 plan to commit an illegal act under the hand of  
10 one, hand of all theory. That evidence doesn't  
11 show anything about the hand of one, hand of all  
12 theory.

13 At best, the only thing that can be  
14 substantially used would be the fingerprint, which  
15 in the State's argument would place me at the  
16 crime scene. However, that fingerprint alone  
17 doesn't amount to proof that I was there at the  
18 time of the crime. And these are the reasons why  
19 it doesn't amount proof. Because, at best,  
20 Your Honor, the fingerprint by itself establishes  
21 mere presence. Mere presence is insufficient to  
22 establish proof beyond a reasonable doubt.

23 THE COURT: Was that charged to the jury?

24 MR. GOSS: The hand of one, hand of all?

25 THE COURT: Mere presence.

1                   MR. GOSS: No, Your Honor. It wasn't.

2                   It wasn't. Mere presence wasn't charged at all.

3                   All right. But these are the reasons why  
4                   this fingerprint -- I'm going to talk about this  
5                   fingerprint first, since that's the most  
6                   substantial piece of evidence.

7                   The first thing, the print can't be  
8                   dated. No one can tell when that fingerprint was  
9                   placed on the front -- on that glass door to that  
10                  store. So they can't put a date to it. The  
11                  expert established that at trial, and every other  
12                  witnesses to corroborate the expert established  
13                  that no one could put a date to that fingerprint  
14                  on the glass door. All right?

15                  Secondly, the sweat, the substance that  
16                  the expert identified was the sweat was never  
17                  tested for DNA. Mr. Smiley, he made that argument  
18                  during the directed verdict motion. He made  
19                  that -- you know, that the sweat, if it was sweat,  
20                  why didn't you-all test it? That would have been,  
21                  really, better than, you know, the fingerprint  
22                  itself, in my opinion.

23                  So, they hadn't test the fingerprint for  
24                  DNA. And also, like I said before, the expert  
25                  also testified that there could have been -- that

1       the substance couldn't have been anything other  
2       than sweat.

3               Third, Your Honor, the victim -- the  
4       State used the fact that the victim testified that  
5       he cleaned the windows every morning. So they  
6       inferring -- the State, you know, inferred that,  
7       well, since he cleaned it every morning, those  
8       fingerprints shouldn't have been on there after he  
9       cleaned it. That was the inference that the State  
10      used.

11             However, Your Honor, when you look at it,  
12      his testimony -- you look at the victim's  
13      testimony, he said that he cleaned the glass every  
14      morning when he opened up his store. The crime  
15      had been at night. There's plenty of time in  
16      between for that fingerprint to be placed there  
17      before the crime.

18             THE COURT: Uh-huh.

19             MR. GOSS: Okay. So, he testified to  
20      that. That was the victim's testimony. He  
21      cleaned the glass this morning. Okay?

22             And there's no evidence on the record  
23      concerning the location of the print. Mr. Smiley  
24      didn't bring this out at trial. But no one knows  
25      where exactly that fingerprint was at on that

1       glass door. The print could have been below. The  
2       fingerprint could have been above. It could have  
3       been in the place where he, if he did clean it,  
4       couldn't reach, or just missed. So no location of  
5       the fingerprint. It was pure speculation for  
6       anybody to determine that the fingerprint was  
7       placed in the area where the door opens. No  
8       testimony was given to where the location was at  
9       of the fingerprint. Pure speculation, Your  
10      Honor.

11               And finally, Your Honor, there is no  
12      testimony given as to which way the door swings.  
13      Your Honor, at this point, the trial judge brought  
14      this up. You will see it during the argument, the  
15      trial judge says, well, which way the door swings,  
16      because that would be important to know. You  
17      know, because if this door swings outward, you  
18      know, it can be really inferred -- I mean, if the  
19      door swings forward, then it probably can be  
20      inferred that, you know, the fingerprint was there  
21      to push the door open. But if the door goes  
22      backwards, there would be no reasonable  
23      explanation for the fingerprint to be in this  
24      section of the door where it's opened.

25               THE COURT: Yeah. Unless you did that

1        thing, like I do, where you push where you're  
2        supposed to pull. I do that all the time.

3                MR. GOSS: You're right.

4                THE COURT: I know what you mean, though.  
5        I understand your argument.

6                MR. GOSS: Yes, ma'am. Thank you.

7                So, yeah, the trial judge pointed out no  
8        testimony was given on that point about which way  
9        the door swings.

10               THE COURT: Okay.

11               MR. GOSS: Okay. So it was pure  
12        speculation for the jury -- for this case to even  
13        go to the jury for the jury to speculate which way  
14        the door swings.

15               THE COURT: So your argument today is  
16        more surrounding the fact that Mr. Smiley didn't  
17        make these arguments that you're making now. Is  
18        that the --

19               MR. GOSS: Correct.

20               THE COURT: Okay.

21               MR. GOSS: This is the argument that  
22        Mr. Smiley should have made during the directed  
23        verdict motion.

24               THE COURT: Okay.

25               MR. GOSS: He should have focused his



1 argument on the hand of one, hand of all. He  
2 totally invited the State to the hand of one, hand  
3 of all as though the State had enough -- or had  
4 any evidence to present the case to the jury under  
5 the hand of one, hand of all. There was a total  
6 lack of evidence to support this case going to the  
7 jury under the hand of one, hand of all law,  
8 because there was no common play and there was no  
9 participation. No evidence whatsoever of these  
10 two elements under the hand of one, hand of all  
11 law. So how is the jury to find I'm guilty under  
12 that theory, under accomplice liability, when the  
13 State has failed in their case to prove beyond a  
14 reasonable doubt or present sufficient evidence to  
15 meet these elements of the crime that was charged  
16 as charged?

17 One more argument I would make in regards  
18 to the totality of the evidence. Going further to  
19 the wet fingerprint, the gun, and the clothes, all  
20 -- all -- altogether, Your Honor, I would argue  
21 that, at best, that evidence amounts to mere  
22 suspicion that I'm guilty. All that evidence, it  
23 doesn't prove that I committed a crime just  
24 because my fingerprint was placed at the crime  
25 scene, because a bloody gun was found in my

1       cousin's car, and there were clothing items found  
2       in my mother's house. That doesn't say that I was  
3       the one that committed this crime.

4               So, at best, the State's evidence that  
5       was presented at trial amounts to mere suspicion.  
6       And we know mere suspicion is not enough to  
7       convict. As a matter of fact, the law states that  
8       mere suspicion -- if the evidence raises a mere  
9       suspicion, then the judge must grant a directed  
10      verdict by the court.

11             THE COURT: Uh-huh.

12             MR. GOSS: So, Your Honor, that's my  
13      argument. And I would be asking that the Court  
14      today render a directed verdict on these charges  
15      based on the lack of evidence that the State  
16      failed to produce beyond a reasonable doubt that I  
17      committed the crime under the hand of one, hand of  
18      all theory. And, as a result, my lawyer was  
19      ineffective. He allowed the State to violate my  
20      due process right to a fair trial, to have no  
21      case -- to have the State prove their case -- to  
22      prove each element of their case beyond a  
23      reasonable doubt.

24             As I stated, Your Honor, again, the State  
25      failed to meet these elements of the hand of one,

1 hand of all law that they charged me with.

2 So this whole conviction is wrongful,  
3 Your Honor, and should be vacated. And I should  
4 be immediately released from custody, Your Honor,  
5 because I have spent the last 14 and a half years  
6 of my life in this place for a crime that I did  
7 not even commit.

8 And would I like to be free. I suffer.  
9 My family suffer. My kids suffer. My daughter  
10 was in here crying yesterday because she know the  
11 injustice. She know that I'm guilty (sic). So I  
12 would like to be immediately released from  
13 custody, Your Honor, based on that argument right  
14 there alone.

15 THE COURT: All right.

16 MR. GOSS: That would be my first  
17 argument, Your Honor. I also have other  
18 arguments.

19 THE COURT: All right. I'm happy to hear  
20 your other arguments at this time. Let me -- I'll  
21 just hear them all and let the State respond in  
22 full at the end.

23 MR. GOSS: Okay.

24 THE COURT: All right.

25 MR. GOSS: Your Honor, my second argument

1 would be based on the due process violation as  
2 well as equal protection violation. This is in  
3 regards to the delay, the excessive delay in the  
4 final disposition of my PCR action.

5 So, the State has excessively delayed a  
6 final disposition of my PCR action resulted in  
7 extreme prejudice to me, Your Honor.

8 Your Honor, I filed my PCR in 2011. This  
9 is 2021, about to be 2022. That's 10 and a half  
10 years that this case has been pending in this  
11 court.

12 All right. The first -- as you know,  
13 Your Honor, this is my second PCR hearing. I want to  
14 talk about the first first. My first PCR hearing --

15 MS. WEIDAUER: Objection, we're reviewing  
16 this de novo, so he should just be bringing out  
17 new allegations and not talking about what  
18 happened at his first PCR hearing.

19 THE COURT: Okay. I'll certainly take  
20 that into consideration when I'm making any  
21 decisions. But you can tell me a little bit about  
22 the background of it.

23 MR. GOSS: Yes, ma'am.

24 THE COURT: She is correct.

25 MR. GOSS: Yeah, she's correct in --

1                   THE COURT: I'll be happy to take a  
2 background from you. If you want to lay the  
3 groundwork, I'll hear from you.

4                   MR. GOSS: Okay.

5                   THE COURT: Go ahead.

6                   MR. GOSS: Well, the Supreme Court  
7 mentioned in their order that no testimony from  
8 the first PCR should be used in the second PCR.  
9 All right. So I'm not using any testimony. I'm  
10 using new testimony.

11                  THE COURT: Okay.

12                  MR. GOSS: And the issues that I am  
13 presenting is already presented in my application  
14 and amended application.

15                  THE COURT: Okay.

16                  MR. GOSS: Since we're there, Your Honor,  
17 I would like to ask the Court -- I had filed two  
18 prior amendments that were never ruled upon. I  
19 would like to get a ruling on those two prior  
20 motions so that these issues can be, you know,  
21 properly before the court.

22                  THE COURT: Two prior motions to amend.

23                  MR. GOSS: Yes, ma'am.

24                  THE COURT: Well, the only ruling on a  
25 motion to amend is whether or not you can amend.

1                   MR. GOSS: Yeah, I never received a grant  
2 or deny.

3                   THE COURT: Let me go through the file.  
4 Hold on.

5                   MR. GOSS: Yes, ma'am.

6                   (Off the record.)

7                   THE COURT: All right. Second motion to  
8 amend to filed August 4th of this year. You're  
9 seeking to add new grounds, is that what it was?

10                  Okay. I'll allow you to amend. I mean,  
11 I'm going to consider all the grounds that you  
12 allege, so --

13                  MR. GOSS: Yes, ma'am. I just wanted to  
14 make sure I get it before the court, because I  
15 don't want to forget anything --

16                  THE COURT: I hear you.

17                  MR. GOSS: -- if this case has to go on  
18 appeal, that my issue was not properly before the  
19 court.

20                  THE COURT: I'll allow your amendments.  
21 Go ahead.

22                  MR. GOSS: Yes, ma'am, thank you.

23                  Okay. Back to the excessive delay. All  
24 right. So my first PCR hearing was filed in 2011 --  
25 Actually, May. May 27th, 2011 is when I filed my

1 first PCR application.

2 THE COURT: All right.

3 MR. GOSS: That application was heard  
4 November -- was it September? It was September of  
5 2011, is when I had a hearing. Okay? Your  
6 Honorable Deadra Jefferson, she was the judge who  
7 presided over my case, and she heard arguments and  
8 she took it under consideration at the close of my  
9 case. And she rendered her decision in December  
10 denying me post-conviction relief on all claims  
11 raised in the PCR application.

12 Okay. After that, this case was taken  
13 up to the Supreme Court on appeal in which I  
14 argued, you know, that my -- where I looked at PCR  
15 court erred in not granting me relief.

16 THE COURT: All right.

17 MR. GOSS: That appeal was filed, like I  
18 say, around December, no later than January of  
19 2012. 2011, December, is when we filed the notice  
20 of appeal. You know, so the Supreme Court had my  
21 case from 2000 -- I would say 2011, let's stick  
22 with the 2011, December when the notice of appeal  
23 was filed, all the way until October 2018. Seven  
24 years --

25 THE COURT: Uh-huh.

1           MR. GOSS: -- my case was just sitting in  
2     the Supreme Court without a final resolution.

3           During this seven years, Your Honor, all  
4     of my witnesses that were present at my first PCR  
5     hearing that was willing to testify and was here  
6     and prepared to testify, all of those witnesses I  
7     lost contact with them and they became unavailable  
8     which resulted in prejudice. And worse in effect,  
9     Your Honor, was one of the reasons why I filed a  
10    federal habeas corpus after the Supreme Court  
11    decided to remand this case back to the Circuit  
12    Court.

13           All right. So seven years without a final  
14    disposition, without any valid excuse as to why my  
15    case took this long. Your Honor, I think I have a  
16    letter from my appellate attorney. What's his name?  
17    David Alexander, he was my appellate attorney, but he  
18    said that -- Mr. Goss, this is an unusual situation.  
19    He said, I never had a client this long. I was the  
20    first client he ever had that a case lasted seven  
21    years in the Supreme Court without any valid excuse as  
22    to why.

23           All right. So during that time, I lost  
24    witnesses, suffer from depression and  
25    incarceration, as well as anxiety and concern in



1       waiting for the decision.

2               No, that this case has been remanded back  
3       to this court, my case has been pending in this  
4       court for an additional three years. This case  
5       was remanded back here in this Circuit Court,  
6       Charleston County Circuit Court October 17, 2018.  
7       We're here today hearing this case -- what's  
8       today?

9               THE COURT: December 8th.

10              MR. GOSS: December 8th, 2021. A  
11       three-year time span that this case has been  
12       pending with this court without any resolution,  
13       Your Honor. Without any final adjudication on the  
14       merits of my claim, which have -- I also suffer --  
15       had prejudice in the form of oppressionable  
16       incarceration, anxiety and concern in waiting for  
17       a decision, and, most importantly -- specifically  
18       yesterday, as I made the argument early yesterday,  
19       the initial date that my PCR hearing was scheduled  
20       was December the 7th of 2021. This is when the  
21       clerk of court assigned my case to be heard. This  
22       was my day in court. However, I didn't have my  
23       day in court yesterday because either the State or  
24       my attorney asked for an continuance. But what's  
25       the reason for the continuance? No one gave a

1 reason for the continuance.

2 So there's no reason -- there's no valid  
3 reason for the State to ask for a continuance, or  
4 my attorney to ask for a continuance. There's no  
5 valid reason why the Court should have allowed a  
6 continuance. And, as a result, I was prejudiced.

7 As I stated, I had a witness that came  
8 all the way from California, Alicia Hinson. She  
9 flew in from out of state. She was here in the  
10 courtroom present yesterday ready to give her  
11 testimony.

12 THE COURT: I asked you at the beginning  
13 of today's hearing, and you said that you wanted  
14 to go forward.

15 MR. GOSS: I understand, but I still want  
16 to make my argument.

17 THE COURT: Okay.

18 MR. GOSS: I understand your position.

19 THE COURT: All right.

20 MR. GOSS: I just want to preserve the  
21 record.

22 She's not here today. Had to go back.  
23 You know, she came, my family tried to get her in,  
24 tried to tell the deputies that, hey, listen, we  
25 got witnesses out of state. They can't -- won't

1       be able to make it tomorrow. Can we talk to the  
2       judge? We want this to be put on the record.  
3       They said no, you have to go away. They pushed my  
4       -- they pushed away my witness that I had. All  
5       right? So that prejudiced my case.

6               All right. So I would argue that as a  
7       result of that, as a result my witness being lost,  
8       now I have been denied a full and fair opportunity  
9       to present my alibi under the due process of law.  
10      You see? Her not being here deprived me of the  
11      opportunity to present that claim, that alibi  
12      claim. Not any other claim.

13             THE COURT: Why did you not know she was  
14      an alibi witness until much later after this  
15      crime?

16             MR. GOSS: Oh, she was an alibi witness  
17      at the first PCR hearing, Your Honor. She was  
18      here then.

19             THE COURT: Oh, okay. So this isn't,  
20      like, new evidence.

21             MR. GOSS: This isn't new evidence.

22             THE COURT: Oh, okay.

23             MR. GOSS: It's the same witness. She is  
24      not lost and someone was able to contact her for  
25      her to flew in at this time, at the time of my

1       hearing.

2               THE COURT:   Okay.

3               MR. GOSS:   Yes, ma'am.

4               So, you know, she's not here.   Now I'm  
5       prejudiced.   Due process violation.

6               All right.   In addition to that, I would  
7       also argue that I have been denied equal  
8       protection of law because I believe that the State  
9       purposely discriminated against me by using delay  
10      tactics which caused my case to be delayed for  
11      10 and a half years.   I believe all this time that  
12      my case have been delayed, it has been a result of  
13      the State.   Their actions are just disregard for a  
14      final disposition on my case.   They hadn't  
15      provided any valid reason as to why the delay  
16      lasted this long.

17              And, Your Honor, under the case laws  
18      Barker vs. Wingo, and also U.S. vs. Johnson, they  
19      were -- you know, they talk about the delay  
20      factors in which, you know, this court have to  
21      analyze my claims under.   Just to address those  
22      for a minute, one would be -- the first factor  
23      would be the reason for the delay, or should I say  
24      the time of the delay.   How long was this case  
25      delayed?   We know 10 and a half years.

1                   Second, the reason for the delay. I  
2   haven't heard any reason for the delay as of yet.  
3   No valid reason. Whether or not I ever asserted  
4   my rights, you know, to have a speedy hearing.  
5   All through this 10 and a half years, Your Honor,  
6   I've been asserting my rights. Through all my  
7   counsels, through all my appellate counsels, I've  
8   been telling them, listen, I'm a  
9   wrongfully-convicted man. I need to be free.  
10   What's going on with my case? We need to speed up  
11   this process. They telling me, oh, we can't rush  
12   them. Just sick, basically.

13                   So, it would be prejudice. Those for --  
14   as I stated, Your Honor, my argument is that I was  
15   prejudiced in all these forms, and also witnesses,  
16   present incarceration, anxiety, concern waiting  
17   for a decision, all those are prejudiced factors  
18   in my case, Your Honor.

19                   THE COURT: All right.

20                   MR. GOSS: So, yeah. That would conclude  
21   my theory -- or my second argument of due process  
22   violation, equal protection based on the excessive  
23   force -- I mean -- excessive force. I mean  
24   excessive delay.

25                   THE COURT: Right. I'm just going back

1 through your --

2 MR. GOSS: Yes, ma'am.

3 THE COURT: -- making sure you have the  
4 opportunity to hit on all your grounds.

5 MR. GOSS: Right.

6 THE COURT: It looks like you have.

7 MR. GOSS: Yes, ma'am.

8 THE COURT: All right. Anything else you  
9 want to tell me at this time? You'll have an  
10 opportunity to respond to the State one more  
11 time.

12 MR. GOSS: Well, since we're here.

13 THE COURT: I mean, obviously, this is  
14 limited to your PCR.

15 MR. GOSS: Yes, ma'am. It's limited to  
16 all the issues that I --

17 THE COURT: Your general grievances.

18 MR. GOSS: While we're here, because I  
19 don't want to waive any issues, all of them. You  
20 mentioned about the jury charge, so I want to go  
21 over that, too.

22 THE COURT: All right.

23 MR. GOSS: All right. Now, as I stated  
24 earlier, Mr. Smiley, he never, you know, argued  
25 the correct way -- he never argued the correct

1 argument for directed verdict motion under the  
2 hand of one, hand of all based on lack of  
3 evidence.

4 But further, when this case actually did  
5 get to the jury and the jury was charged with the  
6 hand of one, hand of all law, he didn't object --  
7 he didn't launch an objection there either.

8 And when you look through the record,  
9 Your Honor, Mr. Smiley can't make any issues as to  
10 whether or not he didn't know the elements of the  
11 hand of one, hand of all law, because in his  
12 argument he said that the only way that this case  
13 would go forward would be under the hand of one,  
14 hand of all law to show that my client was either  
15 a planner or an accessory. He just identified the  
16 evidence of the hand of one, hand of all law.  
17 Yet, when the State failed to prove those  
18 elements, he never objects. Pretty ineffective.

19 So, the evidence, that never supported  
20 the charge of the hand of one, hand of all law.  
21 Mr. Smiley doesn't make no objection. Actually  
22 allows this case to go forward to the jury,  
23 allowed the jury to be charged under the hand of  
24 one, hand of all law, and, as a result, gain a  
25 lawful conviction on a charge of a crime that the

1 State never proved beyond a reasonable doubt.

2 The State never produced any evidence,  
3 direct or circumstantial, of a prior plan or  
4 scheme between me and my alleged codefendant to  
5 commit an illegal act. The State presented no  
6 evidence to show that I joined together with  
7 anyone to accomplish an illegal purpose. The  
8 State failed to produce any evidence, direct or  
9 circumstantial, of my participation in carrying  
10 out that common plan or scheme between me and my  
11 alleged codefendants. The State presented no  
12 evidence showing that I aided, abetted, or  
13 assisted in any way or anybody in the commission  
14 of this crime pursuant to a common plan or scheme,  
15 which are the necessary elements that has to be  
16 proved in order for the case to go forward under  
17 the hand of one, hand of all law.

18 And case law to support that, recent case  
19 law that I just read -- actually, the  
20 Supreme Court just made a decision in Buckner vs.  
21 State earlier this year, December the 1st. I  
22 believe that was given by me. But the Supreme  
23 Court ruled in that and made it clear that if a  
24 case would go to the jury under the hand of one,  
25 hand of all law, that the State would have to



1       produce these two pieces of evidence or prove  
2       these two pieces of evidence to be able to sustain  
3       a conviction under that theory of accomplice  
4       liability.

5               THE COURT:   Okay.

6               All right.   Let me here for the assistant  
7       attorney general.

8               MS. WEIDAUER:  I need to make sure our  
9       witness is here.   There you are.   The State would  
10      call Jim Smiley to the stand.

11              THE COURT:   All right.

12              THE CLERK:   Do you swear or affirm that  
13      the testimony you shall give before the court  
14      shall be the truth, the whole truth, and nothing  
15      but the truth so help you God?

16              THE WITNESS:  Yes, to the best of my  
17      ability.

18              THE CLERK:   And, please, for the record,  
19      state your full first name and last name.

20              THE WITNESS:  James W. Smiley, IV.

21      WHEREUPON:

22                           JAMES W. SMILEY, IV,  
23      after having been sworn, testified as follows:

24                           DIRECT EXAMINATION

25      BY MS. WEIDAUER:

1 Q Good morning. I'm going to start with a few  
2 background questions.

3 A You're going to have to speak louder. I'm  
4 deaf in one ear.

5 Q Can you hear me better?

6 A Go ahead.

7 THE COURT: You can get closer, if you  
8 need to. That's fine.

9 BY MS. WEIDAUER:

10 Q I'm going to start with a couple of background  
11 questions. How long have you been practicing law?

12 A Since 1993.

13 Q Okay. And how much of that has been criminal?

14 A One hundred percent.

15 Q One hundred percent. You remember this case  
16 pretty well? Do you remember this case well?

17 A Yeah. For a case that's 10 or 11 years old  
18 when we tried it, I do.

19 Q Do you remember whether you were appointed or  
20 retained?

21 A I was nominally retained.

22 Q Okay. And about how long before trial was that?

23 A I was retained quite early in the process.

24 Q So you had adequate time to prepare for this  
25 trial?

1       A     Yes.

2       Q     Okay.  Can you give the court a brief recitation  
3       of the facts that you were working with?

4       A     Okay.

5               THE WITNESS:  This won't be all the  
6       facts, Your Honor.  It's been a long time and it's  
7       off the top of my head.

8               There was an allegation that Darrell,  
9       another gentleman, and I believe there was another  
10      one that was never identified, but that's a long  
11      time ago, had gone into a clothing store -- and I  
12      don't remember off the top of the my head the  
13      clothing store.  I don't know if that was  
14      material -- of two fellows that were immigrants  
15      that had settled in Charleston.  I knew they  
16      weren't cauca- -- they weren't American.  I'm not  
17      saying they -- you understand what I'm saying.

18              And the gentlemen were invaded, for lack  
19      of a better word, by a group of gentlemen in a  
20      clothing store.

21              The owner was put on his stomach and  
22      beaten with the butt of an AK-47, and I believe  
23      there was a pistol involved.  After that, the  
24      police collected evidence from the scene and found  
25      a finger hand print on the front door.  Their

1 investigation took them to Ranger Drive. They  
2 were able to locate a pistol in a car in the front  
3 yard of the home that Darrell lived in. With a  
4 lot of other people, but he lived there. In the  
5 car and on that gun was the DNA of the store  
6 owner.

7 Additionally, in the yard -- or, in the  
8 house, actually, I believe, there was clothes from  
9 the store with tags still on it that were being  
10 sold.

11 That is the general allegation we were up  
12 against.

13 BY MS. WEIDAUER:

14 Q Okay. And did you discuss possible defenses with  
15 that?

16 A Let me tell -- and this is probably where  
17 some of the confusion is, and I want to make sure  
18 that I'm clear on how I handled the case and that  
19 Darrell might have misunderstood me, but I want to  
20 make sure we know.

21 I sat down with Darrell at the beginning,  
22 talked to him and told him -- he wanted to tell me  
23 some things. I'm like, Darrell, the way I do this  
24 is, I get the State's case and I look at it. If  
25 the State can't make up the allegations, you and I

1       aren't ever going to have a talk, all right, about  
2       that if I don't need you, quite frankly. Darrell  
3       took that he couldn't -- he wasn't supposed to say  
4       anything to me, I guess. Because we had  
5       discussions, but it was more about tearing apart  
6       those specific pieces of evidence because the case  
7       against Darrell was circumstantial for the most  
8       part.

9               And so that's where I focused my defense, was  
10       not -- the State meeting their burden. They didn't  
11       have, quote, unquote, direct evidence on Darrell.  
12       They had direct evidence on Joy Mack, if I remember  
13       correctly. And so we tried -- I tried to  
14       differentiate Darrell from Joy in saying you might  
15       have him, but, you know, I have explanations for the  
16       other. The hand print, Darrell had admitted had been  
17       in the store. Now, this is off the top of my head, 11  
18       years ago, but I believe he admitted he had been in  
19       the store earlier that day.

20              As far as telling me he had nothing to do  
21       with it, I never let him get specific to that. I  
22       would talk about each part of the case.

23              And so we talked about the hand print.

24              The gun was very perplexing, that was in the  
25       front yard and had the DNA of the victim on it, which

1 means there is some connection to that home that  
2 Darrell lived in on Ranger Drive.

3 Now, I believe I got some testimony -- and if  
4 I'm being too narrative let me know -- but I believe I  
5 got some testimony from Tomasina that the gun was a  
6 different brother, Ben's gun, and Darrell maintained  
7 that he had never seen that gun, but it was right  
8 there in the front yard with the DNA.

9 Talked her about the -- I talked with  
10 Tomasina mostly about the clothes. Tomasina had said  
11 that they sell clothes regularly there, and they come  
12 in and come out and they run a jockey lot, for lack of  
13 a better word, trading clothes at the house.

14 And so we presented that to the jury, that  
15 each piece of their circumstantial evidence, we can  
16 break the chain to show that there is other reasonable  
17 explanations, and that was my argument to the jury.

18 Q Okay. And you felt like you had a thorough,  
19 well-thought-out defense?

20 A Yeah. Yeah, I did.

21 Q Mr. Goss has alleged -- can you hear me?

22 A And I've got the transcript on my iPad, if I  
23 need to refer to it.

24 Q Okay. Applicant has claimed that you were  
25 ineffective for failing to argue for a directed

1       verdict. Do you remember?

2       A     I argue a directed verdict in any and every  
3       case on general grounds, and then in specifics, if  
4       I have points that I want to make.

5       Q     Can you turn in your transcript to page 479?

6       A     479, Volume I?

7       Q     I believe so. Yes.

8       A     Is it the Bates stamp -- not Bates stamp.  
9       The stamp on the transcript or the actual page  
10      number?

11      Q     I can hand this up to you.

12      A     That would be easiest.

13      Q     I'm not sure that you have the same copies. And  
14      I'm actually going to refer you, first, to page 438 of  
15      this appendix.

16      A     Okay. 438, okay.

17      Q     So, Mr. Goss has alleged that you failed to argue  
18      for a directed verdict and, as you see in this  
19      transcript, when you did you basically conceded that  
20      he was -- my understanding of the argument is that you  
21      conceded that he could be charged under hand of one,  
22      hand of all. So can you kind of breakdown your  
23      strategy for that document in there? And if you need  
24      a moment to refresh your recollection.

25      A     If you don't mind. I argued the accomplice

1 liability in my directed verdict. Yeah, I argued  
2 accomplice liability and that circumstantial  
3 evidence, that didn't raise to a level to go to a  
4 jury, I believe.

5 Q And you stand by that argument today, that that  
6 was your best option to receive a directed verdict at  
7 that time?

8 A The options that I knew is to go after the  
9 case on a circumstantial evidence, differentiate  
10 Darrell from Mr. Mack. Mr. Mack, supposedly, was  
11 the first one in the store with an AK-47 and  
12 bum-rushed in. There's -- I asked the question  
13 specifically to the victim/owner, could he  
14 identify Darrell, and he said no. I said, was he  
15 in the store at the time of the robbery, and he  
16 said no.

17 So, I argued that they had not established  
18 accomplice liability, that under hand of one, hand of  
19 all argument, since he wasn't an actual perpetrator,  
20 according to the victim, that he wasn't there, that he  
21 could either be the planner or an accessory after the  
22 fact, or accessory aider, that he was not a principal  
23 since he was not present; and, therefore, that the  
24 State has failed.

25 Q And the State had failed to present any evidence



1 to --

2 A They did not present any evidence of a plan,  
3 no.

4 Q But you did make that directed verdict motion to  
5 the jury?

6 A Yes, I did.

7 Q And on page 479, you moved again for a directed  
8 verdict?

9 A That would be after the close of my evidence,  
10 our evidence. 479. Yeah, and then that one, I  
11 was just preserving the record for the most part.  
12 I didn't bring up any additional points, but I did  
13 renew my directed verdict which was denied.

14 Q I'm going to go to -- I want to go to the alibi  
15 witnesses --

16 A Okay.

17 Q -- because Darrell has -- I'm not sure necessarily  
18 what allegation that falls under that he's alleging  
19 today. I think just genuine effective assistance of  
20 counsel for failure to call them.

21 Did you have any notice of any alibi  
22 witnesses prior to the trial?

23 A Now, it's been 10 or 11 years, but, to my  
24 recollection, I did not hear about it. And, if I  
25 did, I very quickly pushed it off.

1                   Now, recently we discussed it and I thought  
2                   in my mind, did we talk about the baby-mama's baby  
3                   shower. And I know it was mentioned. I'm not going  
4                   to say that I never ever, ever heard of it. But as  
5                   far as an alibi, it was not something I explored. I  
6                   did not think it would be congruent with the other  
7                   defenses that were in front of us. I thought you live  
8                   and die by your alibi. That we had strong evidence as  
9                   far as the circumstance and that there wasn't a common  
10                  scheme or plan. I was very leery of an alibi, and I  
11                  certainly didn't investigate one. Quite frankly, I  
12                  didn't give it much merit as I had dug into the case  
13                  and knew what we are going to have to prove -- or not  
14                  prove -- excuse me. What the State was going to have  
15                  to prove and not be able to. And it was my best -- in  
16                  my estimation, we had a good defense.

17                  So while I'm not going to tell you I  
18                  absolutely never ever, ever heard of an alibi, it was  
19                  never seriously considered by me. It wasn't brought  
20                  up by Darrell, and I told you our communications. And  
21                  Tomasina, his mother, who I had the most contact with,  
22                  Tomasina and the family, we go way back. I've known  
23                  the family. I knew Darrell from the time he was  
24                  knee-high. Tomasina and I talked a lot.

25                  I talked rarely, quite frankly, with Darrell.

1 I didn't need to. I needed Darrell to be quiet  
2 because I had a defense. If I had won, they would  
3 have lifted me on their shoulders and walked me out of  
4 the courtroom and told me what a great lawyer I was.  
5 Unfortunately, the jury did not come back with that  
6 verdict.

7 Q Through all of those, you know, numerous  
8 communications with Tomasina, Darrell's mother, she  
9 never mentioned that, oh, we were at a baby shower for  
10 this child that's about to be born?

11 A I don't remember that discussion with  
12 Tomasina. All right? I'm not going to tell you  
13 she didn't mention it, because we had lots of  
14 conversations back then.

15 However, seriously -- do not take this as  
16 anything other than seriously -- I didn't think much  
17 of it. I did not have a good faith belief in the  
18 alibi, if there was one because I didn't investigate  
19 it. And if I thought there was a good alibi, I would  
20 have been all over it, but that didn't come up. It  
21 just didn't come up. I don't remember that at all.

22 Q Okay. So, he -- we'll just move on from that  
23 since you stated that you don't remember.

24 MS. WEIDAUER: Beg the Court's  
25 indulgence.

1                   THE WITNESS: Well, more than I don't  
2     remember is, if there was a discussion -- and I'm  
3     not sure there was -- even if there was, I would  
4     not have pursued an alibi defense in this case.  
5     The way the time lines were and the evidence they  
6     found, I think we had been dead on arrival.

7     Q     So there was a strategic reason for the defense --

8     A     I don't remember making this strategic  
9     decision because I don't think it ever got there.  
10    I had a defense. I had two defenses, truthfully;  
11    his lack of direct evidence as to Darrell, and  
12    common scheme and plan. Right?

13                I wouldn't have -- rarely -- I've used an  
14    alibi defense two or three times in my career. And  
15    the only time I've used it is when I knew it was going  
16    to work. Because if your alibi doesn't work, the jury  
17    doesn't believe a damn word you say. And so I was  
18    very leery of anything but what we had in this case  
19    whether it was right or wrong.

20    Q     So the risk, you believe, outweighed the benefit.  
21    The risk would have outweighed the benefit?

22    A     Oh, absolutely. That's my -- I remember  
23    that -- this case fairly well. It was a very hard  
24    default. We tried to separate from the  
25    codefendant as best we could. And, unfortunately,

1 the verdict didn't come back in our favor.

2 MS. WEIDAUER: Please answer any  
3 questions that Mr. Goss has for you. Thank you.

4 THE COURT: All right. Mr. Goss, if you  
5 want ask any questions at this time, you can.

6 CROSS-EXAMINATION

7 BY MR. GOSS:

8 Q Hey, Mr. Smiley.

9 A Hey, Darrell.

10 Q So let me be clear: Your testimony is that --

11 A Could I move closer to him to be able to hear  
12 him or vice versa, because I'm having a hard time  
13 hearing.

14 THE COURT: You can walk in the  
15 microphone.

16 BY MR. GOSS:

17 Q Can you hear me now?

18 A Go ahead.

19 Q Yes. So, to be clear, you just testified that  
20 whether you argued for the directed verdict motion  
21 that your argument was focused on that -- the lack of  
22 evidence on behalf of the State under the hand of one,  
23 hand of all theory?

24 A Well, that, as it's in here. And number 2, I  
25 argued that they hadn't presented substantial

1 evidence for the question to go to the jury.

2 Q So you had argued that the judge should have  
3 granted directed verdict motion based on the State not  
4 proving each element of the hand of one, hand of all  
5 law?

6 A Well, I can just tell you what I said.

7 Q Right.

8 A Would you like me to read that?

9 Q Yes, sir. On page 438 of the transcript.

10 A Page 438?

11 Q Yes, sir.

12 A Yeah, okay. All right. I will tell you that  
13 I'm going to refer, first, to 437 where I argued  
14 about the direct evidence and that there wasn't  
15 any and that there was nothing to place you  
16 directly in the store.

17 Q Okay.

18 A I made a point -- and I'm reading from the  
19 top of 438.

20 Q Okay.

21 A I made a point of it when I asked that and  
22 wrote it down exactly as it was responded, but if  
23 that be the case because he recognized my guy, my  
24 guy was in the store earlier that week. If that  
25 is the case, Your Honor, the only theory that the

1 case would survive on, on the basis that it would  
2 be the hand of one, hand of all, if my client is a  
3 planner, or some sort of accessory.

4 Q Okay. Yes, sir. You can stop right there.

5 So, your argument right here is focused on  
6 the fact that this case should go forward to the jury  
7 based on the hand of one, hand of all law, not that it  
8 should not.

9 A No, sir. That's not what I was arguing.

10 Q That's not?

11 A I was arguing that in the hand of one, hand  
12 of all, all right, is, if you're present, you're a  
13 principal. Okay? You have to be a principal to  
14 be involved in the active part of the robbery. I  
15 argued, there's no evidence to place him there.  
16 All right? Since there's no evidence to place him  
17 there, the State's theory of hand of one, hand of  
18 all can only survive two ways; that you were the  
19 planner, right, or that you had aided in some way.  
20 All right?

21 And I argued there's no evidence to  
22 either of those things, so the hand of one, hand  
23 of all can't survive. There was no pre-plan shown  
24 by the State. There's nothing to show you and  
25 Mr. Mack or anybody else had conspired, cohered,

1       planned this robbery that was presented in  
2       evidence. That's what I argued.

3       Q     Well --

4       A     Maybe I didn't argue it well, but that's what  
5       I was arguing.

6       Q     Yeah. Because, from my understanding, when you  
7       started this argument, you were saying that, you know,  
8       the State failed to produce any direct evidence, and  
9       then you go on to say, well, the only way this case  
10      can go forward, I mean, going forward means to be  
11      presented to the jury. What I'm saying --

12      A     The only theory which the State can then go  
13      forward on, whether it be the hand of one, hand of  
14      all because I'm arguing there is no direct  
15      evidence that you were in the store. Therefore,  
16      you could only be part of a hand of one, hand of  
17      all if you were a planner or an aider or an  
18      abettor, and they did not present evidence of  
19      either.

20      Q     Let me ask you --

21      A     That's what my argument was.

22      Q     Let me ask you this, Mr. Smiley: Do you know the  
23      elements of the hand of one, hand of all law?

24      A     Yeah.

25      Q     Could you please state those elements for the



1 record?

2 THE COURT: I'm going to direct you. You  
3 don't need to answer that question.

4 MR. GOSS: He don't need to answer it.

5 THE COURT: What did you say?

6 MS. WEIDAUER: I was saying, you were  
7 saying he don't need to answer it.

8 THE COURT: I mean, the law is the law.  
9 It doesn't matter what he testifies the law is, or  
10 what I say the law is.

11 MR. GOSS: I got you.

12 MR. MURPHY: It's all written. It's the  
13 law.

14 BY MR. GOSS:

15 Q So from my understanding -- or from your  
16 understanding, did the State prove that I planned?

17 A No.

18 Q That I committed a plan? Did the State --

19 A That's what I was arguing, that they showed  
20 no evidence that you planned.

21 Q Okay. And they never showed any evidence of my  
22 participation in the plan?

23 A Right, that's what I argued.

24 Q So you're saying that you correctly argued your  
25 directed verdict motion?

1 A I argued what I argued.

2 Q Okay. Let me ask you --

3 A I believe -- Darrell, I believe that I did  
4 argue it correctly. But if the Court told me  
5 otherwise, I wouldn't say they're wrong. Okay?

6 Q Yes, sir.

7 A And so I'll agree with you.

8 Q All right. So I want to take you to the jury  
9 charge now on the direct -- on the hand of one, hand  
10 of all. I think that should be on page --

11 A Take your time. It's probably in volume two,  
12 if I had to guess. I got it.

13 Q Okay. Page 529 of the trial transcript.

14 A Hang on a second, because I only had to 500  
15 here. They're going to get it to me.

16 Q Page 529 of the transcript.

17 A Thank you.

18 Q Trial transcript.

19 A All right. I'm on 529.

20 Q All right. Here, this is where the judge charged  
21 the jury on the hand of one, hand of all law.

22 A I'm reading about identifications, so let me  
23 find it.

24 MS. WEIDAUER: I think we have different  
25 copies.

1 THE WITNESS: 528.

2 MS. WEIDAUER: The beginning? Yeah.

3 THE WITNESS: Okay, I found it. Before  
4 he did identification, he did hand of one, hand of  
5 all. And I'll read you -- would you like me to  
6 read it?

7 BY MR. GOSS:

8 Q Yes, sir. Read it for the record, starting  
9 from --

10 A I'll be glad to.

11 THE COURT: He doesn't need to read it.  
12 It's from the record. It's a part of the record.  
13 I'll follow along.

14 THE WITNESS: Okay. It's on page 528.

15 THE COURT: All right.

16 THE WITNESS: Lines 8 through --

17 BY MS. WEIDAUER:

18 Q -- 18.

19 A 18. If you'd like, I'll read it. But what  
20 is your question?

21 Q My question is: Do you see where the judge  
22 mentioned anything about a plan as an element of the  
23 hand of one, hand of all theory?

24 A No, I don't. I don't see that.

25 Q Is it necessary under the law that there must be a

1 plan, as you stated -- you said in your directed  
2 motion there must be a plan, correct?

3 A I'm not a judge, but what -- I'll tell you my  
4 experience has been. That under common scheme and  
5 plan, hand of one, hand of all, you have to show  
6 two or more persons commensurate for an illegal  
7 purpose, all right, and that one or both do acts  
8 in furtherance of that. Okay?

9 Q Correct. Is that, in any way, mentioned in this  
10 jury charge, is my question? About a plan or a scheme  
11 as an element to this hand of one, hand of all law?

12 A It doesn't any anything about plan. It just  
13 talked about acting together.

14 Q But it should have said --

15 A It doesn't.

16 Q It doesn't?

17 A It doesn't say that. I don't disagree with  
18 you. That was the charge that we got 10 years  
19 ago. Should I have objected is the question.

20 Q Right. I was going to get to that?

21 THE COURT: What's your objection?

22 MS. WEIDAUER: Non-responsive to his  
23 question.

24 THE COURT: Yeah. You-all are talking  
25 over each other, too, which is maddening --

1 MR. GOSS: I apologize.

2 THE COURT: You're talking over me while  
3 I'm saying that. I know it's hard.

4 MR. GOSS: I apologize.

5 THE COURT: One at a time. Go ahead,  
6 Mr. Goss. Rephrase your question.

7 BY MR. GOSS:

8 Q I'm asking you -- basically, I'm asking you what  
9 do you think is missing from this jury charge?

10 A The charge does not talk about a scheme or  
11 plan. All right? In those words. All right? Or  
12 about being present, per se, I don't believe. So,  
13 it was a bare hand of one, hand of all charge. I  
14 agree with you.

15 Q In your professional judgment, do you think this  
16 is a sufficient jury charge under the hand of one,  
17 hand of all law?

18 A Eleven years later, I would probably argue  
19 against the charge. I would argue for more in the  
20 charge. But it does state two or more people  
21 acting together, the act of one is the act of all.  
22 That's all I can tell you, Darrell.

23 Q Okay. So why didn't you object to it at trial?

24 A I did not object. I can't tell you --

25 Q You have no reason why?

1       A     I did not, at the time, believe that it was  
2     objectionable.

3               MR. GOSS:  No further questions,  
4     Your Honor.

5               THE COURT:  Okay.  Any redirect?

6               MS. WEIDAUER:  No redirect, Your Honor.

7               THE COURT:  All right.  Any objection to  
8     this witness being released or remain in the  
9     hearing from the State?

10              MS. WEIDAUER:  No objection,  
11     Your Honor.

12              THE COURT:  Any objection to Mr. Smiley  
13     leaving?

14              MR. GOSS:  Yes, Your Honor.  I still have  
15     another witness I would like to call, and maybe  
16     Mr. Smiley probably needs to --

17              THE COURT:  Why does he -- do you have  
18     any more questions for him today?

19              MR. GOSS:  No, I have no more questions  
20     for him.

21              THE COURT:  Why does he need to stay  
22     then?

23              MR. GOSS:  You can let him go.

24              THE COURT:  I'm just asking.  I mean, if  
25     there's a reason, I just need you to articulate

1       your reason for me.

2                   MR. GOSS:   Because I'm going to call  
3       Sharon Goss, and he's going to give testimony, and  
4       maybe Mr. Smiley need to respond to it as to his  
5       investigation.

6                   THE COURT:   You can ask him right now.  
7       You don't need to wait.

8                   MR. GOSS:   Yes, ma'am.

9                   THE COURT:   Any questions you have for  
10      him, ask him now.

11                  MR. GOSS:   All right.

12                                RECROSS-EXAMINATION

13       BY MR. GOSS:

14       Q     Let me ask you about Sharon Goss.

15       A     First of all, I can't hear.

16       Q     Sharon Goss?

17       A     Sharon?

18       Q     Right.  Are you familiar with that name?

19       A     Yes.

20       Q     And how you became familiar with that name?

21       A     I just know the name.  I can't tell you.

22       It's been 11 years, Darrell.

23       Q     So when you first took this case and the State  
24       provided you with discovery, in relation to the gun  
25       being found in the car --

1       A     Right.

2       Q     -- is there any documentation or discovery that  
3       states that the car the gun was found in had the name  
4       of Sharon Goss?

5               THE COURT:   You're asking him to the best  
6       of his recollection.   You can answer.

7               THE WITNESS:   I don't have a recollection  
8       on that.   If you tell me that it's true, I would  
9       agree with you.

10      BY MR. GOSS:

11      Q     Okay.   So because I --

12      A     I believe the car in the yard -- and excuse  
13      me, Darrell, for talking over you, and Your  
14      Honor -- I would agree the car in the yard did not  
15      belong to you.

16      Q     Okay.   It belonged to another man?

17      A     To another Goss, I believe.

18      Q     My question now is:   Did you ever took the time to  
19      go and investigate that guy, the other man who the car  
20      (sic) was found in, or did you make any attempt to  
21      find out --

22      A     I did not.

23      Q     Do you have any reason?

24      A     I did not believe it would be fruitful.

25      Q     Sir?



1       A     I did not believe that that investigation  
2       would be fruitful.

3       Q     So you believe that nothing would come out of  
4       it?

5       A     It wasn't going change your defense.  Our  
6       defense was, that wasn't your gun.  I surely  
7       didn't expect to go find Sharon Goss and him say,  
8       oh, yeah, I bought a gun and it had the DNA all  
9       over it.  You see what I mean, Darrell?

10      Q     Okay.

11      A     I'm not telling you you're right and I'm  
12      wrong.  I'm just telling you the truth.

13      Q     Okay.

14      A     All right.

15      Q     Well, that's the only question I have for you.

16               THE COURT:  Okay.  You can be excused.

17               THE WITNESS:  Good to see you, Judge.

18               THE COURT:  Good seeing you.  Take care.

19               Does the State have any other witnesses  
20      they would like to call at this time?

21               MS. WEIDAUER:  No, Your Honor.  The State  
22      rests.

23               THE COURT:  All right.

24               MR. GOSS:  Your Honor, I didn't want to  
25      interrupt you earlier, but I had one more issue

1       that I wanted to address, but you, kind of, cut me  
2       off. I just wanted to make clear --

3               THE COURT: When did I cut you off? I  
4       don't remember that.

5               MR. GOSS: When I had finished my second  
6       issue about the due process. You was like, okay,  
7       well, that's it. So I wanted to --

8               THE COURT: No, sir. There was a long  
9       period there and I actually asked you several  
10      times if you covered all of your basis, and we  
11      went through the fact that I was going through  
12      your amendments, and there was no cutting off of  
13      anything.

14              MR. GOSS: Okay.

15              THE COURT: But if there's something else  
16      you would like to argue, by all means go ahead.

17              MR. GOSS: Yes, ma'am. I would also like  
18      to talk about the mere presence that you  
19      mentioned. I would like to talk about the mere  
20      presence.

21              MS. WEIDAUER: Objection. We just  
22      released a witness that was his trial counsel that  
23      could have responded to questions regarding this  
24      allegation, and now he's out the door.

25              THE COURT: You agreed to that, sir.

1       What is it that you want to tell me?

2               MR. GOSS: Well, I don't believe we need  
3 his testimony. He didn't make the objection to  
4 the -- he said he didn't made the -- he didn't see  
5 no objection to the hand of one, hand of all  
6 law.

7               THE COURT: Okay.

8               MR. GOSS: And that jury charge didn't  
9 mention nothing about mere presence. It didn't  
10 mention anything about mere knowledge. And it  
11 also didn't mention anything about mere  
12 association.

13              THE COURT: Okay.

14              MR. GOSS: Okay. And the evidence in  
15 this case supported those.

16              THE COURT: Okay. Your argument -- and  
17 you'll have an opportunity at the end to do that.

18              Do you have any other witnesses you want  
19 to call at this time?

20              MR. GOSS: Yes, ma'am. I would like to  
21 call Sharon Goss.

22              THE COURT: Any other witnesses after  
23 this?

24              MR. GOSS: No, ma'am.

25              THE COURT: Okay.

1 THE CLERK: Do you swear or affirm the  
2 testimony you give today is the truth, the whole  
3 truth, and nothing but the truth so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Please state your name for  
6 the record and spell your last name. Thank you.

7 THE WITNESS: I do.

8 THE COURT: Mr. Goss, your witness.

9 WHEREUPON:

10 SHARON GOSS,  
11 after having been sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. GOSS:

14 Q Hey, Sharon Goss. Could you state your name for  
15 the record?

16 A Sharon Goss.

17 Q Okay. Hey, Sharon. I'm Darrell Goss, you know,  
18 your cousin. I wanted to ask you about a gun in this  
19 case. Do you remember anything about a gun being  
20 found in a car that was registered to you back in  
21 2007?

22 A Yes, I do.

23 Q You do recall that?

24 A Yes, sir, I do.

25 Q Tell us, what do you recall about that gun?

1       A     Some guys came with some merchandise, as far  
2       as like clothes and firearms. And some of the  
3       clothes and shoes and stuff I purchased along with  
4       the firearm.

5       Q     Are you familiar, or do you recall what you paid  
6       for the gun? How much you paid for the gun?

7       A     It's been a while, but anywhere from -- it  
8       was like -- with the clothes and the gun itself  
9       altogether I spent, like, close to like 500.

10      Q     Five hundred, okay. After you purchased the gun,  
11      do you know, what did you do with the gun?

12      A     I had to tend to my kids, so I placed it in  
13      my vehicle until I came back.

14      Q     And where was the vehicle at the time when you  
15      placed the gun in it?

16      A     Parked at my residence.

17      Q     And what residence was that?

18      A     2865 Ranger Drive.

19      Q     Okay.

20               MR. GOSS: Thank you. No further  
21      questions.

22               THE COURT: Anything from the State?

23                               CROSS-EXAMINATION

24      BY MS. WEIDAUER:

25      Q     Can you tell the Court what your date of birth

1 is?

2 A July 7, 1985.

3 Q Okay. Do you remember being charged with  
4 possession with intent to distribute cocaine charge in  
5 2008?

6 A Yes, I do.

7 Q Okay. So, at the time of trial, would you have  
8 been willing to testify with that pending charge that  
9 you had purchased this gun illegally?

10 A Yes, I would.

11 Q You would have?

12 A Yes, ma'am.

13 Q Okay. And do you remember -- at the time of  
14 trial, that charge was pending, correct?

15 A Yes.

16 Q Okay.

17 MS. WEIDAUER: No further questions,  
18 Your Honor.

19 THE COURT: All right. Any other  
20 questions for this witness?

21 REDIRECT EXAMINATION

22 BY MR. GOSS:

23 Q Did you ever talk to Mr. Smiley during the course  
24 of this case?

25 A No, I didn't.

1 Q You never talked to Smiley.

2 MR. GOSS: Okay, that's all.

3 THE COURT: All right. You can step  
4 down. Thank you very much. You're free to  
5 leave.

6 All right. No other witnesses by either  
7 side, so I'm happy to hear brief arguments from  
8 each side at this time.

9 You can start, Mr. Goss.

10 MR. GOSS: Well, Your Honor, at this time  
11 I would rest.

12 THE COURT: Okay.

13 MR. GOSS: Understanding that all my  
14 issues have been presented on the record and that  
15 they are preserved and what we received a ruling  
16 on. And those issues being, one, that trial  
17 counsel was ineffective for failing to properly  
18 argue for a directed verdict motion.

19 Two, that my due process and equal  
20 protection rights were violated based on 10 years  
21 and have excessive delay on behalf of the State.

22 Thirdly, that Mr. Smiley failed to object  
23 to the hand of one, hand of all jury charge,  
24 because first, of the lack of evidence, the State  
25 never proved those elements.

1               Second, the jury -- the charge failed to  
2               mention a common plan or a common scheme, which is  
3               a necessary element to be charged in that charge.  
4               Mr. Smiley, he never objected to that.

5               And also he never -- he should have  
6               requested further instructions on mere presence,  
7               mere association, as well as mere knowledge,  
8               because I believe that the fingerprint, you know,  
9               as I said earlier, at best, would have proved mere  
10              presence.

11             Mere knowledge, there was evidence in the  
12             record, I'm not sure, I think it was related to a  
13             tip. I think -- yeah, because the officer got on  
14             the stand and testified that they received a tip  
15             including my name in regards to this armed  
16             robbery. That was officer O.J. Faison.

17             And so I believe that evidence, you know,  
18             at best, would have required a jury instruction on  
19             mere knowledge, you know. So I believe that, you  
20             know, he should have requested further  
21             instructions on mere knowledge and association  
22             because on the association part the officer did --  
23             he mentioned my brother's name, too. He said that  
24             he got information that me and my brother,  
25             Benjamin Goss, was involved in this crime.



1                   So, I believe that, you know, with that  
2 piece of evidence, he should have also mentioned  
3 mere association if that be the case. You know,  
4 but, no one testified to, you know, me taking any  
5 part of this crime. There was no evidence on that  
6 part.

7                   And so Mr. Smiley should have done,  
8 really, a better job on arguing that to the judge  
9 as to as well as to the jury.

10                  So, those being the issues, Your Honor, I  
11 believe that I'm entitled to post-conviction  
12 relief, Your Honor, to end this misery that I have  
13 endured 14 and a half years, Your Honor.

14                  THE COURT: All right. What would the  
15 State like to tell me?

16                  MS. WEIDAUER: Very briefly, Mr. Goss  
17 earlier requested immediate release. That's not  
18 available relief under the PCR Act. We just  
19 wanted to note that again for the Court.

20                  Applicant also claimed that counsel's  
21 ineffective for failing for a directed verdict.  
22 Counsel did argue for a directed verdict and said  
23 that there were reasons behind his argument and he  
24 felt that it was a good argument at the time of  
25 trial.

1           Applicant also argued that there was an  
2           excessive delay. There is, of course, extensive  
3           procedural history that this court has no control  
4           over. This court was pending for quite a long  
5           time before the Supreme Court, but we have gotten  
6           here as quickly as we could pending that federal  
7           habeas stay and other factors that are before  
8           every single PCR case and the State right now.

9           The State would argue that applicant has  
10          wholly failed to present an alibi witness to show  
11          that he was -- could have been anywhere but at the  
12          alleged crime scene. So -- beg the Court's  
13          indulgence for one moment. I'm looking for the  
14          cite.

15          Glover v. State, 318 S.C. 496 says that  
16          counsel's failure to collect -- contact an alleged  
17          alibi witness does not prejudice the applicant  
18          when the applicant fails to show the witness's  
19          testimony would have established an alibi defense,  
20          and the State would contend that he's failed to  
21          establish that alibi defense here today.

22          The State would just rest on the rest of  
23          the testimony presented here today and the record  
24          as a whole.

25          THE COURT: All right. Any response?

1                   MR. GOSS: Your Honor, just quick, brief  
2                   reply. I forgot to mention about the lack of  
3                   investigation, about Sharon Goss and the gun on  
4                   Mr. Smiley's part.

5                   Also, Your Honor, I would ask for relief  
6                   from that claim because Mr. Smiley never, as he  
7                   stated -- testified that he never investigate  
8                   Sharon Goss. We heard testimony from Sharon Goss  
9                   that he purchased the gun the day those guys were  
10                  selling clothes on the street. He purchased that  
11                  along with other people, and he spent about \$500.  
12                  He should have been looked into. You know,  
13                  Mr. Smiley he had discovery records showing that,  
14                  you know, the gun was found in Sharon Goss's car.  
15                  You know, obviously he didn't ask anybody about  
16                  Sharon, so he should have investigated Sharon.

17                  And so I would ask that I receive relief  
18                  on that ground as well.

19                  THE COURT: All right. Well, obviously,  
20                  I have a lot to look at. It's a lengthy file at  
21                  this point in time. I'll have to review the  
22                  transcript as a whole and go through and consider  
23                  arguments on both sides, and I'll obviously look  
24                  at the cases cited and hopefully get you an order  
25                  within the next 30 to 45 days. Okay?

1 MR. GOSS: Yes, ma'am.

2 THE COURT: All right. Good luck

3 you-all.

4 MR. GOSS: Thank you, Your Honor.

5 (The hearing was concluded.)

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## CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, II for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record, ***DIGITALLY RECORDED*** of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Family Court for Charleston County, South Carolina.

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

May 6, 2022



\_\_\_\_\_  
Sharon G. Hardoon, CSR  
Official Circuit Court Reporter, III

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Darrell L. Goss, #305517,  
Applicant,

vs.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE 9th JUDICIAL CIRCUIT

Case No. : 2011-CP-10-3782

4th MOTION TO AMEND  
PCR APPLICATION

**FILED**

JUN 21 2022

JULIE J. ARMSTRONG  
CLERK, C.P. & G.S.

TO: THE HONORABLE JENNIFER B. MCCOY ; PRESIDING  
JUDGE :

NOW COMES Applicant, Darrell L. Goss, pro se, and moves this Honorable Court, pursuant to Rule 15(c) of the South Carolina Rules of Civil Procedure, for an order allowing his fourth amendment to relate back to the original pleading. Applicant submit that the Court should freely grant him leave to amend because there's no undue prejudice to the State. see, Patton v. Miller, 480 S.C. 471, 804 S.E.2d 252 (2017) ("The rules of civil procedure reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome

and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits" ).

WHEREFORE, premises considered, this Court should grant Plaintiff's motion and allow him to amend his PCR Application to include the following grounds for relief :

GROUND ONE : Ineffective Trial Counsel

SUPPORTING FACTS : Trial Counsel was ineffective for failing to properly argue for a directed verdict of acquittal because the State failed to meet its burden of proof as to each element of " the hand of one, the hand of all " theory of accomplice liability. Specifically, (1) the State failed to produce any evidence - direct or circumstantial - of a prior plan or scheme between Applicant and his alleged codefendants to commit an illegal act. The State presented entirely no evidence at all proving or tended to prove that Applicant joined together with any codefendant(s) to accomplish an illegal purpose ; and

(2) the State failed to produce any direct or substantial circumstantial evidence of Applicant's participation in carrying out that common plan or scheme between him and his alleged

codefendants. The State presented no substantial evidence proving or tended to prove that Applicant aided, abetted, or assisted the perpetrators (in any way) during the commission of a crime pursuant to a prior common plan or scheme.

## GROUND TWO : Ineffective Appellate Counsel

SUPPORTING FACTS : Appellate Counsel was ineffective for failing to argue for a directed verdict of acquittal because the state failed to meet its burden of proof as to each element of " the hand of one, the hand of all " theory of accomplice liability. Specifically, (1) the State failed to produce any evidence - direct or circumstantial - of a prior plan or scheme between Applicant and his alleged codefendants to commit an illegal act. The state presented entirely no evidence at all proving or tended to prove that Applicant joined together with any codefendant(s) to accomplish an illegal purpose ; and

(2) the state failed to produce any direct or substantial circumstantial evidence of Applicant's participation in carrying out that common plan or scheme between him and his alleged codefendants. The state presented no substantial evidence proving or tended to prove that Applicant aided, abetted, or assisted



the perpetrators (in any way) during the commission of a crime pursuant to a prior common plan or scheme.

### ARGUMENT IN SUPPORT OF 4th MOTION TO AMEND

Rule 15 (C), S.C. R. Civ. P., provides :

(C) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.

An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (a) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

In the present case, Applicant raised the issue, at his PCR hearing, that his trial counsel, James W. Smiley, rendered ineffective counsel when he improperly argued for a directed verdict as described above in ground one.

However, in this Court's order of dismissal, it appears that the Court justifies Mr. Smiley's argument for a directed verdict. see, Order of Dismissal, p. 34. If that be the case, this Court has essentially conceded that this precise argument, was then, preserve for appellate review<sup>1</sup>.

If so, Applicant now moves the Court to amend his PCR application to include an additional claim that his appellate lawyer, Robert M. Pachak, rendered ineffective counsel when he failed to raise the directed verdict issue on appeal.

### CONCLUSION

For all the above reasons, Applicant respectfully asks the Court to grant his motion.

---

<sup>1</sup> which review errors of law only.

Respectfully Submitted,

Darrell L. Goss

Darrell L. Goss #305517

Lieber Corr. Inst.

P.O. Box 205

Ridgeville, SC 29472

June 16, 2022

ATTY  
SOL  
GIS  
AG

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Darrell L. Goss, SCDC #305517,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2011-CP-10-03782

**ORDER OF DISMISSAL**

FILED  
2022 JUN 15 AM 9:09  
JULIE J. ARMSTRONG  
CLERK OF COURT

This matter comes before this Court by way of post-conviction relief action commenced by Applicant Darrell L. Goss on May 27, 2011. An evidentiary hearing into the matter convened before the undersigned on December 8, 2021. Applicant was present and proceeded with the hearing as a *pro se* litigant, and this Court is satisfied that the requirements of *Faretta v. California* 422 U.S. 806 (1975) and *Hilton v. State*, 422 S.C. 204, 810 S.E.2d 852 (2018), have been met<sup>1</sup>. Assistant Attorney General Samantha J. Weidauer represented the State. Applicant testified on his own behalf at the hearing, as did Applicant's cousin, Sharon Goss. Applicant's trial counsel, James W. Smiley, IV, Esquire, also testified.

This Court had before it a copy of the Charleston County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections;

<sup>1</sup> At the outset of the evidentiary hearing, this Court inquired about Applicant's motion to relieve counsel and entered into a colloquy regarding whether Applicant still wished to relieve counsel. (PCR Tr. 2). Applicant stated his PCR counsel, Christopher L. Murphy, had failed to inform him of the scheduling change for his hearing – this matter was continued from December 7, 2021, until the next day, December 8, 2021. (PCR Tr. 2-3). Applicant represented to this Court that his out-of-state witness, Felicia Henderson, could have been present to testify on the prior date, but because of the scheduling change was now unavailable. (PCR Tr. 2). Applicant stated he believed he had suffered prejudice as a result of Mr. Murphy's failure to inform him or his family about the change in schedule and therefore wished to relieve Mr. Murphy as counsel. (PCR Tr. 2-4). When questioned by this Court whether Applicant wished to proceed forward with the hearing without his aforementioned witness, Applicant unequivocally responded yes. (PCR Tr. 5). Applicant informed this Court he had other claims he was willing to raise at this evidentiary hearing that did not require the unavailable witness to be present. (PCR Tr. 5-6). Therefore, this Court granted Applicant's motion to relieve counsel, but requested Mr. Murphy remain as stand-by counsel (PCR Tr. 11).

JBW/1

the records from Applicant's direct appeal, including the trial transcript; and the pleadings and records in this post-conviction relief action including: Applicant's initial 2011 post-conviction relief application, the transcript from Applicant's 2011 evidentiary hearing the Honorable Deadra L. Jefferson, the Order of Dismissal signed by Judge Jefferson in December 2011, and the documents from the subsequent post-conviction appeal, including the Supreme Court Order remanding this matter back to the circuit court for a *de novo* post-conviction relief hearing.

After hearing the testimony and evidence presented at the post-conviction relief hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel and due process violations are without merit. Therefore, for the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

### **I. Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the September 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-10805), assault and battery with intent to kill (ABWIK) (2007-GS-10-10806), and kidnapping (2007-GS-10-10807). James W. Smiley, IV, Esquire (Counsel), represented Applicant. Trip Lawton, Esquire and Kevin Hales, Esquire, prosecuted the case. On February 23-26, 2009, Applicant proceeded to trial before the Honorable J.C. Nicholson, Jr. and a jury. At the conclusion of the trial, the jury found Applicant guilty as indicted. Judge Nicholson sentenced Applicant to concurrent sentences of twenty years for each offense.

Applicant filed a notice of appeal which was perfected by Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense—Office of Appellate Defense. On appeal, Applicant raised two issues:

- I. Whether the trial court erred in overruling defense counsel's objection to the solicitor's burden shifting closing argument?

JBW/2

II. Whether the trial counsel erred in refusing to allow defense counsel to impeach the victim with a pending charge of counterfeiting goods?

Following further briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. *State v. Goss*, Op. No. 2011-UP-214 (Ct. App. filed May 17, 2010). The Remittitur was returned to the circuit court on June 9, 2011.

On May 27, 2011, Applicant filed a *pro se* application for post-conviction relief alleging trial counsel was ineffective for failing to present an alibi; for failing to properly investigate the facts and circumstances of the case; for failing to present witnesses; and for failing to provide Applicant with discovery. The State filed a return to the application requesting an evidentiary hearing be held on Applicant's allegations. On September 16, 2011, an evidentiary hearing was convened at the Charleston County Courthouse before the Honorable Deadra L. Jefferson. Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office, represented the State. At the outset of the hearing, Applicant requested Judge Jefferson allow him to proceed *pro se*. Judge Jefferson apprised Applicant of the pitfalls of self-representation and suggested Applicant allow counsel to represent him. Applicant testified on his own behalf. Counsel also testified at the hearing. During the hearing, Applicant entered into evidence a visitor's log from the jail, a memorandum of law, and two letters addressed to Counsel. Present at the hearing were witnesses, Angelique Gaskins, the mother of Applicant's child; Lucretia Douglas, a friend; Bernard Godfrey, Applicant's uncle; and Felicia Henderson, a friend. Also, present were Clifford Hartwell, Applicant's brother, and Sharon Goss, Applicant's cousin. Judge Jefferson took judicial notice of each witness's testimony.

On December 1, 2011, Judge Jefferson signed an Order of Dismissal finding Applicant had failed to establish any constitutional violations or deprivations. Specifically, Judge Jefferson found Counsel's testimony credible while also finding Applicant's testimony not credible. Regarding Applicant's claims of ineffective assistance of counsel, the court found Applicant failed to meet his burden of proof, and Counsel's representation did not fall below an objective standard of reasonableness. Additionally, the court found Counsel made a valid strategic decision to only call Applicant's mother as a witness at trial, and was not ineffective for failing to call Sharon Goss or other named witnesses. Similarly, the Court found Counsel was not ineffective for failing to pursue the alibi witnesses where neither Applicant nor Applicant's mother informed counsel of a potential alibi defense. Lastly, the court found Applicant failed to prove the prejudice prong of *Strickland*.

Applicant filed a notice of appeal from the Order of Dismissal on December 5, 2011. On July 23, 2012, Applicant filed his petition for writ of certiorari and accompanying appendix in the Supreme Court of South Carolina. Thereafter, the Court transferred Applicant's case to the Court of Appeals pursuant Rule 243(1), SCACR. On November 21, 2014, the Court of Appeals granted certiorari. Following briefing and oral argument, the Court of Appeals affirmed the PCR court's decision in an unpublished opinion. *State v. Goss*, Op. No. 2016-UP-382 (Ct. App. filed July 27, 2016). Applicant filed a petition for rehearing, which was denied on September 26, 2016.

On November 14, 2016, Applicant filed a petition for writ of certiorari and accompanying appendix with the Supreme Court of South Carolina. On October 19, 2017, the Court granted certiorari and ordered additional briefing. Following further briefing and oral argument, the Supreme Court of South Carolina remanded the matter to the circuit court for a *de novo* PCR hearing, instructed Applicant it would be incumbent for him to secure the attendance of his witnesses for the *de novo* hearing, and emphasized that neither party may rely upon testimony

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presented at the initial hearing. (*Goss v. State*, 425 S.C. 101, 820 S.E.2d 373 (2018)). After this matter was remanded back to the circuit court by Supreme Court Order on October 17, 2018, Applicant filed a Motion to Stay Proceedings on January 7, 2019. On January 29, 2019, an Order was filed staying this post-conviction relief matter for one year while Applicant's federal habeas case existed. This hearing followed.

## **II. Factual Summary**

In the Supreme Court's opinion remanding this PCR matter back to the circuit court for a *de novo* hearing, the facts of the case were summarized as follows:

Goss was charged in connection with the armed robbery of Urban Wear, a clothing store in North Charleston. The store owner, Andy Ayazgok, reported that five unmasked black males entered the store through the main storefront door at about 7:30 p.m., just before closing time, and proceeded to beat him, tie him and his employee up, and flee after stealing merchandise and cash. Of the five assailants, Andy was able to identify only Joy Mack as one of the assailants. Goss and Mack were tried jointly. Andy did not identify Goss as a perpetrator but identified him as having been in the store the week before the robbery.<sup>2</sup>

Sergeant Al Hallman was a member of the crime scene unit that processed the scene and was qualified by the trial court as an expert in fingerprint identification. He testified that when he arrived on the scene, he observed what he described as "wet" prints on the exterior of the glass storefront door; specifically, Sergeant Hallman testified the prints were a "simultaneous impression" of three fingers and a palm. The door from which the prints were lifted was the door through which the perpetrators gained entry and was also the door used by customers. Sergeant Hallman testified the prints were wet from either sweat or some other substance, which indicated to him the prints were fresh. He waited until the prints were dry and lifted them for possible later comparison. Andy testified at trial that he customarily cleaned the inside and outside of the storefront door each morning, and he testified he did so when he opened the store on the morning of the robbery.

Within hours after the robbery, a man named Lorenzo Johnson advised lead detective O.J. Faison that [Applicant] Goss

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<sup>2</sup> Andy's proffered trial testimony detailing his recollection of seeing Goss in the store the week before the robbery was that Goss was shoplifting and Andy ran him off. The trial court granted Goss's motion to exclude these details from Andy's testimony before the jury.



and his brother, Benjamin Goss, were two of the perpetrators. Detective Faison relayed this information to Sergeant Hallman. Hallman compared the prints he lifted from the storefront door to inked impressions from [Applicant] Goss; he testified the prints matched. After the prints were matched to Goss, law enforcement obtained a warrant to search Goss's residence and any vehicles on the premises. The warrant was executed at approximately 9:30 p.m. the night following the robbery. A .357 Magnum handgun with blood on the barrel was found in a car parked in the yard of the residence occupied by Goss and eight or nine other people, including several black males. DNA testing established the blood was Andy's. Clothing with tags was found in a bedroom in the residence, and Andy identified some of the clothing as being part of the merchandise stolen during the robbery. Goss's mother, Thomasina Goss, was trial counsel's primary contact prior to trial because trial counsel had known her for many years and because Goss was in jail the entire twenty months before trial. She was the only defense witness called at trial and testified to the following: Goss lived in the house with her and eight other people, she bought the stolen clothing from some unidentified men in the street in front of her house on the same day law enforcement searched her home, she knew the clothes were likely stolen, she had never seen Goss drive or ride in the car in which the bloody gun was found, and everyone who lives in the house uses the bedroom in which the stolen clothing was found. The State impeached her with a shoplifting conviction and two convictions for giving false information to the police.

### **III. Issues Before This Court**

In his original application for post-conviction relief, filed May 27, 2011, Applicant alleges he is being held in custody unlawfully based on:

1. Ineffective assistance of counsel
  - a. "Violation of the Sixth Amendment to the United States Const.";
  - b. "Violation of the Fourteenth Amend. to the U.S. Const."; and
  - c. "Violation of Article 1 Section 3 of S.C. Const."

On August 6, 2020, Applicant amended his application *pro se* to include the following allegations:

1. Ineffective assistance of counsel
  - a. "Trial counsel was ineffective in failing to prepare [Applicant's] case and object to the 'hands of one, hands of all' theory";

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2. Due Process Violation

- a. The indictments did not put Applicant on notice of the charges he was facing.
  - i. “[Applicant] was not informed by indictment that he allegedly conspired with Joy Mack to commit the crimes convicted for”
- b. “The State did not also indict [Applicant] on a criminal conspiracy charge, but it nonetheless, pursued a conviction against him based on that theory”;

3. Subject Matter Jurisdiction

On August 4, 2021, Applicant amended his application *pro se* to include the following allegations:

1. Ineffective assistance of counsel

- a. “Trial Counsel was ineffective in failing to object to “the hand of one, the hand of all” jury charge.

2. Unfair jury trial

- a. “The State failed to prove each element of “the hand of one, the hand of all” accomplice liability theory beyond a reasonable doubt”; and

3. Due process violation

- a. “There has been excessive and unjustified delay in the disposition of [Applicant’s] PCR proceedings”.

At the hearing on December 8, 2021, Applicant moved to incorporate an unfiled third amendment to his application<sup>3</sup> to include the following allegation:

1. Ineffective assistance of counsel

- a. “Trial counsel was ineffective for failing to properly argue for a directed verdict of acquittal because the State failed to meet its burden of proof as to each element of “the hand of one, the hand of all” theory of accomplice liability. Specifically, (1) the State failed to produce any evidence – direct or circumstantial – of a prior plan or scheme between Applicant and his alleged codefendants to commit an illegal act. The State presented entirely no evidence at all proving or tended to prove that Applicant joined together with any codefendant(s) to accomplish an illegal purpose; and

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<sup>3</sup> Though not filed prior to the evidentiary hearing, this amendment was filed on February 11, 2022. For purposes of this order, this Court incorporates this amendment with the allegations raised in Applicant’s initial amended applications and addresses the claims made within as they were raised at the evidentiary hearing.

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- i. "The State failed to produce any direct or substantial circumstantial evidence of Applicant's participation in carrying out that common plan or scheme between him and his alleged codefendants. The State presented no substantial evidence proving or tended to prove that Applicant aided, abetted, or assisted the perpetrators (in any way) during the commission of a crime pursuant to a prior common plan or scheme."

To the extent the allegations set forth in Applicant's application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, the Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

#### **IV. Testimony Presented at Evidentiary Hearing**

##### ***Pro se Applicant Darrell Goss Testimony***

Applicant testified (and argued) on his own behalf before this Court. Applicant argued trial counsel was ineffective for failing to properly argue his directed verdict motion at trial<sup>4</sup>. (PCR Tr. 14). Applicant testified the basis for Counsel's motion for a directed verdict centered on the State's failure to produce enough evidence to prove Applicant was guilty as a principle. (PCR Tr. 15). Applicant testified the State argued his charges should be submitted to the jury under a hand of one, hand of all theory while conceding Applicant was an accomplice, not a principal. (PCR Tr. 15). Applicant argued that because the State identified Applicant as an accomplice, Counsel's argument was improper as it focused on the State's lack of evidence in relation to Applicant as a principle in the crimes. (PCR Tr. 15).

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<sup>4</sup> Applicant stated Counsel argued the motion for directed verdict on pages 346-446 of the trial transcript. (PCR Tr. 14). However, this Court notes the relevant pages pertaining to the motion for a directed verdict are 438-446 of the trial transcript.

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Applicant testified Counsel stated his case could only go forward and be brought to the jury under the hand of one, hand of all theory. (PCR Tr. 15). Applicant testified the State agreed with Counsel and the trial judge, Judge Nicholson, acknowledged the theory of hand of one, hand of all was all the State had against Applicant. (PCR Tr. 15). Applicant argued the State failed to prove all elements required under this theory, failed to produce any evidence showing a common plan or a common scheme existed, and failed to produce any evidence showing Applicant participated in the crime in any manner. (PCR Tr. 16-17).

Regarding evidence, Applicant testified there were three pieces of evidence presented in this case: a wet fingerprint found at the crime scene – specifically on the outside of the glass door of the store in which the armed robbery occurred; a gun with the victim’s DNA on it<sup>5</sup>; and clothing items found inside the residence of his mother’s house in a room Applicant did not reside in. (PCR Tr. 17-19). Applicant argued none of the State’s evidence showed a common plan or showed Applicant participated under the hand of one, hand of all theory. (PCR Tr. 19). Applicant further argued the fingerprint was the only piece of evidence that “[could] be substantially used” to place Applicant at the crime scene. (PCR Tr. 19). Applicant testified the fingerprint alone is not proof Applicant was at the store at the time of the incident<sup>6</sup>. (PCR Tr. 19). Applicant testified no evidence was presented concerning the location of the print, the fingerprint could not be dated, and the substance that created the fingerprint (sweat) was never tested for DNA. (PCR Tr. 19-21). Applicant argued that because the victim testified he cleaned the windows every morning, the State was able argue the fingerprint had to have been made after the windows were cleaned. (PCR Tr.

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<sup>5</sup> Applicant testified the gun in this matter was found in a vehicle located outside his residence. (PCR Tr. 18). Applicant argued the gun was not his and was found in Sharon Goss’s, Applicant’s cousin, car. (PCR Tr. 18).

<sup>6</sup> This Court inquired whether mere presence was charged to the jury, to which Applicant responded it was not. (PCR Tr. 19-20).

20-21). Applicant asserted that because the incident occurred at night, there was plenty of time in between the cleaning of the windows and the time of the incident for the fingerprint to have been placed on the door. (PCR Tr. 21). Applicant further argued there was no testimony presented regarding which way the door swung and it was left to the “pure speculation [of] the jury” to determine which way the door swung. (PCR Tr. 22-23). Applicant argued Counsel was ineffective for failing to make the above arguments at trial during the motion for a directed verdict; further Applicant asserted Counsel invited the State to charge hand of one, hand of all despite a lack of evidence to support the jury charge. (PCR Tr. 21-24). Applicant contended that the evidence presented at trial only amounted to mere suspicion of guilt and therefore, Counsel was ineffective for failing to properly argue the directed verdict motion<sup>7</sup>. (PCR Tr. 24-25).

Applicant also argued his due process rights and equal protection rights were violated. (PCR Tr. 27). Specifically, Applicant argued the excessive delay in the disposition of this post-conviction relief action caused him prejudice. (PCR Tr. 27). Applicant testified he filed his post-conviction relief application on May 27, 2011. (PCR Tr. 27). Applicant testified that the initial evidentiary hearing for this application was heard September 2011 by the Honorable Deadra Jefferson who denied Applicant relief on all claims raised within the application. (PCR Tr. 30). Applicant stated the matter was then appealed and sat before the Supreme Court for seven years without a final resolution. (PCR Tr. 31). Applicant testified after the case was remanded back to the circuit court for *de novo* review, it sat pending for an additional three years without a resolution. (PCR Tr. 28, 32). Applicant alleges that as a result of this delay he has lost contact with the

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<sup>7</sup> Applicant requested this Court render a “directed verdict on [the] charges based on the lack of evidence that the State failed to produce beyond a reasonable doubt that [Applicant] committed the crime under the hand of one, hand of all theory.” (PCR Tr. 25). Applicant further stated that because he believed the State had failed to meet the elements required under the hand of one, hand of all theory, the conviction should be vacated. (PCR Tr. 25-26).

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witnesses who were present and willing to testify at his initial evidentiary hearing, therefore resulting in prejudice. (PCR Tr. 31). Applicant further argued, as he did during his motion to relieve counsel (Christopher L. Murphy), that this hearing was originally scheduled on December 7, 2021, and because the matter was continued to December 8, 2021, he was prejudiced. (PCR Tr. 32-33). This Court asked Applicant again, as it did at the start of the hearing, whether he wished to move forward without his alleged alibi witness. (PCR Tr. 33). Applicant stated he wanted to make his argument regardless of this alleged alibi witness's unavailability to testify. (PCR Tr. 33). Applicant testified that as a result of the continuance, his alibi witness was lost and he was denied a full and fair opportunity to present his alibi. (PCR Tr. 34). Applicant testified that he had further been denied equal protection of law because he believed the State had purposely discriminated against him by using delay tactics which caused his case to be delayed for ten and a half years. (PCR Tr. 35).

Lastly, Applicant argued Counsel was ineffective for failing to object to the hand of one, hand of all jury charge. (PCR Tr. 37-38). Applicant asserted that because Counsel argued the elements of hand of one, hand of all in his motion for a directed verdict, his failure to object to the jury charge of hand of one, hand of all, Counsel was ineffective. (PCR Tr. 38). Applicant again argued the State failed to produce any evidence supporting the hand of one, hand of all jury charge and failed to produce evidence supporting a prior plan scheme between Applicant and codefendant. (PCR Tr. 39). After the State rested its case at this hearing and over the State's objection, Applicant further testified the jury charge did not include mention of mere presence, mere knowledge, and or mere association. (PCR Tr. 66). Applicant argued there was evidence in the case to support all three. (PCR Tr. 66).

*Trial Counsel James W. Smiley, IV Testimony*

The State called Applicant's trial counsel, James W. Smiley, IV (Counsel), as a witness. Counsel testified he has been practicing law since 1993 and that one hundred percent of his practice during that time has been in criminal law. (PCR Tr. 41). Counsel testified he was retained early on in this case and felt he had adequate time to prepare for Applicant's trial. (PCR Tr. 41-42). Counsel testified that despite the age of this case, he remembered it well. (PCR Tr. 41). Counsel testified he has known Applicant from the time he was "knee-high" and talked frequently with Applicant's mother, Tomasina, prior to Applicant's trial. (PCR Tr. 49). When asked by the State to provide a brief recitation of the facts in this case, Counsel testified the State alleged Applicant, another man, and another man who was never identified, went into a clothing store in Charleston, put the owner on his stomach, and beat him with the butt of an AK-47 gun<sup>8</sup>. (PCR Tr. 42). Counsel stated police collected evidence from the scene and found a fingerprint on the front door of the store where the incident occurred. (PCR Tr. 42). Counsel testified law enforcement's investigation led them to Ranger Drive where Applicant lived. (PCR Tr. 43). Counsel testified law enforcement located a pistol with DNA from the victim/store owner on it in a car in the front yard of the home Applicant lived in. (PCR Tr. 43). Counsel further testified clothes from the store where the incident took place were found in the home Applicant lived in, had the tags still on them, and were being sold. (PCR Tr. 43).

When asked whether Counsel discussed possible defenses with Applicant, Counsel testified he sat down with Applicant at the beginning of his representation and told him: "Darrell, the way I do this is, I get the State's case and I look at it. If the State can't make up the allegations, you and I aren't ever going to have a talk, all right, about that if I don't need you, quite frankly."

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<sup>8</sup> Counsel also noted he believed there was a pistol involved in the incident. (PCR Tr. 42).

(PCR Tr. 43-44). Counsel posited that as a result of that conversation Applicant could have believed he was not supposed to talk to Counsel at all. (PCR Tr. 44). Counsel elaborated he and Applicant did have discussions regarding specific pieces of evidence the State had. (PCR Tr. 44).

Counsel stated he focused his defense on the State not being able to meeting their burden because the State did not have any direct evidence linking Applicant to the incident. (PCR Tr. 44). Counsel testified he recalled Applicant admitting to being in the store earlier on the day of incident. (PCR Tr. 44). Counsel testified he did not allow Applicant to tell him he had nothing to do with the incident; but rather, would discuss each part of the case with Applicant. (PCR Tr. 44). Counsel stated he and Applicant discussed the print and the gun found in the front yard with the victim's DNA on it<sup>9</sup>. (PCR Tr. 44-45). Counsel testified Applicant maintained he had never seen the gun before. (PCR Tr. 45). Counsel testified he also spoke with Applicant's mother, Tomasina Goss, about the clothing that was found. (PCR Tr. 45). Counsel stated Tomasina told him clothes were regularly sold and traded at the house; Counsel referred to this practice as a jockey lot. (PCR Tr. 45). Counsel testified he presented each piece of circumstantial evidence to the jury and attempted to show there were other reasonable explanations for the evidence. (PCR Tr. 45). Counsel testified he believed he had a thorough, well-thought-out defense to the State's evidence. (PCR Tr. 45).

Regarding Applicant's allegation Counsel failed to properly argue the directed verdict motion, Counsel testified he argues for a directed verdict in all cases on general grounds and add specifics if there are additional points to be made. (PCR Tr. 46). Counsel testified he made an accomplice liability argument in this matter and argued the circumstantial evidence that existed did not rise to a level that allowed the matter to go to a jury. (PCR Tr. 46-47). Counsel testified he attacked the State's case by going after the circumstantial evidence and attempting to differentiate

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<sup>9</sup> Counsel testified he believed he elicited some testimony at trial from Tomasina Goss, Darrell's mother, that the gun was Darrell's brother's gun. (PCR Tr. 45).



Applicant's case from Applicant's co-defendant's case. (PCR Tr. 47). Counsel noted he remembered specifically asking the victim whether he could identify Applicant at trial and that the victim responded he could not. (PCR Tr. 47). Counsel testified that because the victim had stated Applicant was not present, Applicant was therefore not a principal. (PCR Tr. 47). Counsel further testified the State had failed to present any evidence of a plan. (PCR Tr. 48). Counsel testified he moved for a directed verdict again after the close of evidence to preserve the record but did not bring up any additional points at that time. (PCR Tr. 48).

Regarding alibi witnesses, Counsel testified he did not hear about alibi witnesses prior to trial and if he did, did not explore any alibi witnesses. (PCR Tr. 48-49). Counsel testified he believed there was strong evidence to support the defense that there was not a common scheme or plan. (PCR Tr. 49). Counsel further testified he did not think the exploration of alibi witnesses would be congruent with his defense strategy and was leery of presenting an alibi in this case – again, reiterating he believed he had a good defense. (PCR Tr. 49). Counsel further testified he did not have a good faith belief an alibi existed and should he have believed one did, he would have investigated further. (PCR Tr. 50). Counsel testified that even if there was an alibi, he would not have pursued the defense based on the timeline of the incident and the evidence found. (PCR Tr. 51). Counsel stated he believed the case would have been “dead on arrival” should they have tried to introduce an alibi. (PCR Tr. 51). Counsel stated he has rarely used an alibi defense in career because “if your alibi doesn't work, the jury doesn't believe a damn word you say.” (PCR Tr. 51). Counsel agreed the risk of presenting an alibi defense in this case outweighed the benefit. (PCR Tr. 51).

On cross-examination, Counsel testified his motion for a directed verdict was focused on the lack of evidence presented by the State to support a hand of one, hand of all theory and argued

the State had not presented substantial evidence for the question to go to the jury. (PCR Tr. 52-53). Counsel testified he argued there was no direct evidence placing Applicant at the store. (PCR Tr. 53). Counsel testified he argued that to charge Applicant under hand of one, hand of all, the State would have to show Applicant was present at the scene of the crime to be considered a principal. (PCR Tr. 54). Counsel stated that because there was no evidence placing Applicant at the scene of the crime, the State's theory could only survive if they had proven Applicant was a planner or had aided in the commission of the crime. (PCR Tr. 54). Counsel testified he argued there was no evidence of either of those things – there was nothing to show Applicant was a planner or that Applicant had conspired to commit this crime – and therefore, the State's hand of one, hand of all theory could not survive. (PCR Tr. 54-55). Counsel maintained he did not believe the State had proven Applicant planned to commit the crimes, nor did the State show any evidence of Applicant's participation in the crime. (PCR Tr. 56).

Regarding the jury charge, Applicant inquired whether Counsel, upon refreshing his recollection, saw anywhere the judge mentioned a plan as an element of the hand of one, hand of all theory. (PCR Tr. 58). Counsel testified he did not. (PCR Tr. 58). Counsel testified that in his experience, under common scheme and plan, hand of one, hand of all, it is required to show two or more person commensurate for an illegal purpose and that one or both do acts in further of that. (PCR Tr. 59). Counsel testified that the jury charge did not state anything about a plan or a scheme as an element to hand of one, hand of all. (PCR Tr. 59). Applicant inquired if Counsel believed there was anything missing from the jury charge. (PCR Tr. 60). Counsel responded that the charge given was a "bare" hand of one, hand of all charge. (PCR Tr. 60). Counsel testified that eleven years after this trial he would argue for more in the charge while noting that the charge did state "two or more people acting together, the act of one is the act of all". (PCR Tr. 60). Counsel stated

that he did not believe at the time of trial that the charge was objectionable. (PCR Tr. 61).

Regarding Sharon Goss, Applicant inquired whether Counsel was familiar with the name. (PCR Tr. 62). Counsel testified that he knew the name but was unaware of how he became familiar with it. (PCR Tr. 62). Counsel testified he did not recall if there was discovery disclosed showing the car where the gun with victim's DNA on it was found belonged to Sharon Goss. (PCR Tr. 63). Counsel did agree the car where the gun was found did not belong to Applicant. (PCR Tr. 63). Regarding investigation, Applicant questioned Counsel whether he investigated the man who owned the car in which the gun was found. (PCR Tr. 63). Counsel responded he did not. (PCR Tr. 63). Counsel stated he did not conduct an investigation because he did not believe it would be fruitful. (PCR Tr. 63). Counsel stated that any investigation would not have changed his defense that the gun was not Applicant's gun. (PCR Tr. 64). Counsel stated he did not expect to find Sharon Goss, the owner of the car, and have him testify that he bought a gun which had DNA all over it. (PCR Tr. 64).

***Witness Sharon Goss's Testimony***

Applicant called Sharon Goss, his cousin, to testify after the State rested their case. (PCR Tr. 67). Sharon testified that a gun was found in a car registered to him in 2007. (PCR Tr. 67). Sharon testified he obtained the pistol when he purchased some merchandise – clothes and firearms - from “some guys”. (PCR Tr. 67). Sharon testified he paid around \$500 dollars for all of the merchandise, including the pistol. (PCR Tr. 68). Sharon testified that after purchased the gun, he placed it in his vehicle that was parked in front of his residence. (PCR Tr. 68). Sharon testified that at the date of Applicant's trial he had been charged with possession with intent to distribute cocaine charge. (PCR Tr. 69). Sharon testified at the time of Applicant's trial he would have been willing to testify that he had purchased the gun illegally despite having a pending charge of his own. (PCR

Tr. 69). Sharon testified he did not talk to Counsel during the course of Applicant's case. (PCR Tr. 69).

## V. Standard of Review

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. 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 post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in *Strickland* to

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determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. *Id.*

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonably professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. "The burden of rebutting this presumption 'rests squarely on the defendant,' and '[i]t should go without saying that the absence of evidence cannot overcome [i]t.'" *Dunn v. Reeves*, 594 U.S. \_\_\_, \_\_\_, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, "even

if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if '[t]he record does not reveal' that counsel took an approach that *no competent lawyer would have chosen*." *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24).

"When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." *Dunn*, 594 U.S. \_\_\_, 141 S. Ct. at 2410 (quoting *Harrington*, 562

U.S. at 106–107). “Such decisions are particularly difficult because certain tactics carry the risk of ‘harm[ing] the defense’ by undermining credibility with the jury or distracting from more important issues.” *Id.* (quoting *Harrington*, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial*.” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had

no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Id.* at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

JBM/21



## **VI. Findings of Fact & Conclusions of Law**

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments made by counsel and Applicant, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised and finds each to be without merit. Therefore, pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

### ***Allegation Counsel Failed to Properly Argue Motion for Directed Verdict***

Applicant testified his attorney did not properly argue his motion for a directed verdict. Applicant testified he believed Counsel should have argued the State did not have enough evidence to support a jury charge under hand of one, hand of all, and that the State's evidence only raised a mere suspicion of Applicant's guilt. Applicant further argued Counsel invited the State to charge Applicant under hand of one, hand of all despite a lack of evidence to support the charge.

When considering a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. *State v. Larmand*, 415 S.C. 23, 30, 780 S.E.2d 892, 895 (2015) (citing *Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). The role of the trial court is only to determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *State v. Bennett*, 415 S.C. 232, 781 S.E.2d 352 (2016). If there is any direct or circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. *State v. Cherry*, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004). "In deciding motions for a directed verdict. . . the evidence and all reasonable inferences which may be drawn from it must

be viewed in the light most favorable to the non-moving party. If more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury.” *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 611, 518 S.E.2d 591, 597 (1999). “[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge’s ruling upon a motion for a directed verdict must stand absent an error of law.” *State v. Nix*, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986). The trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. *State v. Hernandez*, 382 S.C. 620, 625-26, 677 S.E.2d 603, 605-06 (2009). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *State v. Ladner*, 373 S.C. 103, 120, 644 S.E.2d 684, 693 (2007).

This Court has reviewed the relevant portion of the transcript and finds no deficiency in Counsel’s handling of this motion. (Trial Tr. 438 – 446). Counsel credibly testified he argued for a directed verdict as to all three charges – assault and battery with intent to kill, armed robbery, and kidnapping – raising the issues of whether the State had sufficiently proved Applicant was present during the robbery and whether the State had proved a link to Applicant and the gun used in the incident. (Tr. p. 439 – 440). At trial during his motion, Counsel noted the victim in this case, when asked directly, testified Applicant was not present in the store during the armed robbery. (Trial Tr. 438). In response, the trial court stated it believed Counsel’s interpretation of the victim’s testimony was a play on words. The trial court further noted victim’s testimony was not contradictory to the State’s case because though victim testified he did not see Applicant in the store, he knew there were four black males who he did not know present at the time of the incident<sup>10</sup>. (Trial Tr. 439). Counsel further argued during his motion to the trial court that the State

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<sup>10</sup> The trial court later inquired whether the victim stated Applicant was not in the store. (Trial Tr. 478-479). Counsel represented to the trial court he had asked victim whether he recognized Applicant from the

could only pursue this case under the hand of one, hand of all theory, and to do so, must show Applicant was a planner or some kind of accessory. (Trial Tr. 438-439). Counsel argued the State had produced no evidence to place Applicant at the store during the robbery, nor had the State shown any link between the State's evidence and Applicant. (Trial Tr. 439-440). The trial court denied the motion for a directed verdict. (Trial Tr. 446). At the close of the Defense's case, Counsel renewed the motion for directed verdict and the trial judge declined to change his ruling. (Trial Tr. 480).

When considering a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. *State v. Larmand*, 415 S.C. 23, 30, 780 S.E.2d 892, 895 (2015) (citing *Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). If there is any direct or circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. *State v. Cherry*, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004). This Court finds there were clear factual issues for the jury to consider at the close of the State's case; the trial court correctly denied the motion. Therefore, this Court finds no deficiency with Counsel's handling of the motion and further finds Applicant did not suffer prejudice. Accordingly, this allegation is therefore **DENIED**.

***Allegation Applicant's Due Process and Equal Protection Rights Have Been Violated***

Applicant further asserted his continued incarceration is in violation of his due process and equal protection rights due to excessive delay in the disposition of this matter. At the evidentiary hearing, in support of this allegation, Applicant testified to the procedural history of this matter over all, as well as testified to the continuance occurring during this term of court and the prejudice

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robbery, to which victim had testified he did not. (Trial Tr. 478). The trial court warned Counsel of mischaracterizing the witness's testimony in closing by stating victim testified Applicant was not in the store during the robbery. (Trial Tr. 479).

Applicant believes he has incurred. Specifically, Applicant argued post-conviction relief counsel, Christopher L. Murphy, failed to inform him of the scheduling change for this hearing from December 7, 2021, until December 8, 2021. As such, Applicant argued one of his out-of-state witnesses, Felicia Henderson, was unavailable to testify. Applicant further alleged that he has been denied equal protection because the State of South Carolina has purposefully discriminated against him by using delay tactics.

As an initial matter, this Court notes it entered into a colloquy with Applicant regarding his alleged unavailable out-of-state witness. This Court specifically inquired whether Applicant wished to proceed with the hearing without his witness, to which Applicant unequivocally responded he did. Applicant informed this Court he had other claims to raise that did not require the unavailable witness. This Court notes it again inquired into Applicant's understanding and willingness to proceed without all alleged necessary witnesses during Applicant's testimony, to which Applicant again indicated he understood and wished to proceed. Therefore, to the extent Applicant alleges he was prejudiced by the one-day continuance in this matter during the December 2021 post-conviction relief term of court, this Court finds that allegation meritless.

As to allegation alleging excessive delay in the disposition of the matter, Applicant asserted he filed this application in May 2011. Applicant testified that following his initial evidentiary hearing denying relief he filed an appeal. Applicant testified that his appeal sat pending for seven years before the Court before being remanded. Applicant testified that after this matter was remanded back to the circuit court for a *de novo* evidentiary hearing it sat for an additional three years in the circuit court without a resolution. Applicant claims that as a result of these delays he has lost contact with witnesses who were present and willing to testify at his initial evidentiary hearing.

As to the allegations of excessive delay relating to the length of time this post-conviction relief matter has been pending, this Court finds Applicant has failed to show his due process rights were violated. This matter was remanded back to the circuit court for a *de novo* evidentiary hearing on October 17, 2018. After this matter was remanded, Applicant filed a Motion to Stay Proceedings on January 7, 2019, requesting the matter be stayed for one year as Applicant had filed a federal habeas corpus action. On January 29, 2019, an Order staying Applicant's PCR matter for one year was filed. Additionally, prior to this hearing, Applicant filed a motion to appoint counsel on July 26, 2021. That motion was heard and granted during the September 2021 term of court in the 9<sup>th</sup> Circuit. Therefore, based on Applicant's procedural history, this Court finds Applicant finds this allegation meritless.

As to Applicant's allegation he has been denied equal protection because the State of South Carolina has purposefully discriminated against him by using delay tactics. This Court finds that allegation wholly meritless as Applicant has shown no evidence to support a claim his equal protection rights were violated. This Court finds Applicant cannot show prejudice as a result of the alleged delay. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

***Allegation Counsel Failed to Object to Jury Charge of Hand of One, Hand of All***

Applicant further alleges Counsel should have objected to the hand of one, hand of all jury charge. Applicant asserts Counsel maintained the elements of hand of one, hand of all were not met when arguing Applicant's motion for a directed verdict, and therefore was ineffective for failing to object to the jury charge as a whole.

“‘Under the ‘hand of one is the hand of all’ theory [of accomplice liability], one who joins with another to accomplice an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.’” *State v. Thompson*,

374 S.C. 257, 261-62, 647 S.E.2d 702, 704-05 (Ct. App. 2007) (quoting *State v. Condrey*, 394 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002)). Though “[m]ere presence and prior knowledge that a crime was going to be committed, without more is insufficient to constitute guilt”, ““presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a [principal].”” *Id.* (quoting *State v. Hill*, 268 S.C. 390, 395-96, 234 S.E.2d 219, 221 (1977)). “In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties.” *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010).

At the evidentiary hearing, Counsel credibly testified he did not believe the hand of one, hand of all charge was objectionable at the time of trial. Counsel further testified his defense was to show the State had not met their burden – specifically, that the State did not have any direct evidence linking Applicant to the incident. Counsel testified he believed he had a thorough, well-thought-out defense and that he presented each piece of circumstantial evidence to the jury, attempting to show there were other reasonable explanations for the evidence.

This Court finds Applicant has failed to meet his burden and finds no deficiency on the part of Counsel nor prejudice therefrom in regards to this allegation. Evidence in the record supports a charge on the hand of one is the hand of all and the charge was appropriately given to the jury. Therefore, this Court finds Counsel would have had no valid basis for an objection to the instruction. Accordingly, this Court finds Counsel was not deficient for failing to object to the charge given, finds Applicant was not prejudiced by Counsel’s failure to object to the jury charge, and dismisses this allegation. Accordingly, this Court finds this allegation must be **DENIED**.

***Allegation Counsel Failed to Investigate Sharon Goss as Witness***

Applicant argues Counsel performed an inadequate pre-trial investigation into Applicant's cousin, the owner of the car where the gun with victim's DNA was found, Sharon Goss. A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. *Strickland*, at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney's "[f]ailure 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." *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing *Kibler v. State*, 267 S.C. 250, 227 S.E.2d 199 (1976)).

An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* at 690; *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

This Court finds Applicant has failed to establish any deficiency in Counsel's preparation for trial. Counsel testified he knew the car in which the gun was found did not belong to Applicant. Counsel further testified he did not investigate the owner of the car where the gun was found

*TBM/28*

because it would not have changed his defense strategy – that Applicant was not the owner of the gun. Therefore, this Court finds Counsel was not constitutionally ineffective and did not fail to conduct an adequate pre-trial investigation. As such, Applicant has failed to show any deficiency in Counsel's performance and any resulting prejudice. Accordingly, this allegation is **DENIED**.

***Allegation Counsel Failed to Request Mere Presence,  
Mere Knowledge, Mere Association Jury Charges***

Though Applicant did not make this allegation in his original application or amended applications, he alleged through his testimony at the evidentiary hearing Counsel was ineffective for failing to request a mere presence, mere knowledge, and/or mere association jury charge. Applicant presented no evidence regarding how he was prejudiced by Counsel's alleged failure to request these jury charges.

Mere association with another who committed a crime does not make that person an accomplice or a co-conspirator to the guilty perpetrator, nor does mere presence at the scene of the crime make a person an accomplice or a co-conspirator. *State v. Kelsey*, 331 S.C. 50, 76, 502 S.E.2d 63, 77 (1998). Counsel testified at this evidentiary hearing that his defense was focused on the State's inability to meet their burden. Counsel testified the State did not present any direct evidence linking Applicant to the incident. Counsel further testified that throughout the trial he attempted to show reasonable explanations for each piece of circumstantial evidence the State presented. Counsel maintained at this hearing he did not believe the State had proven Applicant either participated or planned to commit these crimes.

Therefore, this Court finds Applicant has failed to meet his burden of showing any ineffectiveness. This Court finds Counsel's defense strategy was centered around proving Applicant was not involved in the commission of these crimes in any capacity. This Court further



finds a request for a mere presence, mere knowledge, and/or mere association jury charge wholly conflicts with Counsel's strategy.

Thus, this Court cannot find any prejudice to Applicant. Accordingly, Applicant has failed to meet his burden under *Strickland*, and his request for relief by way of this allegation is **DENIED**.

## VII. Conclusion

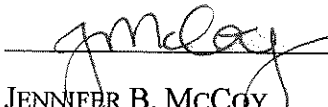
Based on the evidence presented at the PCR hearing and a thorough review of the record before this Court, this Court finds Applicant has not proven any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application is denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203 SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

### IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 14 day of June, 2022.

  
 JENNIFER B. MCCOY  
 Presiding Circuit Court Judge  
 Ninth Judicial Circuit

Charleston, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Darrell L. Goss, #305517,  
Applicant,

vs.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE 9th JUDICIAL CIRCUIT

Case No. : 2011-CP-10-3782

MOTION TO ALTER OR  
AMEND JUDGMENT

**FILED**

JUN 27 2022

JULIE J. ARMSTRONG  
CLERK, C.P. & G.S.

TO: THE HONORABLE JENNIFER B. MCCOY ; PRESIDING JUDGE:

NOW COMES Applicant, Darrell L. Goss, pro se, and moves this Honorable Court, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and the South Carolina Supreme Court's ruling in both Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) and Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), for an Order altering or amending its judgment entered on June 15, 2022, and received on June 20, 2022.

The basis for this motion is as follows :

ARGUMENTI. The PCR Court should Alter or Amend its Judgment and Address Applicant's Claim of an Unfair Jury Trial.

At his PCR hearing, Applicant informed the Court about his outstanding motions to amend. (PCR Tr. 28-29)

The Court ruled :

THE COURT : All right. Second motion to amend filed August 4th of this year. You're seeking to add new grounds, is that what it was ?

Okay. I'll allow you to amend. I mean, I'm going to consider all the grounds that you allege, so --

MR. GOSS : Yes, ma'am. I just wanted to make sure I get it before the court, because I don't want to forget anything -- if this case has to go on appeal, that my issues were properly before the court.

THE COURT : I'll allow your amendments. Go ahead.

MR. GOSS : Yes, ma'am, thank you .

( PCR Tr. 29, II. 7-22 )

In its order of dismissal, the Court acknowledged that Applicant amended his PCR application to include the following allegation :

Unfair Jury Trial : The State failed to prove each element of " the hand of one, the hand of all " accomplice liability theory beyond a reasonable doubt

( Order of Dismissal, p. 6-8, III. Issues Before This Court, No. 2 )

The Court went further and explained :

To the extent the allegations set forth in Applicant's application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, the Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice . S.C. Code Ann. § 17-27-90

Id.

Applicant hereby object to the Court's finding that he has voluntarily waived and abandoned his claim of an unfair trial. Applicant contends the Court's finding is not supported by the evidence contained in the record.

Indeed, Applicant argued / testified at his PCR hearing that he was denied a fair trial. ( PCR Tr. 14-36 ) It follows :

MR. GOSS : So, Your Honor, that's my argument. And I would be asking that the Court today render a directed verdict on these charges based on the lack of evidence that the state failed to produce beyond a reasonable doubt that I committed the crime under the hand of one, hand of all theory. And, as a result, my lawyer was ineffective. He allowed the State to violate my due process right to a fair trial, to have no case -- to have the State prove their case -- to prove each element of their case beyond a reasonable doubt.

As I stated, Your Honor, again, the stated failed to meet these elements of the hand of one, hand of all law that they charged me with .

So this whole conviction is wrongful, Your Honor, and should be vacated. And I should be immediately released from custody, Your Honor,

because I have spent the last 14 and half years of my life in prison for a crime that I did not even commit.

(PCR Tr. 25-26, II. 12-25 and 1-7)

However, the PCR Court did not specifically address this issue fair and square on its face in the order of dismissal. Therefore, Applicant respectfully asks the Court to alter or amend its order to address his claim of an unfair trial. Specifically, Applicant asks the PCR judge to make specific findings of fact and conclusions of law as to this issue, so that it can be properly preserve for appellate review, should Your Honor deny such claim. Id., Marlar.

In reviewing this claim, Applicant draws the Court's attention to the landmark case, Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979) (citing, In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970)) ("Reasonable-doubt standard of criminal law has constitutional stature, and due process clause protects accused against conviction except upon proof beyond reasonable doubt of every fact necessary to constitute crime with which he is charged"), where the United States Supreme Court held:

Due process requires that no person

be made to suffer the onus of a criminal conviction except upon sufficient proof, defined as evidence necessary to convince a trier of fact beyond reasonable doubt of the existence of every element of the offense .

In the case at hand, it is undisputed that the State failed to prove each element of accomplice liability ( commonly known as " hand of one, hand of all " ) . ( PCR Tr. 54-55 ) Thus, Applicant was denied a fair trial under the Sixth and Fourteenth Amendment to the United States Constitution . 6th, 14th Amend. Const.

## II. The PCR Court should Alter or Amend its Judgment and Address Applicant's Claim of Ineffective Appellate Counsel .

Recently, on June 16th 2022, after have receiving a copy of the (unsigned) proposed order of dismissal from the State's attorney general's office, Applicant filed a fourth motion to amend with the Court . In that motion, Applicant re-raised his claim of ineffective trial counsel for improperly arguing for a directed verdict, and he raised an entirely new claim of ineffective appellate counsel

for failing to advance the directed verdict motion on appeal. In the order of dismissal, which was filed on June 15, 2022 and received June 20, 2022, this Court did not address Applicant's new amended claim regarding the ineffectiveness of his appellate counsel pertaining to the issue(s) surrounding the directed verdict motion that he [Applicant] and his trial lawyer testified to before this Court at the PCR hearing.

Accordingly, Applicant asks the Court to grant his fourth motion to amend his PCR application, and to make specific findings of fact and conclusions of law related to this new allegation of ineffective appellate counsel.<sup>1</sup>

### CONCLUSION

Based on all the above reasons, this Court should grant Applicant's motion.

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<sup>1</sup> Should the Court deem it necessary to hold a new hearing regarding this issue of appellate counsel, Applicant concurs.



Respectfully Submitted,

Darrell L. Goss

Darrell L. Goss #305517

Lieber Corr. Inst.

P.O. Box 205

Ridgeville, SC 29472

June 22, 2022

## FORM 5

STATE OF SOUTH CAROLINA )

County of Charleston )Darrell L. Goss # 305517 )

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

v. )

State of South Carolina )

2023-CP-10-4698  
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

(Austin Appeal)

FILED  
2023 SEP 25 AM 10:53  
JULIE J. HARRINGTON  
CLERK OF COURTINSTRUCTIONS - 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 Evans Correctional Institution
2. Name and location of Court which imposed sentence The Honorable J.C. "Buddy" Nicholson Jr., Charleston County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Joy Mack
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Armed Robbery (2007-GS-10-10805)
  - (b) Kidnapping (2007-GS-10-10806)

- (c) Assault & Battery W/Intent to Kill (2007-GS-10-10807)
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Twenty (20) years, concurrently (February 26, 2009)
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty Jury Trial
- (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. Affirmed
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. May 17, 2011
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Gess, Op. No. 2011-UP-214
- 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) PCR counsel failed to file appeal on Applicant's behalf
- (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? Yes
- (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? \_\_\_\_\_
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. Application for Post Conviction Relief
- ii. Petition for Writ of Habeas Corpus
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. The Honorable Jennifer B. McCoy, Charleston County Court of Common Pleas
- ii. The Honorable Bruce H. Hendricks, United States District Court
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. Denied and Dismissed
- ii. Pending
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. June 14, 2003
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. Goss v. State, C/A No. 2001-CP-10-3782
- ii. Goss v. Jackson, C/A No. 2003-CV-103-BHH
- 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?

Yes

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

(a) which grounds have been presented:

- i. Ineffective counsel in not filing PCR appeal
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. Application for Post Conviction Relief (2003-CP-10-3465)
- 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. James W. Smiley  
 \_\_\_\_\_  
 ii. Robert M. Pachak  
 \_\_\_\_\_  
 iii. Christopher L. Murphy  
 \_\_\_\_\_  
 (b) the proceedings at which each such attorney represented you:  
 i. Trial and Sentencing  
 \_\_\_\_\_  
 ii. Direct Appeal  
 \_\_\_\_\_  
 iii. Post Conviction Relief  
 \_\_\_\_\_

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

I want to appeal the denial of my first post conviction  
relief application (2011-CP-10-3782) pursuant to Austin v.  
State, 305 S.C. 453, 409 S.E.2d 395 (1991).

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

No

STATE OF SOUTH CAROLINA )

VERIFICATION

County of Bennettsville )

I, Darrell L. Goss, 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.

Darrell L. Goss

SWORN to and subscribed before me this 14th  
 day of September, 2023

Sandra Ouellet (L.S.)  
 Notary Public

My Commission Expires: 2/17/24

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

I, Darrell L. Goss, 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.

Darrell L. Goss  
Applicant

SWORN or affirmed to and subscribed before me this

14th day of September, 2023

Sandra Aultman  
Notary Public

My Commission Expires: 2/17/24



## FORM 5

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )Darrell L. Goss # 305517  
Full name and prison number (if any) of Applicant. )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

CASE NO : 3033-CF-10-1698

Amended  
APPLICATION FOR  
POST-CONVICTION RELIEF /  
Austin Appeal / Declaratory  
Judgment

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 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 Evans Correctional Institution
2. Name and location of Court which imposed sentence The Honorable J.C. Nicholson
3. Name(s) of co-defendant(s) (if any) Joy Mack
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Armed Robbery ( 3007-GS-10-10805 )
  - (b) Assault & Battery w/ Intent to Kill ( 3007-GS-10-10806 )
  - (c) Kidnapping ( 3007-GS-10-10807 )
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) February 26, 2009 ( 30 years on each count, ran concurrent )
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty Jury Trial \_\_\_\_\_
- (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. Affirmed \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. May 17, 2011 \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Goss, Opinion No. 2011-UP-214 \_\_\_\_\_
- 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:

GROUND S FOR RELIEF

1. PCR counsel was ineffective for failing to appeal the denial of Applicant's initial PCR application. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

a. Pursuant to the S.C. Supreme Court's ruling in Hazel v. State, 377 S.C. 60, 659 S.E.2d 137 (2008), Applicant requests the Court to issue a declaratory judgment declaring that his kidnapping conviction did not include a criminal sexual offense or attempted criminal sexual offense and would not require him to register **as** a sex offender.

### GROUND'S FOR RELIEF

1. PCR counsel was ineffective for failing to appeal the denial of Applicant's initial PCR application. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

a. Pursuant to the S.C. Supreme Court's ruling in Hazel v. State, 377 S.C. 60, 659 S.E.2d 137 (2008), Applicant requests the Court to issue a declaratory judgment declaring that his kidnapping conviction did not include a criminal sexual offense or attempted criminal sexual offense and would not require him to register as a sex offender.

- (a) see attachment
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attachment
- (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? Yes
- (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. Application for Post Conviction Relief
- ii. Petition for Writ of Habeas Corpus
- iii. Application for Post Conviction Relief / Declaratory Judgment
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. The Honorable Jennifer B. McCoy, Circuit Court Judge
- ii. The Honorable Bruce H. Hendricks, U.S. District Court Judge
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (c) the disposition thereof:
- i. Denied
- ii. Denied
- iii. Pending

- iv. \_\_\_\_\_
- (d) the date of each such disposition:
- i. June 14, 2033
- ii. February 27, 2034
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Goss v. State, C/A No. 2011-CP-10-3783
- ii. Goss, Sr. v. Kendell, C/A No. 2022-cv-103-BHH
- iii. Goss v. State, C/A No. 2024-CP-10-1360
- 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) Improper forum
- (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. James W. Smiley \_\_\_\_\_
- ii. Robert M. Pachak \_\_\_\_\_
- iii. Christopher L. Murphy \_\_\_\_\_

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

- i. Trial \_\_\_\_\_
- ii. Appeal \_\_\_\_\_
- iii. Post Conviction Relief \_\_\_\_\_

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

I want to appeal the denial of my initial PCR application \_\_\_\_\_

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

No \_\_\_\_\_

STATE OF SOUTH CAROLINA

)

)

VERIFICATION

County of Bennett Hsville

)

Darrell L. Goss

I,           , 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.

*Darrell L. Goss*

SWORN to and subscribed before me this 11<sup>th</sup>  
day of June, 2024.

*Sandra Outlaw*

(L.S.)

Notary Public

My Commission Expires: 2/28/34



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

Darrell L. Goss

I, \_\_\_\_\_, 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.

*Darrell L. Goss*

Applicant

SWORN or affirmed to and subscribed before me this

11th day of June, 2024

*Sandra Dutton*

Notary Public

My Commission Expires: 2/28/34

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Darrell L. Goss, #305517,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
)

) CASE NO. 2023–CP–10-04698  
)

**RETURN AND MOTION  
TO DISMISS**

(No appointment of counsel)

FILED  
2024 JUL -2 AM 11:19  
CLERK OF COURT

In response to the application for post-conviction relief (PCR) filed by Darrell L. Goss (Applicant) on September 25, 2023, and received by Respondent on December 8, 2023,<sup>1</sup> Respondent makes the following return and motion to dismiss:<sup>2</sup>

### **PROCEDURAL HISTORY (STATE COURT)**<sup>3</sup>

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate twenty-year sentence. In September 2007, the Charleston County Grand Jury indicted Applicant for assault and battery with intent to kill, kidnapping, and armed robbery. These charges arose from an incident involving victim Aytekin Ayazgok on June 14, 2007.

On February 23-26, 2009, Applicant proceeded to a jury trial before the Honorable J.C.

<sup>1</sup> According to an email from the Charleston County Clerk of Court, this filing had to be approved by the Chief Administrative Judge because Applicant has filed more than three prior PCR applications.

<sup>2</sup> Respondent's return was due to be filed within ninety days of service. See Rule 12(a), SCRCP ("[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 return, and in light of no demonstrable prejudice to Applicant, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing the Court may fix the time in which the State must respond); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the time limit prescribed by the statute is not mandatory but discretionary with the trial court).

<sup>3</sup> Applicant has filed four federal habeas corpus petitions related to these convictions; three have been dismissed due to failure to exhaust State remedies (2:18-cv-02938-BHH, mandate issued Nov. 10, 2021; 2:20-cv-04133-BHH, mandate issued Sept. 20, 2021; 2:23-cv-00722-BHH, dismissed June 6, 2024, mandate not yet issued). The fourth was dismissed based upon Applicant's motion to dismiss (21-200, dismissed September 1, 2021).

Nicholson. James Smiley, Esquire, represented Applicant, and Assistant Solicitors Trip Lawton and Kevin Hales prosecuted the case.<sup>4</sup> The jury convicted Applicant as indicted, and Judge Nicholson sentenced him to concurrent sentences of twenty years for each charge.

Applicant filed a direct appeal, which was perfected by Appellate Defender Robert M. Pachak. On appeal, Applicant argued the trial court erred in (1) overruling defense counsel's objection to the solicitor's burden shifting in closing argument and (2) refusing to allow defense counsel to impeach the victim with a pending charge of counterfeiting goods. The Court of Appeals affirmed both issues on the merits. State v. Goss, Up. Op. No. 2011-UP-214 (filed May 17, 2011). The remittitur was sent June 9, 2011.

On May 27, 2011, Applicant filed his first PCR application alleging ineffective assistance of counsel (2011-CP-10-3782). Respondent filed a return requesting an evidentiary hearing. On September 11, 2011, an evidentiary hearing convened before the Honorable Deadra L. Jefferson. Applicant was present and represented by Charles Brooks, Esquire. Assistant Attorney General Matthew S. Friedman represented Respondent.

On December 1, 2011, Judge Jefferson issued an order denying and dismissing with prejudice Applicant's PCR application. Applicant filed a petition for a writ of certiorari from the denial of his application (2011-204386), and the Court of Appeals granted certiorari. On July 27, 2016, the Court of Appeals issued an opinion affirming. State v. Goss, 2016-UP-382. Applicant filed a petition for a writ of certiorari in the Supreme Court of South Carolina, and the Supreme Court granted certiorari. On October 17, 2018, the Supreme Court issued an order remanding for a de novo PCR hearing.<sup>5</sup> The remittitur was sent November 2, 2018.

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<sup>4</sup> Applicant was tried with co-defendant Joy Mack, who was represented by Alex Apostolou, Esquire.

<sup>5</sup> Pertinently, the Court stated, "We emphasize the proceedings will be de novo, and neither party may rely upon testimony presented at the initial hearing which is the subject of this appeal."

On December 8, 2021, a de novo evidentiary hearing convened before the Honorable Jennifer B. McCoy.<sup>6</sup> Applicant was present and initially represented by Christopher Murphy, Esquire.<sup>7</sup> At the start of the hearing, Applicant moved to proceed pro se, and Judge McCoy granted his request. Assistant Attorney General Samantha Weidauer represented Respondent. At the hearing, Applicant testified on his behalf and called as a witness his cousin Sharon Goss. Respondent called as a witness, trial counsel James Smiley, Esquire.

On June 21, 2022—*after* the PCR evidentiary hearing, Application filed a 4<sup>th</sup> Motion to Amend PCR Application. On June 15, 2022, Judge McCoy issued an order denying and dismissing Applicant's PCR application.<sup>8</sup>

On June 27, 2022, Applicant filed a "Motion to Alter or Amend Judgement."<sup>9</sup> That motion is currently pending before the Court.

On July 6, 2022, Application filed a notice of appeal from the Order denying and dismissing his PCR application. That same day, he filed a motion to proceed pro se. On September 19, 2022, the Supreme Court of South Carolina issued an order denying his motion to proceed pro se. That same day, the Court sent Applicant a letter instructing him to "submit the name of the attorney you have obtained to represent you or provide proof that you have filled out and submitted the enclosed affidavit of indigency to the Division of Appellate Defense" within twenty days. The

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<sup>6</sup> On January 7, 2019, Applicant filed a pro se motion to stay his PCR proceedings pending the disposition of his federal habeas corpus petition; that motion was granted on January 21, 2019.

<sup>7</sup> Mr. Murphy was initially appointed to represent Applicant on December 17, 2018. On January 15, 2019, Applicant filed a motion to proceed pro se, which was granted by the Honorable Roger M. Young, Sr. that same day. On July 26, 2021, Applicant filed a motion for appointment of counsel. Applicant's motion to appoint counsel was granted, and Mr. Murphy was reappointed on September 13, 2021.

<sup>8</sup> Respondent served this Order on Applicant by mail on June 16, 2022.

<sup>9</sup> Although not accompanied by a formal certificate of service, Applicant relayed in his cover letter, dated June 22, 2022, "By copy, I am also serving the State." On June 24, 2022, Applicant mailed Respondent a letter indicating he had filed the motion but "Due to the prison's policy, I was not able to receive copies of my handwritten legal documents in order to serve you a copy as required." Respondent does not take issue with the service of this motion.

Court cautioned, “Failure to timely respond may result in dismissal of this matter.” On October 24, 2022, the Court issued an order dismissing Applicant’s appeal for failure “to submit the name of an attorney or provide proof that he has filled out and submitted an affidavit of indignity with the Division or Appellate Defense.” Applicant did not file a petition for rehearing, and the remittitur was sent November 9, 2022.

#### **CURRENT APPLICATION**

On September 25, 2023, Applicant filed this PCR application alleging:

Ineffective assistance of counsel: PCR counsel failed to file appeal on Applicant’s behalf.

As relief, Respondent requests, “I want to appeal the denial of my first post conviction relief application (2011-CP-10-3782) pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).” Attached to this return and incorporated herein are the Charleston County Clerk of Court records of the underlying convictions; Applicants records from the South Carolina Department of Corrections; and the records from Applicant’s direct appeal, his 2011 PCR action, and his federal habeas corpus petitions. Respondent reserves the right to amend this return upon receipt of any additional, relevant information.

#### **MOTION TO DISMISS**

Respondent moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code because there are no genuine issues of material fact that would necessitate an evidentiary hearing. Because there are no questions of law or fact to necessitate a hearing, Respondent requests this Court issue a Conditional Order of Dismissal indicating the Court’s intent to dismiss the application and its reasons for doing so.<sup>10</sup> See S.C. Code Ann. § 17-27-70(b)

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<sup>10</sup> A proposed Conditional Order of Dismissal consistent with this return and motion to dismiss is being concurrently submitted for the Court’s consideration.

(establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (finding summary disposition appropriate when no facts need to be developed and the applicant is not entitled to relief).

Respondent further avers that because there are no questions of law or fact to necessitate a hearing, counsel does NOT need to be appointed for Applicant. See Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court, S.C. Sup. Ct. Order filed Oct. 6, 2008 (“If the Attorney General asserts that the [PCR] application is barred as being successive or as being untimely under the statute of limitations, counsel will not be appointed except upon written order of the Chief Judge for Administrative Purposes for the Court of Common Pleas in the circuit. In these cases, the Chief Judge will insure that counsel is only appointed for an indigent applicant when the facts raise a material issue regarding the applicability of the rule forbidding successive applications or the statute of limitations.”); Rule 71.1(d), SCRCF (providing appointment of counsel is necessary only when a question of law or fact necessitates a hearing). Respondent moves for summary dismissal for the following reason:

***Not Ripe***

This application should be summarily dismissed as not yet ripe for consideration. Pertinently, Applicant has a Rule 59(e), SCRCF, motion pending before the circuit court that has not yet been ruled upon. Thus, the time for the filing of his appeal has not yet started running—making Applicant’s request for a belated appeal of the 2022 order premature. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (“A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCF, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying

such motion.”). Applicant has only raised an allegation related to a late appeal of the 2022 order;<sup>11</sup> because the time to appeal that order has not yet begun, this issue is premature and not ripe for consideration.<sup>12</sup>

#### ALL OTHER CLAIMS

Any allegation not expressly admitted, qualified, or explained is hereby denied.

[Conclusion and signature page follows]

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<sup>11</sup> Any claim related to ineffective assistance of trial or appellate counsel would be untimely and barred by the doctrine against successive applications. *See* S.C. Code Ann. § 17-27-45(A) (“An application for relief pursuant to this chapter *must* be filed within one year after the entry of judgment . . . or within one year after the sending of the remittitur . . . .”); S.C. Code Ann. § 17-25-90 (“All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.”).

<sup>12</sup> Assuming, *arguendo*, Application’s filing of the Rule 59(e) motion did not stay the time for serving the notice of appeal, Respondent submits a review of the pleadings refute any allegation that Applicant is entitled to a belated appeal from the 2021 order denying his PCR application, and an evidentiary hearing is not needed to further resolve this issue. Pertinently, Applicant moved to proceed pro se at the PCR hearing, and that motion was granted. Thereafter, PCR counsel no longer owed Applicant any duty and thus could not have been ineffective. *See Austin v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (providing an “allegation that counsel failed to seek review [of a PCR order] sufficiently states a claim of ineffective assistance”).

Further, Applicant filed a timely pro se notice of appeal from the 2021 order, but his appeal was dismissed by the Supreme Court for failure to comply with its directive to submit proof that he had retained counsel or applied for counsel through the South Carolina Commission on Indigent Defense. The undisputed evidence does not show Applicant did not knowingly and intelligently waive his right to an appeal; rather, it shows he *did* appeal but failed to comply with the directives of the Supreme Court, resulting in the dismissal and subsequent remittitur of his appeal. *See Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (“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.*” (emphasis added)). Thus, Respondent submits this allegation should be summarily dismissed.

CONCLUSION

WHEREFORE, Respondent moves to summarily dismiss the application as premature and not ripe for consideration.

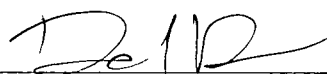
Respectfully Submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

DANIELLE DIXON  
Assistant Attorney General

By:

  
\_\_\_\_\_  
Danielle Dixon

ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

June 27, 2024



STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

Darrell L. Goss, #305517, )

Applicant, )

v. )

State of South Carolina )

Respondent, )  
\_\_\_\_\_ )

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

Case No.: 2023-CP-10-04698 )

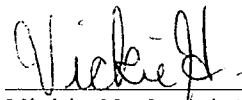
Certificate of Service by Mail )

FILED  
JUL -2 AM 11:19  
CLERK OF COURT

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 Respondent's Return and Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Darrell L. Goss#305517 (4B-0118-A)**  
**Evans Correctional Institution**  
**610 Highway 9 West**  
**Bennettsville, SC 29512**

DATED this 27<sup>th</sup> day of June, 2024.



\_\_\_\_\_  
Vickie H., Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Darrell L. Goss, #305517,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO. 2023–CP–10-04698

) **AMENDED RETURN AND MOTION**  
) **TO DISMISS**

) (No appointment of counsel)

2024 JUL -5 PM 2:09  
FILED  
CLERK OF COURT

In response to the application for post-conviction relief (PCR) filed by Darrell L. Goss (Applicant) on September 25, 2023, and received by Respondent on December 8, 2023,<sup>1</sup> Respondent makes the following return and motion to dismiss:<sup>2</sup>

**PROCEDURAL HISTORY (STATE COURT)**<sup>3</sup>

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate twenty-year sentence. In September 2007, the Charleston County Grand Jury indicted Applicant for assault and battery with intent to kill, kidnapping, and armed robbery. These charges arose from an incident involving victim Aytekin Ayazgok on June 14, 2007.

On February 23-26, 2009, Applicant proceeded to a jury trial before the Honorable J.C.

<sup>1</sup> According to an email from the Charleston County Clerk of Court, this filing had to be approved by the Chief Administrative Judge because Applicant has filed more than three prior PCR applications. On June 27, 2024, Applicant filed an Amended Application raising an additional ground.

<sup>2</sup> Respondent's return was due to be filed within ninety days of service. See Rule 12(a), SCRPC ("[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 return, and in light of no demonstrable prejudice to Applicant, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing the Court may fix the time in which the State must respond); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the time limit prescribed by the statute is not mandatory but discretionary with the trial court).

<sup>3</sup> Applicant has filed four federal habeas corpus petitions related to these convictions; three have been dismissed due to failure to exhaust State remedies (2:18-cv-02938-BHH, mandate issued Nov. 10, 2021; 2:20-cv-04133-BHH, mandate issued Sept. 20, 2021; 2:23-cv-00722-BHH, dismissed June 6, 2024, mandate not yet issued). The fourth was dismissed based upon Applicant's motion to dismiss (21-200, dismissed September 1, 2021).

On February 23-26, 2009, Applicant proceeded to a jury trial before the Honorable J.C. Nicholson. James Smiley, Esquire, represented Applicant, and Assistant Solicitors Trip Lawton and Kevin Hales prosecuted the case.<sup>4</sup> The jury convicted Applicant as indicted, and Judge Nicholson sentenced him to concurrent sentences of twenty years for each charge.

Applicant filed a direct appeal, which was perfected by Appellate Defender Robert M. Pachak. On appeal, Applicant argued the trial court erred in (1) overruling defense counsel's objection to the solicitor's burden shifting in closing argument and (2) refusing to allow defense counsel to impeach the victim with a pending charge of counterfeiting goods. The Court of Appeals affirmed both issues on the merits. State v. Goss, Up. Op. No. 2011-UP-214 (filed May 17, 2011). The remittitur was sent June 9, 2011.

On May 27, 2011, Applicant filed his first PCR application alleging ineffective assistance of counsel (2011-CP-10-3782). Respondent filed a return requesting an evidentiary hearing. On September 11, 2011, an evidentiary hearing convened before the Honorable Deadra L. Jefferson. Applicant was present and represented by Charles Brooks, Esquire. Assistant Attorney General Matthew S. Friedman represented Respondent.

On December 1, 2011, Judge Jefferson issued an order denying and dismissing with prejudice Applicant's PCR application. Applicant filed a petition for a writ of certiorari from the denial of his application (2011-204386), and the Court of Appeals granted certiorari. On July 27, 2016, the Court of Appeals issued an opinion affirming. State v. Goss, 2016-UP-382. Applicant filed a petition for a writ of certiorari in the Supreme Court of South Carolina, and the Supreme Court granted certiorari. On October 17, 2018, the Supreme Court issued an order remanding for

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<sup>4</sup> Applicant was tried with co-defendant Joy Mack, who was represented by Alex Apostolou, Esquire.

a de novo PCR hearing.<sup>5</sup> The remittitur was sent November 2, 2018.

On December 8, 2021, a de novo evidentiary hearing convened before the Honorable Jennifer B. McCoy.<sup>6</sup> Applicant was present and initially represented by Christopher Murphy, Esquire.<sup>7</sup> At the start of the hearing, Applicant moved to proceed pro se, and Judge McCoy granted his request. Assistant Attorney General Samantha Weidauer represented Respondent. At the hearing, Applicant testified on his behalf and called as a witness his cousin Sharon Goss. Respondent called as a witness, trial counsel James Smiley, Esquire.

On June 21, 2022—*after* the PCR evidentiary hearing, Application filed a 4<sup>th</sup> Motion to Amend PCR Application. On June 15, 2022, Judge McCoy issued an order denying and dismissing Applicant's PCR application.<sup>8</sup>

On June 27, 2022, Applicant filed a "Motion to Alter or Amend Judgement."<sup>9</sup> That motion is currently pending before the Court.

On July 6, 2022, Application filed a notice of appeal from the Order denying and dismissing his PCR application. That same day, he filed a motion to proceed pro se. On September 19, 2022, the Supreme Court of South Carolina issued an order denying his motion to proceed pro se. That same day, the Court sent Applicant a letter instructing him to "submit the name of the

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<sup>5</sup> Pertinently, the Court stated, "We emphasize the proceedings will be de novo, and neither party may rely upon testimony presented at the initial hearing which is the subject of this appeal."

<sup>6</sup> On January 7, 2019, Applicant filed a pro se motion to stay his PCR proceedings pending the disposition of his federal habeas corpus petition; that motion was granted on January 21, 2019.

<sup>7</sup> Mr. Murphy was initially appointed to represent Applicant on December 17, 2018. On January 15, 2019, Applicant filed a motion to proceed pro se, which was granted by the Honorable Roger M. Young, Sr. that same day. On July 26, 2021, Applicant filed a motion for appointment of counsel. Applicant's motion to appoint counsel was granted, and Mr. Murphy was reappointed on September 13, 2021.

<sup>8</sup> Respondent served this Order on Applicant by mail on June 16, 2022.

<sup>9</sup> Although not accompanied by a formal certificate of service, Applicant relayed in his cover letter, dated June 22, 2022, "By copy, I am also serving the State." On June 24, 2022, Applicant mailed Respondent a letter indicating he had filed the motion but "Due to the prison's policy, I was not able to receive copies of my handwritten legal documents in order to serve you a copy as required." Respondent does not take issue with the service of this motion.

attorney you have obtained to represent you or provide proof that you have filled out and submitted the enclosed affidavit of indigency to the Division of Appellate Defense” within twenty days. The Court cautioned, “Failure to timely respond may result in dismissal of this matter.” On October 24, 2022, the Court issued an order dismissing Applicant’s appeal for failure “to submit the name of an attorney or provide proof that he has filled out and submitted an affidavit of indigency with the Division or Appellate Defense.” Applicant did not file a petition for rehearing, and the remittitur was sent November 9, 2022.

### **CURRENT APPLICATION**

On September 25, 2023, Applicant filed this PCR application alleging:

Ineffective assistance of counsel: PCR counsel failed to file appeal on Applicant’s behalf.

As relief, Respondent requests, “I want to appeal the denial of my first post conviction relief application (2011-CP-10-3782) pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).”<sup>10</sup>

On June 27, 2024, Respondent filed an Amended PCR application again raising the Austin issue and additionally requesting the following:

Pursuant to the S.C. Supreme Court’s ruling in Hazel v. State, 377 S.C. 60, 659 S.E.2d 137 (2008), Applicant requests the Court to issue a declaratory judgment declaring that his kidnapping conviction did not include a criminal sexual offense or attempted criminal sexual offense and would not require him to register as a sex offender.

### **MOTION TO DISMISS**

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<sup>10</sup> Respondent incorporates by reference herein the records that were filed with its original return, which include the Charleston County Clerk of Court records of the underlying convictions; Applicants records from the South Carolina Department of Corrections; and the records from Applicant’s direct appeal, his 2011 PCR action, and his federal habeas corpus petitions. Respondent reserves the right to amend this return upon receipt of any additional, relevant information.

Respondent moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code because there are no genuine issues of material fact that would necessitate an evidentiary hearing. Because there are no questions of law or fact to necessitate a hearing, Respondent requests this Court issue a Conditional Order of Dismissal indicating the Court's intent to dismiss the application and its reasons for doing so.<sup>11</sup> See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (finding summary disposition appropriate when no facts need to be developed and the applicant is not entitled to relief).

Respondent further avers that because there are no questions of law or fact to necessitate a hearing, counsel does NOT need to be appointed for Applicant. See Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court, S.C. Sup. Ct. Order filed Oct. 6, 2008 ("If the Attorney General asserts that the [PCR] application is barred as being successive or as being untimely under the statute of limitations, counsel will not be appointed except upon written order of the Chief Judge for Administrative Purposes for the Court of Common Pleas in the circuit. In these cases, the Chief Judge will insure that counsel is only appointed for an indigent applicant when the facts raise a material issue regarding the applicability of the rule forbidding successive applications or the statute of limitations."); Rule 71.1(d), SCRCF (providing appointment of counsel is necessary only when a question of law or fact necessitates a hearing). Respondent moves for summary dismissal for the following reasons:

***Not Ripe***

Applicant's request for a belated appeal pursuant to Austin should be summarily dismissed as not yet ripe for consideration. Pertinently, Applicant has a Rule 59(e), SCRCF, motion pending

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<sup>11</sup> A proposed Conditional Order of Dismissal consistent with this return and motion to dismiss is being concurrently submitted for the Court's consideration.

before the circuit court that has not yet been ruled upon. Thus, the time for the filing of his appeal has not yet started running—making Applicant’s request for a belated appeal of the 2022 order premature. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (“A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion.”). Because the time to appeal the 2022 order has not yet begun, this issue is premature and not ripe for consideration.<sup>12</sup>

### *Statute of Limitations*

Applicant’s allegation related to his request for declaratory judgment should be summarily dismissed as barred by the statute of limitations.<sup>13</sup> “An application for relief pursuant to this chapter must be filed within one year after the entry of judgment . . . or within one year after the sending of the remittitur . . . .” § 17-27-45(a). A motion for summary judgment may be used to raise the defense of statute of limitations. McDonnell v. Consol. Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994).

Here, Applicant was sentenced on February 26, 2009. He filed a direct appeal, and the

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<sup>12</sup> Assuming, *arguendo*, Application’s filing of the Rule 59(e) motion did not stay the time for serving the notice of appeal, Respondent submits a review of the pleadings refute any allegation that Applicant is entitled to a belated appeal from the 2021 order denying his PCR application, and an evidentiary hearing is not needed to further resolve this issue. Pertinently, Applicant moved to proceed pro se at the PCR hearing, and that motion was granted. Thereafter, PCR counsel no longer owed Applicant any duty and thus could not have been ineffective. See Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (providing an “allegation that counsel failed to seek review [of a PCR order] sufficiently states a claim of ineffective assistance”).

Further, Applicant filed a timely pro se notice of appeal from the 2021 order, but his appeal was dismissed by the Supreme Court for failure to comply with its directive to submit proof that he had retained counsel or applied for counsel through the South Carolina Commission on Indigent Defense. The undisputed evidence does not show Applicant did not knowingly and intelligently waive his right to an appeal; rather, it shows he *did* appeal but failed to comply with the directives of the Supreme Court, resulting in the dismissal and subsequent remittitur of his appeal. See Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (“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.*” (emphasis added)). Thus, Respondent submits this allegation should be summarily dismissed.

<sup>13</sup> Respondent concedes the statute of limitations does not apply to Applicant’s claim related to a belated Austin appeal.

remittitur was sent June 9, 2011. This PCR application was therefore due on or before June 10, 2012. Applicant filed this application on September 25, 2023—more than ten years after the statute of limitations expired. Further, Applicant raised the allegation related to the request for declaratory judgement for the first time on June 27, 2024—again, more than ten years after the statute of limitations expired. Accordingly, this application should be summarily dismissed as untimely.

### *Successive*

Applicant's application should be summarily dismissed as successive.<sup>14</sup> Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a prior application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

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

§ 17-27-90. Successive PCR actions are barred unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Id. PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). "Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice." Id. at 451, 409 S.E.2d at 394. Thus, any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at

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<sup>14</sup> Respondent concedes the rule against successiveness does not apply to Applicant's request for a belated appeal pursuant to Austin.



450, 409 S.E.2d at 394. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Here, Applicant's allegation related to a request for declaratory judgement could have been raised in his first PCR application. Applicant has failed to establish a sufficient reason why he could not have raised his current allegations in his prior applications and has thus failed to meet his burden of showing this allegation could not have been previously raised. Accordingly, this Court should summarily dismiss the application as successive.

**ALL OTHER CLAIMS**

Any allegation not expressly admitted, qualified, or explained is hereby denied.

[Conclusion and signature page follows]

CONCLUSION

WHEREFORE, Respondent moves to summarily dismiss the application as barred by the statute of limitations and successive. Respondent further moves to summarily dismiss the allegation related to a belated Austin appeal as premature and not ripe for consideration.

Respectfully Submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

DANIELLE DIXON  
Assistant Attorney General

By:



Danielle Dixon

ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

July 1, 2024

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Darrell L. Goss, #305517,

Case No.: 2023-CP-10-04698

Applicant,

v.

Certificate of Service by Mail

State of South Carolina,

Respondent,

FILED  
2024 JUL -5 PM 2:09  
JULIE K. JONES  
CLERK OF COURT

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 Amended Return and Motion to Dismiss in the above-captioned matter, on the following person by depositing same in the United States mail, postage prepaid:

**Darrell L. Goss, #305517 (4B-0118-A)**  
**Evans Correctional Institution**  
**610 Highway 9 West**  
**Bennettsville, SC 29512**

DATED this 1<sup>st</sup> day of July, 2024.

*Vickie H.*

Vickie H., Legal Assistant  
For Respondent

|                           |   |                                       |
|---------------------------|---|---------------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS          |
| COUNTY OF CHARLESTON      | ) | NINTH JUDICIAL CIRCUIT                |
|                           | ) |                                       |
| Darrell L. Goss, #305517, | ) | CASE NO. 2023-CP-10-04698             |
|                           | ) |                                       |
| Applicant,                | ) |                                       |
|                           | ) |                                       |
| v.                        | ) | <b>CONDITIONAL ORDER OF DISMISSAL</b> |
|                           | ) |                                       |
| State of South Carolina,  | ) |                                       |
|                           | ) |                                       |
| Respondent.               | ) |                                       |
|                           | ) |                                       |

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Darrell L. Goss (Applicant) on September 25, 2023, and received by Respondent on December 8, 2023; and an amended PCR application filed on June 27, 2024.<sup>1</sup> Respondent made its return and moved to summarily dismiss Applications' claim related to a belated Austin appeal as premature and not ripe for consideration. Specifically, Respondent contended Applicant filed a Rule 59(e), SCRCP, motion to reconsider this Court's order of dismissal that had not yet been ruled upon, making Applicant's request for a belated appeal of that order premature. Respondent likewise made an amended return and moved to dismiss the additional allegation raised in the amended application, asserting it was untimely and successive. For the reasons set forth herein, Respondent's motion to dismiss is granted.<sup>2</sup>

<sup>1</sup> According to an email from the Charleston County Clerk of Court, this filing had to be approved by the Chief Administrative Judge because Applicant has filed more than three prior PCR applications.

<sup>2</sup> Respondent's return was due to be filed within ninety days of service. See Rule 12(a), SCRCP ("[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 return, and in light of no demonstrable prejudice to Applicant, this Court accepts this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing the Court may fix the time in which the State must respond); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the time limit prescribed by the statute is not mandatory but discretionary with the trial court).

JML

**PROCEDURAL HISTORY (STATE COURT)**<sup>3</sup>

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate twenty-year sentence. In September 2007, the Charleston County Grand Jury indicted Applicant for assault and battery with intent to kill, kidnapping, and armed robbery. These charges arose from an incident involving victim Aytekin Ayazgok on June 14, 2007.

On February 23-26, 2009, Applicant proceeded to a jury trial before the Honorable J.C. Nicholson. James Smiley, Esquire, represented Applicant, and Assistant Solicitors Trip Lawton and Kevin Hales prosecuted the case.<sup>4</sup> The jury convicted Applicant as indicted, and Judge Nicholson sentenced him to concurrent sentences of twenty years for each charge.

Applicant filed a direct appeal, which was perfected by Appellate Defender Robert M. Pachak. On appeal, Applicant argued the trial court erred in (1) overruling defense counsel's objection to the solicitor's burden shifting in closing argument and (2) refusing to allow defense counsel to impeach the victim with a pending charge of counterfeiting goods. The Court of Appeals affirmed both issues on the merits. State v. Goss, Up. Op. No. 2011-UP-214 (filed May 17, 2011). The remittitur was sent June 9, 2011.

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<sup>3</sup> Applicant has filed four federal habeas corpus petitions related to these convictions; three have been dismissed due to failure to exhaust State remedies (2:18-cv-02938-BHH, mandate issued Nov. 10, 2021; 2:20-cv-04133-BHH, mandate issued Sept. 20, 2021; 2:23-cv-00722-BHH, dismissed June 6, 2024, mandate not yet issued). The fourth was dismissed based upon Applicant's motion to dismiss (21-200, dismissed September 1, 2021).

<sup>4</sup> Applicant was tried with co-defendant Joy Mack, who was represented by Alex Apostolou, Esquire.

JM/2

On December 1, 2011, Judge Jefferson issued an order denying and dismissing with prejudice Applicant's PCR application. Applicant filed a petition for a writ of certiorari from the denial of his application (2011-204386), and the Court of Appeals granted certiorari. On July 27, 2016, the Court of Appeals issued an opinion affirming. State v. Goss, 2016-UP-382. Applicant filed a petition for a writ of certiorari in the Supreme Court of South Carolina, and the Supreme Court granted certiorari. On October 17, 2018, the Supreme Court issued an order remanding for a de novo PCR hearing.<sup>5</sup> The remittitur was sent November 2, 2018.

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On June 21, 2022—*after* the PCR evidentiary hearing, Application filed a 4<sup>th</sup> Motion to Amend PCR Application. On June 15, 2022, Judge McCoy issued an order denying and dismissing Applicant's PCR application.<sup>8</sup>

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<sup>5</sup> Pertinently, the Court stated, "We emphasize the proceedings will be de novo, and neither party may rely upon testimony presented at the initial hearing which is the subject of this appeal."

<sup>6</sup> On January 7, 2019, Applicant filed a pro se motion to stay his PCR proceedings pending the disposition of his federal habeas corpus petition; that motion was granted on January 21, 2019.

<sup>7</sup> Mr. Murphy was initially appointed to represent Applicant on December 17, 2018. On January 15, 2019, Applicant filed a motion to proceed pro se, which was granted by the Honorable Roger M. Young, Sr. that same day. On July 26, 2021, Applicant filed a motion for appointment of counsel. Applicant's motion to appoint counsel was granted, and Mr. Murphy was reappointed on September 13, 2021.

<sup>8</sup> Respondent served this Order on Applicant by mail on June 16, 2022.

<sup>9</sup> Although not accompanied by a formal certificate of service, Applicant relayed in his cover letter, dated June 22, 2022, "By copy, I am also serving the State." On June 24, 2022, Applicant mailed Respondent a letter indicating he

is currently pending before the Court.

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#### CURRENT APPLICATION

On September 25, 2023, Applicant filed this PCR application alleging:

Ineffective assistance of counsel: PCR counsel failed to file appeal on Applicant’s behalf.

As relief, Respondent requests, “I want to appeal the denial of my first post conviction relief application (2011-CP-10-3782) pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).”<sup>10</sup>

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had filed the motion but “Due to the prison’s policy, I was not able to receive copies of my handwritten legal documents in order to serve you a copy as required.” Respondent does not take issue with the service of this motion.

<sup>10</sup> Respondent incorporates by reference herein the records that were filed with its original return, which include the Charleston County Clerk of Court records of the underlying convictions; Applicants records from the South Carolina Department of Corrections; and the records from Applicant’s direct appeal, his 2011 PCR action, and his federal habeas corpus petitions. Respondent reserves the right to amend this return upon receipt of any additional, relevant information.

On June 27, 2024, Respondent filed an Amended PCR application again raising the Austin issue and additionally requesting the following:

Pursuant to the S.C. Supreme Court's ruling in Hazel v. State, 377 S.C. 60, 659 S.E.2d 137 (2008), Applicant requests the Court to issue a declaratory judgment declaring that his kidnapping conviction did not include a criminal sexual offense or attempted criminal sexual offense and would not require him to register as a sex offender.

### **MOTION TO DISMISS**

Respondent moved for summary dismissal pursuant to section 17-27-70 of the South Carolina Code because there are no genuine issues of material fact that would necessitate an evidentiary hearing. Because there are no questions of law or fact to necessitate a hearing, Respondent requested this Court NOT appoint counsel and instead issue a Conditional Order of Dismissal indicating the Court's intent to dismiss the application and its reasons for doing so.<sup>11</sup> See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (finding summary disposition appropriate when no facts need to be developed and the applicant is not entitled to relief); Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court, S.C. Sup. Ct. Order filed Oct. 6, 2008 ("If the Attorney General asserts that the [PCR] application is barred as being successive or as being untimely under the statute of limitations, counsel will not be appointed except upon written order of the Chief Judge for Administrative Purposes for the Court of Common Pleas in the circuit. In these cases, the Chief Judge will insure that counsel is only appointed for an indigent applicant when the facts raise a material issue regarding the applicability of the rule forbidding successive applications or the statute of limitations."); Rule

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<sup>11</sup> A proposed Conditional Order of Dismissal consistent with this return and motion to dismiss is being concurrently submitted for the Court's consideration.

Jm/s



71.1(d), SCRCP (providing appointment of counsel is necessary only when a question of law or fact necessitates a hearing).

After consideration of the records before this Court, this Court grants Respondent's motion for summary dismissal for the following reasons:

***Not Ripe***

This Court finds Applicant's request for a belated appeal pursuant to Austin should be summarily dismissed as not yet ripe for consideration. Pertinently, Applicant has a Rule 59(e), SCRCP, motion pending before the circuit court that has not yet been ruled upon. Thus, the time for the filing of his appeal has not yet started running—making Applicant's request for a belated appeal of the 2022 order premature. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) ("A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion."). Because the time to appeal the 2022 order has not yet begun, this issue is premature and not ripe for consideration.<sup>12</sup>

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<sup>12</sup> Assuming, *arguendo*, Application's filing of the Rule 59(e) motion did not stay the time for serving the notice of appeal, Respondent submits a review of the pleadings refute any allegation that Applicant is entitled to a belated appeal from the 2021 order denying his PCR application, and an evidentiary hearing is not needed to further resolve this issue. Pertinently, Applicant moved to proceed pro se at the PCR hearing, and that motion was granted. Thereafter, PCR counsel no longer owed Applicant any duty and thus could not have been ineffective. See Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991) (providing an "allegation that counsel failed to seek review [of a PCR order] sufficiently states a claim of ineffective assistance").

Further, Applicant filed a timely pro se notice of appeal from the 2021 order, but his appeal was dismissed by the Supreme Court for failure to comply with its directive to submit proof that he had retained counsel or applied for counsel through the South Carolina Commission on Indigent Defense. The undisputed evidence does not show Applicant did not knowingly and intelligently waive his right to an appeal; rather, it shows he *did* appeal but failed to comply with the directives of the Supreme Court, resulting in the dismissal and subsequent remittitur of his appeal. See Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) ("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.*" (emphasis added)). Thus, Respondent submits this allegation should be summarily dismissed.

JM/6

*Statute of Limitations*

This Court finds Applicant's allegation related to his request for declaratory judgment is barred by the statute of limitations.<sup>13</sup> "An application for relief pursuant to this chapter must be filed within one year after the entry of judgment . . . or within one year after the sending of the remittitur . . . ." § 17-27-45(a). A motion for summary judgment may be used to raise the defense of statute of limitations. McDonnell v. Consol. Sch. Dist. Of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994).

Here, Applicant was sentenced on February 26, 2009. He filed a direct appeal, and the remittitur was sent June 9, 2011. This PCR application was therefore due on or before June 10, 2012. Applicant filed this application on September 25, 2023—more than ten years after the statute of limitations expired. Further, Applicant raised the allegation related to the request for declaratory judgement for the first time on June 27, 2024—again, more than ten years after the statute of limitations expired. Accordingly, this application shall be summarily dismissed as untimely.

*Successive*

This Court finds Applicant's allegation related to his request for a declaratory judgement should be summarily dismissed as successive.<sup>14</sup> Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a prior application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly,

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<sup>13</sup> Respondent conceded the statute of limitations does not apply to Applicant's claim related to a belated Austin appeal.

<sup>14</sup> Respondent conceded the rule against successiveness does not apply to Applicant's request for a belated appeal pursuant to Austin.

Jm/7

voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

§ 17-27-90. Successive PCR actions are barred unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Id. PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). "Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice." Id. at 451, 409 S.E.2d at 394. Thus, any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. at 450, 409 S.E.2d at 394. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Here, Applicant's allegation related to a request for declaratory judgement could have been raised in his first PCR application. Applicant has failed to establish a sufficient reason why he could not have raised his current allegations in his prior applications and has thus failed to meet his burden of showing this allegation could not have been previously raised. Accordingly, this allegation shall be summarily dismissed as successive.

#### CONCLUSION

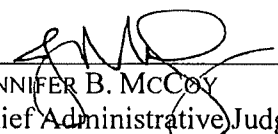
WHEREFORE, pursuant to section 17-27-70 of the South Carolina Code, this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have, factual or legal, with the Charleston

County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
 Danielle Dixon, Esquire  
 PCR Division – Ninth Circuit  
 P.O. Box 11549  
 Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be received by the Charleston County Clerk of Court and opposing counsel within twenty days from the date of the service of this Order, and the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 5 day of August, 2024.

  
 JENNIFER B. MCCOY  
 Chief Administrative Judge – Common Pleas  
 Ninth Judicial Circuit

Charleston, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO: 2023-CP-10-4698

Darrell L. Goss, #305517,

Applicant,

v.

**RESPONSE TO CONDITIONAL  
ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

FILED  
2024 SEP 19 AM 10:50  
JULIE J. ARMSTRONG  
CLERK OF COURT

Applicant, Darrell L. Goss, *pro se*, hereby submit this response to the Court's conditional order of dismissal.

**I. THE ISSUE OF RIPENESS**

Respondent argues the court should summarily dismiss Applicant's request for a belated appeal pursuant to Austin because it is premature and not ripe for consideration because Applicant has a pending Rule 59(e) motion before the court.

Applicant disagrees.

Applicant maintains the court should grant counsel and a hearing on his request for a belated appeal. Applicant submits his Rule 59(e) motion has been pending for over two (2) years and the Court has no intention on ruling on such motion. Even to date, the Court has yet to rule on Applicant's motion so that he can pursue an appeal. Applicant now raises the issue of inordinate delay which violates the constitutional protections of due process of law. Ward v. Freeman, 46 F.3d 1129

(4<sup>th</sup> Cir. 1995). Therefore, Applicant contends that exceptional circumstances exist for the court to consider the merits of his claim despite the pending Rule 59(e) motion.

## II. STANDBY COUNSEL

Respondent argues PCR counsel no longer owed Applicant a duty and could not have been ineffective because Applicant proceeded *pro se* at the PCR hearing.

Applicant disagrees.

Applicant maintains because the court appointed standby counsel, PCR counsel owed Applicant a duty and rendered ineffective assistance in failing to perfect Applicant's appeal.

The PCR court's ruling is as follows:

- THE COURT: All right.
- All right. Well, understanding that and regarding your – you're seeking to have Mr. Murphy relieved, I will grant the motion. I am going to ask that he remain in here and just – as your second. As a second chair, just to sort of supervise. If you happen to have a question along the way procedurally or something like that, but I'll allow you to go forward and question these witnesses yourself today.
- I find you're making a willing and knowing and voluntarily waiver of your right to an attorney today. You've indicated to me that you're not under influence of any medicine or anything that would keep you from understanding what's going on. You certainly appear very lucid to me today and clear, so I have no problem granting your request today.

PCR Tr. p. 11, lines 4-21.

In State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998), our Supreme Court defined standby counsel's role as "to aid appellant to the extent he desired".

Here, the PCR court explicitly stated that it was appointing standby counsel for procedural reasons. Filing a notice of appeal is procedural. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). On the record, Applicant was unequivocal in his intent to appeal an adverse ruling:

- MR. GOSS: Yes, ma'am. I just wanted to make sure I get it before the court, because I don't want to forget anything - -
- THE COURT: I hear you.
- MR. GOSS: - - if this case has to go on appeal, that my issue was properly before the court.
- THE COURT: I'll allow your amendments. Go ahead.
- MR. GOSS: Yes, ma'am , thank you.

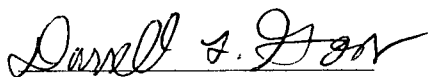
PCR Tr. p. 29, lines 13-22.

Therefore, PCR counsel was ineffective for failing to perfect Applicant's appeal.

### CONCLUSION

**WHEREFORE**, this court should appoint counsel and conduct an evidentiary hearing into the facts and circumstances of this matter.

Respectfully Submitted,



Darrell L. Goss

2125 Aberdeen Ave, Apt 104

North Charleston, SC 29405



STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO: 2023-CP-10-4698

Darrell L. Goss, #305517,

Applicant,

v.

State of South Carolina,

Respondent.

**CERTIFICATE OF SERVICE**

FILED  
2024 SEP 19 AM 10:51  
JULIE J. ARMSTRONG  
CLERK OF COURT

I hereby certify that on this 16<sup>th</sup> day of September, 2024, I served the foregoing **RESPONSE TO CONDITIONAL ORDER OF DISMISSAL** upon counsel of record in this matter by depositing a true copy of the same in the U.S. mail, prepaid postage, addressed as follows:

South Carolina Attorney General's Office

Attn: Danielle Dixon, Esquire

PCR Division – Ninth Circuit

P.O. Box 11549

Columbia, SC 29211

September 16, 2024

Darrell L. Goss

|                          |   |                        |
|--------------------------|---|------------------------|
| State of South Carolina  | ) | Court of Common Pleas  |
| County of Charleston     | ) | Ninth Judicial Circuit |
|                          | ) |                        |
| DARRELL L. GOSS,         | ) | Case Number:           |
|                          | ) | 2023-CP-10-04698       |
| Applicant,               | ) |                        |
|                          | ) |                        |
| vs.                      | ) |                        |
|                          | ) | HEARING ON             |
| STATE OF SOUTH CAROLINA, | ) | POSTCONVICTION RELIEF  |
|                          | ) |                        |
| Respondent.              | ) | TRANSCRIPT OF RECORD   |
| _____                    | ) |                        |

December 17, 2024  
Charleston, South Carolina

B E F O R E:

The Honorable Jocelyn Newman

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

MR. CHRISTOPHER L. MURPHY,  
Court-Appointed Attorney,  
for the Applicant;

MS. DANIELLE DIXON,  
Assistant Attorney General,  
for the Respondent.

Jamie Bickett  
Official Court Reporter

1 (The following proceedings were had in open court.)

2 THE COURT: Is Mr. Goss in the courtroom?

3 MR. MURPHY: Yes, he is.

4 THE COURT: Come on forward.

5 Okay. We can go on the record, I believe, as soon as  
6 they're ready.

7 MS. DIXON: May it please the Court.

8 THE COURT: Yes, ma'am.

9 MS. DIXON: I'm Danielle Dixon, assistant attorney  
10 general, for the State of South Carolina. This is the case  
11 of Darrell Goss v. State, Docket Number 2023-CP-10-4698.

12 Your Honor, Mr. Goss is no longer incarcerated on his  
13 charges. He did have a 20-year sentence that he's already  
14 served. He was indicted in September 2007 by the Charleston  
15 County Grand Jury for assault and battery with intent to  
16 kill, kidnapping, and armed robbery.

17 And your Honor, just briefly, this was a robbery of a  
18 store. I believe it was maybe two men went into the store  
19 and held the victim at gunpoint and robbed him is kind of the  
20 scenario there.

21 He did have a jury trial February 2009 before the  
22 Honorable J.C. Nicholson. He was represented by James  
23 Smiley, and then assistant solicitors Trip Lawton and Kevin  
24 Hales prosecuted the case. He was convicted as indicted and  
25 got concurrent sentences of 20 years for the charges.

1           He filed a direct appeal that was perfected by Appellate  
2   Defender Robert Pachek. That was affirmed on the merits by  
3   the Court of Appeals. The remittitur from that was sent  
4   June 9, 2011.

5           He filed his first PCR application in May of 2011,  
6   raising allegations of ineffective assistance of counsel. He  
7   did have a hearing in September of 2011 before the Honorable  
8   Deadra Jefferson. At that time he was represented by Charles  
9   Brooks, and Assistant Attorney General Matthew Friedman  
10   represented the State. Judge Jefferson issued an order  
11   denying and dismissing with prejudice the claims following  
12   that hearing.

13          He did file a petition for a writ of cert from that.  
14   The Court of Appeals actually granted cert there and then  
15   thereafter issued an opinion affirming the PCR court.

16          He filed a petition for a writ of cert in the state  
17   Supreme Court, and the Supreme Court also granted cert and  
18   then issued an order in October of 2018 remanding him for a  
19   new PCR hearing.

20          In December of 2021, he had a new hearing before Judge  
21   McCoy here. He was represented at that time by Mr. Murphy,  
22   who is also here today in this case. And at the start of the  
23   hearing, he wanted to go pro se. Judge McCoy granted his  
24   request and they had the hearing. And then it was ultimately  
25   denied, but between the time of the hearing and the time of

1 the order denying PCR, he filed another amended application  
2 with the circuit court, which the State has moved to strike  
3 in that action.

4 He also filed, after that order was filed, a motion to  
5 alter or amend judgment pursuant to 59(e). And your Honor,  
6 that order is still pending before Judge McCoy.

7 On July 6, 2022, he did try to appeal that order from  
8 the first PCR action. He also filed a motion to proceed pro  
9 se. The Supreme Court denied his motion to proceed pro se  
10 and sent him a letter instructing him to either apply for  
11 indigent defense or submit the name of the attorney that  
12 would represent him. He did not do so, and so the Supreme  
13 Court dismissed his petition. The remittitur was sent  
14 November 9, 2022.

15 Your Honor, he filed this current application  
16 September 25, 2023. He's got a claim related to PCR  
17 counsel's failure to file an appeal.

18 He also filed an amended application raising an issue  
19 related to him being required to register on the sex offender  
20 registry. Your Honor, the State has moved to -- first of  
21 all, the State initially filed a return asserting the statute  
22 of limitations and successiveness as to all claims other than  
23 the late PCR appeal issue. However, the State has reviewed  
24 the records in this case, and it is believed that he does not  
25 need to be on the sex offender registry, that this was not a

1 crime that was sexual in nature.

2 He had filed a petition in the original jurisdiction of  
3 the Supreme Court. We thought that that would resolve the  
4 issue, but they basically didn't grant cert so we're back  
5 here. We agree that he should not be on the sex offender  
6 registry. We're willing to waive our affirmative defense as  
7 to that issue only.

8 As to the late appeal, our position is kind of twofold.

9 Number 1, I think it's kind of premature. If Judge  
10 McCoy has not ruled on the 59(e), then I think whenever she  
11 finally issues that order -- and we did email her, and we can  
12 follow up with her again to get a ruling. But once she rules  
13 on that, I believe the appeal should be ready to go.

14 However, alternative to that, we would move to dismiss  
15 that summarily because he did actually file a notice of  
16 appeal from that action and the Supreme Court dismissed it  
17 because he did not comply with their directive. So I think  
18 he's hard-pressed to come in here today and say he did not  
19 voluntarily waive his right to that appeal when he did, in  
20 fact, file it and it got dismissed because he didn't do what  
21 they asked him to do.

22 So that's kind of our position as to the late appeal  
23 issue. It's either premature because Judge McCoy hasn't  
24 ruled on the 59(e), or it should be denied because he can't  
25 show he voluntarily waived it when he didn't comply with

1     their directive.

2             And then we would ask, to the extent that he's alleging  
3     any other claim related to the conviction itself, that that  
4     be dismissed as untimely and successive to his first PCR.

5             THE COURT:   Okay.   Mr. Murphy?

6             MR. MURPHY:   Thank you, your Honor.   May it please the  
7     Court.

8             To put on the record, I had represented Mr. Goss  
9     beforehand.   And in this action, part of it was he alleged  
10    that I failed to file an appeal of that December 21 hearing  
11    before Judge McCoy.   That creates somewhat of a conflict of  
12    interest.   I understand that he's willing to waive that  
13    conflict for terms of -- for the purposes of going forward  
14    today.

15            And so --

16            THE COURT:   Is that correct, sir?

17            THE APPLICANT:   Yes, ma'am, it is.

18            THE COURT:   Okay.

19            MR. MURPHY:   And so now that we've kind of isolated the  
20    issue where the sexual registry is gone, we're really looking  
21    at what -- does he have a right to appeal that December of  
22    '21 PCR application?   And the way I always look at these  
23    things is, procedurally, we don't have a motion to reconsider  
24    -- a ruling on that motion to reconsider from Judge McCoy.  
25    And until we get that -- and we're going to call her and try

1 and get a ruling. Then that starts the process when we can  
2 file our appeal.

3 He did file an appeal beforehand. It was -- the Court  
4 clearly didn't know about the motion to reconsider. It was  
5 dismissed.

6 But in any event, procedurally, I just look at these  
7 things very simply as you've got to get that ruling and then  
8 you can go forward. And so that's what -- all he's asking is  
9 to get that ruling and be able to file that appeal. And  
10 that's the whole issue that we're here for today.

11 THE COURT: All right. So I'm going to -- well, is the  
12 sex offender registry issue a part of this 2023 case?

13 MS. DIXON: I believe -- we've had extensive  
14 conversations in our office, and he did file an amendment.

15 THE COURT: Okay.

16 MS. DIXON: That amendment was filed June 27, 2024. And  
17 in that amendment, he raised his late appeal of the PCR  
18 again. He also requested -- and this is a quote -- "Pursuant  
19 to the Supreme Court's ruling in *Hazel v. State*, applicant  
20 requests the Court to issue a declaratory judgment declaring  
21 that his kidnapping conviction did not include a criminal  
22 sexual offense or attempted criminal sexual offense and would  
23 not require him to register as a sex offender."

24 And you know, *Hazel v. State* is a case where they  
25 allowed that to kind of come in the avenue of PCR.



1 I will note I think he did also attempt to file a  
2 declaratory judgment action in the circuit court related to  
3 this issue, but I think his IP motion was denied. So that  
4 didn't -- you know, that got dismissed.

5 MR. MURPHY: And the only other thing, Judge, I would  
6 put on the record, when I was dismissed back in '21, I was  
7 appointed as standby counsel. And I did not file any  
8 posttrial pleadings because I was standby counsel. Mr. Goss  
9 is saying, "You should have done that." And so I'm being  
10 very clear with why I didn't do it or what was happening, and  
11 I think that's an issue. Next time I'm standby counsel, I'm  
12 certainly going to do this. So that was something that in my  
13 practice, I wanted to let him -- I told him I would inform  
14 the Court of that.

15 THE COURT: So I'm going to grant this as to the limited  
16 issue of the sex offender registry -- and that's with the  
17 State's consent -- but otherwise dismiss the 2023 PCR  
18 application. I think -- I don't know if it's not ripe for --

19 MS. DIXON: If it's -- yeah, it's either not -- our  
20 position is it's either not ripe or if it is ripe, I think he  
21 kind of messed up when he did file the appeal and didn't do  
22 what the Supreme Court asked him to do.

23 THE COURT: Right. Either of the two. I mean, so the  
24 order can include both alternative grounds: Either it's not  
25 ripe because you don't have the decision on the 2021 case on

1     that 59(e) motion, or it's sort of a moot issue or there are  
2     no grounds for new PCR because of Mr. Goss filing his own  
3     appeal and that being dismissed. So it's one of two things.  
4     I'm not deciding today which of those it is. It doesn't  
5     really matter which one it is because this PCR should not go  
6     forward.

7             So we'll get you off the sex offender registry. But  
8     otherwise, I think you just have to wait on Judge McCoy to  
9     decide that 59(e) motion in the other case and we'll go from  
10    there.

11            Does that make sense, Mr. Goss?

12            THE APPLICANT: It does. I just wanted to make sure  
13    that -- could I place on the record that I would agree to,  
14    you know, the premature argument, but I would disagree as to  
15    whether or not my claim had -- was sufficient enough.  
16    Because the Supreme Court ruled in *State versus Reed* that  
17    when the court appointed standby counsel, he has a duty to  
18    file all procedural, you know, motions. And filing my direct  
19    appeal or the PCR is procedural.

20            So although I waived my right to represent myself, she  
21    appointed him -- the judge appointed him as standby counsel,  
22    so that duty carried on to my PCR appeal. So I would say  
23    that that would give me valid grounds to raise on the PCR  
24    appeal as to whether or not he was ineffective for failing to  
25    file. That's in *State versus Reed*.

1           THE COURT: So I'd even go on to say that either it's  
2 premature or Mr. Goss cannot show prejudice as a result even  
3 if Mr. Murphy has a duty to file.

4           MS. DIXON: And I would just respond the State's  
5 position on that would be there is no Sixth Amendment right  
6 to standby counsel, that once you waive your right to  
7 counsel, you waive your right to effective assistance of  
8 counsel. So that would be our position there. I don't think  
9 there's a continued duty to do anything after you're  
10 relieved, even if you're standby, when there's no -- and  
11 there's certainly no constitutional right to standby counsel.  
12 If that helps.

13          THE APPLICANT: For the record, I would just cite *State*  
14 *versus Reed*, 332 S.C. 35. It's a 1998 case. That's what  
15 resolved the issue as to what duty standby counsel has. So  
16 we can leave that to the Supreme Court.

17          THE COURT: Y'all ready to hear from me? Because I was  
18 talking and --

19          MS. DIXON: I'm sorry.

20          THE COURT: -- was interrupted midsentence. And then  
21 Mr. Goss just jumped up. I don't know. Y'all let me know  
22 when you're ready --

23          MS. DIXON: I'm sorry, Judge.

24          THE COURT: -- to hear what I have to say.

25          THE APPLICANT: Sorry, your Honor.

1           THE COURT: So in any event, the 2023 PCR application is  
2 dismissed except for the single issue of the sex offender  
3 registry, because whether there's a duty or not -- and I'm  
4 searching the law right now, but even if there is a duty for  
5 standby counsel to file notice of appeal, there is no  
6 prejudice because the notice of appeal was, in fact, filed.  
7 Even if it wasn't by Mr. Murphy, it was filed. It's not as  
8 though Mr. Goss missed his chance to file the notice of  
9 appeal. He, in fact, did it himself, you know, so there can  
10 be no prejudice as a result of that.

11           But that's really an alternative ground because I think  
12 that this PCR application is premature.

13           So that is the ruling of the Court. And I'll ask  
14 Ms. Dixon to submit an order granting relief as to the sex  
15 offender registry issue and otherwise denying it.

16           How long do you need, Ms. Dixon?

17           MS. DIXON: I might be able to get it to you this week.

18           THE COURT: I'll give you 20 days.

19           MS. DIXON: Okay. Twenty days.

20           THE COURT: Okay.

21           MS. DIXON: Thank you.

22           THE COURT: All righty. Thank you, folks.

23           MR. MURPHY: Thank you, Judge.

24           (End of proceedings.)  
25

**CERTIFICATE OF REPORTER**

State of South Carolina

County of Charleston

I, Jamie L. Bickett, an Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case in the Ninth Judicial Circuit, the Court of Common Pleas for Charleston County, South Carolina.

  
\_\_\_\_\_  
Official Court Reporter

Dated this 25th day  
of March, 2025.

2023-CP-10-4698

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Darrell L. Goss,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
)) CASE NO. 2024-CP-10-02101  
)) **ORDER REQUIRING APPLICANT'S**  
) **NAME BE REMOVED FROM**  
) **SEX OFFENDER REGISTRY AND**  
) **DISMISSING REMAINING CLAIMS**  
) **WITH PREJUDICE**  
)2024 JUN 10 PM 2:33  
J. ARMSTRONG  
CLERK OF COURT

FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Darrell L. Goss (Applicant) on September 25, 2023; and an amended application filed June 27, 2024. Respondent filed a return and moved to summarily dismiss the claim related to a belated Austin appeal as premature and not ripe for consideration due to a pending Rule 59(e), SCRCR, motion. Respondent likewise made an amended return and moved to dismiss the allegation raised in the amended application as untimely and successive. On August 6, 2024, the Honorable Jennifer B. McCoy issued a Conditional Order of Dismissal, provisionally dismissing the application but providing Applicant twenty days to show why the Order should not become final. Thereafter, Applicant filed a response to the Conditional Order of Dismissal.

On December 17, 2024, a hearing convened on the State's motion to dismiss. Applicant was present and represented by Christopher L. Murphy, Esquire.<sup>1</sup> Assistant Attorney General Danielle Dixon represented Respondent. At the start of the hearing, Respondent waived its affirmative defenses to the issue of whether Applicant should be on the sex offender registry. Respondent further conceded that based on its review of the records, Applicant should not be on

<sup>1</sup> Applicant waived on the record any conflict of interest related to Mr. Murphy representing him at this proceeding.

the sex offender registry. Respondent moved to dismiss the remainder of the allegations. Applicant opposed the motion to dismiss the late appeal issue, asserting standby counsel had a duty to file a notice of appeal. After consideration and for the reasons set forth herein, this Court finds Applicant should not be required to register on the sex offender registry. This Court further finds the remaining allegations should be denied and dismissed with prejudice.

**PROCEDURAL HISTORY (STATE COURT)<sup>2</sup>**

Applicant is NOT presently confined in the South Carolina Department of Corrections, as he has completed his sentence on the underlying convictions. In September 2007, the Charleston County Grand Jury indicted Applicant for assault and battery with intent to kill, kidnapping, and armed robbery. These charges arose from a June 14, 2007 robbery of a retail store.

On February 23-26, 2009, Applicant proceeded to a jury trial before the Honorable J.C. Nicholson. James Smiley, Esquire, represented Applicant, and Assistant Solicitors Trip Lawton and Kevin Hales prosecuted the case.<sup>3</sup> The jury convicted Applicant as indicted, and Judge Nicholson sentenced him to concurrent sentences of twenty years for each charge.

Applicant filed a direct appeal, which was perfected by Appellate Defender Robert M. Pachak. On appeal, Applicant argued the trial court erred in (1) overruling defense counsel's objection to the solicitor's burden shifting in closing argument and (2) refusing to allow defense counsel to impeach the victim with a pending charge of counterfeiting goods. The Court of Appeals affirmed both issues on the merits. State v. Goss, Up. Op. No. 2011-UP-214 (filed May 17, 2011). The remittitur was sent June 9, 2011.

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<sup>2</sup> Applicant has filed four federal habeas corpus petitions related to these convictions; three have been dismissed due to failure to exhaust State remedies (2:18-cv-02938-BHH, mandate issued Nov. 10, 2021; 2:20-cv-04133-BHH, mandate issued Sept. 20, 2021; 2:23-cv-00722-BHH, dismissed June 6, 2024, mandate not yet issued). The fourth was dismissed based upon Applicant's motion to dismiss (21-200, dismissed September 1, 2021).

<sup>3</sup> Applicant was tried with co-defendant Joy Mack, who was represented by Alex Apostolou, Esquire.

On May 27, 2011, Applicant filed his first PCR application alleging ineffective assistance of counsel (2011-CP-10-3782). Respondent filed a return requesting an evidentiary hearing. On September 11, 2011, an evidentiary hearing convened before the Honorable Deadra L. Jefferson. Applicant was present and represented by Charles Brooks, Esquire. Assistant Attorney General Matthew S. Friedman represented Respondent.

On December 1, 2011, Judge Jefferson issued an order denying and dismissing with prejudice Applicant's PCR application. Applicant filed a petition for a writ of certiorari from the denial of his application (2011-204386), and the Court of Appeals granted certiorari. On July 27, 2016, the Court of Appeals issued an opinion affirming. State v. Goss, 2016-UP-382. Applicant filed a petition for a writ of certiorari in the Supreme Court of South Carolina, and the Supreme Court granted certiorari. On October 17, 2018, the Supreme Court issued an order remanding for a de novo PCR hearing.<sup>4</sup> The remittitur was sent November 2, 2018.

On December 8, 2021, a de novo evidentiary hearing convened before the Honorable Jennifer B. McCoy.<sup>5</sup> Applicant was present and initially represented by Christopher Murphy, Esquire.<sup>6</sup> At the start of the hearing, Applicant moved to proceed pro se, and Judge McCoy granted his request. Assistant Attorney General Samantha Weidauer represented Respondent. At the hearing, Applicant testified on his behalf and called as a witness his cousin Sharon Goss. Respondent called as a witness trial counsel James Smiley, Esquire.

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<sup>4</sup> Pertinently, the Court stated, "We emphasize the proceedings will be de novo, and neither party may rely upon testimony presented at the initial hearing which is the subject of this appeal."

<sup>5</sup> On January 7, 2019, Applicant filed a pro se motion to stay his PCR proceedings pending the disposition of his federal habeas corpus petition; that motion was granted on January 21, 2019.

<sup>6</sup> Mr. Murphy was initially appointed to represent Applicant on December 17, 2018. On January 15, 2019, Applicant filed a motion to proceed pro se, which was granted by the Honorable Roger M. Young, Sr. that same day. On July 26, 2021, Applicant filed a motion for appointment of counsel. Applicant's motion to appoint counsel was granted, and Mr. Murphy was reappointed on September 13, 2021.



On June 21, 2022—*after* the PCR evidentiary hearing, Application filed a 4<sup>th</sup> Motion to Amend PCR Application. On June 15, 2022, Judge McCoy issued an order denying and dismissing Applicant’s PCR application.<sup>7</sup>

On June 27, 2022, Applicant filed a “Motion to Alter or Amend Judgement.”<sup>8</sup> That motion is currently pending before the Court.

On July 6, 2022, Applicant filed a notice of appeal from the Order denying his PCR application and a motion to proceed pro se. On September 19, 2022, the Supreme Court of South Carolina issued an order denying his motion to proceed pro se. That same day, the Court sent Applicant a letter instructing him to “submit the name of the attorney you have obtained to represent you or provide proof that you have filled out and submitted the enclosed affidavit of indigency to the Division of Appellate Defense” within twenty days. The Court cautioned, “Failure to timely respond may result in dismissal of this matter.” On October 24, 2022, the Court dismissed Applicant’s appeal for failure “to submit the name of an attorney or provide proof that he has filled out and submitted an affidavit of indignity with the Division or Appellate Defense.” Applicant did not file a petition for rehearing, and the remittitur was sent November 9, 2022.

#### CURRENT APPLICATION

On September 25, 2023, Applicant filed this PCR application alleging:

Ineffective assistance of counsel: PCR counsel failed to file appeal on Applicant’s behalf.

As relief, Respondent requests, “I want to appeal the denial of my first post conviction relief

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<sup>7</sup> Respondent served this Order on Applicant by mail on June 16, 2022.

<sup>8</sup> Although not accompanied by a formal certificate of service, Applicant relayed in his cover letter, dated June 22, 2022, “By copy, I am also serving the State.” On June 24, 2022, Applicant mailed Respondent a letter indicating he had filed the motion but “Due to the prison’s policy, I was not able to receive copies of my handwritten legal documents in order to serve you a copy as required.” Respondent does not take issue with the service of this motion.

application (2011-CP-10-3782) pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).”

On June 27, 2024, Respondent filed an Amended PCR application again raising the Austin issue and additionally requesting the following:

Pursuant to the S.C. Supreme Court’s ruling in Hazel v. State, 377 S.C. 60, 659 S.E.2d 137 (2008), Applicant requests the Court to issue a declaratory judgment declaring that his kidnapping conviction did not include a criminal sexual offense or attempted criminal sexual offense and would not require him to register as a sex offender.

Before this Court are the Charleston County Clerk of Court records of the underlying convictions; Applicants records from the South Carolina Department of Corrections; and the records from Applicant’s direct appeal, his 2011 PCR action, and his federal habeas corpus petitions.

#### **SEX OFFENDER REGISTRY**

At the start of the hearing, Respondent waived its affirmative defenses as to the issues related to the sex offender registry. Respondent further conceded that, based on its review of the records, Applicant should not be required to register on the sex offender registry. This Court has reviewed the records and agrees Applicant should not be required to register on the sex offender registry. This Court further finds the South Carolina Law Enforcement Division shall remove Applicant’s name from the sex offender registry.

#### **BELATED APPEAL**

Respondent moved to dismiss Applicant’s claim related to a belated appeal of his first PCR action pursuant to Austin, arguing the issue was not ripe for consideration due to a pending Rule 59(e), SCRCp, motion in the first PCR action. This Court agrees and finds the time for filing this appeal has not yet begun—making Applicant’s request for a belated appeal of the 2022 order premature. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (“A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e),

SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion.”). Because the time to appeal the 2022 order has not begun, this issue is premature and not ripe for consideration.

Alternately, this Court finds that even if the Rule 59(e) motion did not stay the time for filing the direct appeal, Applicant cannot demonstrate prejudice from any alleged deficiency by standby counsel’s failure to file a notice of appeal. Pertinently, Applicant filed a timely pro se notice of appeal from the 2021 order, but his appeal was dismissed by the South Carolina Supreme Court for failure to comply with its directive to submit proof that he had retained counsel or applied for counsel through the South Carolina Commission on Indigent Defense. The undisputed evidence does not show Applicant did not knowingly and intelligently waive his right to an appeal; rather, it shows he *did* appeal but failed to comply with the directives of the Supreme Court, resulting in the dismissal and subsequent remittitur of his appeal. See Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (“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.*” (emphasis added)). Thus, this Court finds Applicant cannot demonstrate prejudice from counsel’s failure to file a notice of appeal, and this claim is denied and dismissed with prejudice.

### CONCLUSION

Based on the foregoing, this Court concludes Applicant should not be required to register on the sex offender registry. This Court further finds Applicant has not established any other constitutional violations that would require this Court to grant additional relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file

and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. Applicant shall NOT be required to register on the sex offender registry, and the South Carolina Law Enforcement Division shall remove his name from the registry; and
2. The remainder of this application is denied and dismissed with prejudice.

AND IT IS SO ORDERED THIS 6th day of January 2025.

  
JOCELYN NEWMAN  
Presiding Judge  
Ninth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Charleston County

Honorable Jocelyn Newman, Circuit Court Judge

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DARRELL L. GOSS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO.: 2025-000218

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MOTION TO HOLD APPEAL IN ABEYANCE AND  
REMAND FOR RULING ON PETITIONER'S RULE 59(e) MOTION

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Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel moves this Court for an order holding the timelines for appeal in abeyance and remanding this case to the Charleston County Court of Common Pleas for a ruling on Petitioner's outstanding Rule 59(e), SCRCF, motion. Counsel would show this Court:

1. In September of 2007, Petitioner was indicted by a Charleston County grand jury for one count each of assault and battery with intent to kill, armed robbery, and kidnapping. He proceeded

to trial on February 23-26, 2009, before the Honorable J.C. Nicholson.<sup>1</sup> He was found guilty as indicted and sentenced to concurrent sentences of twenty years' incarceration for each charge.

2. Petitioner timely filed a direct appeal of his convictions. The Court of Appeals affirmed the convictions in an unpublished opinion. State v. Goss, Op. No. 2011-UP-214 (S.C. Ct. App. filed May 17, 2011). On May 27, 2011, Petitioner filed his initial application for post-conviction relief in PCR case 2011-CP-10-03782. An evidentiary hearing was held on September 11, 2011, before the Honorable Deadra L. Jefferson. On December 11, 2011, Judge Jefferson denied Petitioner's application for post-conviction relief.

3. Petitioner timely appealed the denial of his 2011 PCR application. The Court of Appeals affirmed the denial of the 2011 PCR application in an unpublished opinion. Goss v. State, Op. No. 2016-UP-382 (S.C. Ct. App. filed July 27, 2016). Petitioner sought a writ of certiorari from this Court to review the denial of his 2011 PCR application. This Court reversed the Court of Appeals and remanded the matter to the circuit court for a *de novo* evidentiary hearing.<sup>2</sup> Goss v. State, 425 S.C. 101, 820 S.E.2d 373 (2018).

4. The *de novo* evidentiary hearing in PCR case 2011-CP-10-03782 was held on December 8, 2021, before the Honorable Jennifer B. McCoy. At the start of the hearing Petitioner moved to

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<sup>1</sup> Petitioner was tried jointly with his co-defendant, Joy Mack, who was also found guilty as indicted.

<sup>2</sup> "It was error for the PCR court to take judicial notice of the witnesses' testimony and then conclude these witnesses would not have been credible to a jury because of their relationships with Goss. ... Here, the PCR court's decision to take judicial notice of the substance of witnesses' testimony and then find those witnesses not credible diluted the process to the point where the PCR court's factual findings—and perhaps the legal conclusions arising from those factual findings—were based upon an incomplete consideration of all the evidence." Goss v. State, 425 S.C. 101, 107–08, 820 S.E.2d 373, 376 (2018).

proceed *pro se* and his request was granted. Judge McCoy denied Petitioner's 2011 PCR application in a written order on June 15, 2022. (Exhibit A)

5. Petitioner timely filed a Rule 59(e), SCRCP, motion on June 27, 2022. (Exhibit B). No order has ever been issued ruling on this Rule 59(e), SCRCP, motion. On July 5, 2022, Petitioner filed a notice of intent to appeal Judge McCoy's 2022 ruling denying relief in PCR case 2011-CP-10-03782, even though the Rule 59(e), SCRCP, motion was still pending.

6. Petitioner moved before this Court to proceeded *pro se* on appeal. This Court denied that request and ordered Petitioner to hire private counsel or obtain representation through the South Carolina Office of Indigent Defense. On October 24, 2022, this Court dismissed Petitioner's appeal for failing to comply with the Court's order.

7. On September 25, 2023, Petitioner filed the present application in PCR case 2024-CP-10-02101, alleging he was entitled to a belated appeal of Judge McCoy's 2022 order in PCR case 2011-CP-10-03785 pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). He amended his application on June 27, 2024, to further assert that his name should be removed from the sex offender registry because his kidnapping conviction did not include a criminal sexual offense.

8. An evidentiary hearing was convened in PCR case 2024-CP-10-02101 before the Honorable Jocelyn Newman on December 17, 2024. At the hearing the State agreed that Petitioner's name should be removed from the sex offender registry, but argued that the claim related to the belated appeal of 2011-CP-10-03782 should be dismissed as premature and not ripe for consideration due to a pending Rule 59(e), SCRCP, motion in that case.

9. On January 10, 2025, an order was filed removing Petitioner's name from the sex offender registry and dismissing the belated appeal pursuant to Austin claim as untimely.<sup>3</sup> Petitioner timely filed a notice of appeal from the portion of the order denying him a belated appeal.

10. The record in this case shows that Petitioner timely filed a Rule 59(e), SCRCP, motion in PCR case 2011-CP-10-03782 that has been pending since June 2022. The unrulud upon Rule 59(e), SCRCP, motion stayed the necessity for any further proceedings in the case until that motion has been resolved.

11. Petitioner requests this Court remand this matter to the Court of Common Pleas of Charleston County for a ruling on the Rule 59(e), SCRCP, motion so that if the lower court denies the motion, Petitioner can properly file a notice of intent to appeal the denial of relief in PCR case 2011-CP-10-03782.

12. Opposing counsel for the state, Assistant Attorney General Danielle Dixon, has no objection to remanding this matter to the circuit court for a ruling on the outstanding Rule 59(e), SCRCP, motion.

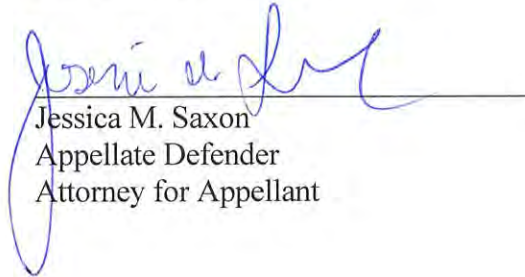
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<sup>3</sup> In the order, the PCR court found in the alternative that if the Rule 59(e) did not stay the timelines for filing an appeal, Petitioner could not show prejudice from stand-by counsel's failure to file an appeal where Petitioner himself filed the appeal but failed to follow the instructions of the Supreme Court resulting in the appeal being dismissed.



WHEREFORE, undersigned counsel respectfully requests an order from this Court holding the appeal in abeyance and remanding the matter to the circuit court of Charleston County for a ruling on Petitioner's outstanding Rule 59(e), SCRPC, motion in case number 2011-CP-10-03782.

Respectfully submitted,



Jessica M. Saxon  
Appellate Defender  
Attorney for Appellant

This 25<sup>th</sup> day of June, 2025.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Charleston County

Honorable Jocelyn Newman, Circuit Court Judge

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DARRELL L. GOSS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

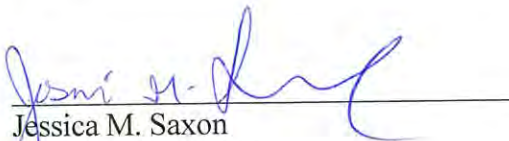
RESPONDENT.

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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Motion to Hold Appeal in Abeyance and Remand for a Ruling on Petitioner's 59(e), SCRCF, Motion in the above-referenced case have been served upon Danielle Dixon, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 25<sup>th</sup> day of June, 2025.

  
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Jessica M. Saxon  
Appellate Defender  
Attorney for Appellant

# EXHIBIT A

ATTY  
SOL  
GIS  
AG

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Darrell L. Goss, SCDC #305517,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2011-CP-10-03782

**ORDER OF DISMISSAL**

FILED  
2022 JUN 15 AM 9:19  
JULIE J. ARMSTRONG  
CLERK OF COURT

This matter comes before this Court by way of post-conviction relief action commenced by Applicant Darrell L. Goss on May 27, 2011. An evidentiary hearing into the matter convened before the undersigned on December 8, 2021. Applicant was present and proceeded with the hearing as a *pro se* litigant, and this Court is satisfied that the requirements of *Faretta v. California* 422 U.S. 806 (1975) and *Hilton v. State*, 422 S.C. 204, 810 S.E.2d 852 (2018), have been met<sup>1</sup>. Assistant Attorney General Samantha J. Weidauer represented the State. Applicant testified on his own behalf at the hearing, as did Applicant's cousin, Sharon Goss. Applicant's trial counsel, James W. Smiley, IV, Esquire, also testified.

This Court had before it a copy of the Charleston County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections;

<sup>1</sup> At the outset of the evidentiary hearing, this Court inquired about Applicant's motion to relieve counsel and entered into a colloquy regarding whether Applicant still wished to relieve counsel. (PCR Tr. 2). Applicant stated his PCR counsel, Christopher L. Murphy, had failed to inform him of the scheduling change for his hearing – this matter was continued from December 7, 2021, until the next day, December 8, 2021. (PCR Tr. 2-3). Applicant represented to this Court that his out-of-state witness, Felicia Henderson, could have been present to testify on the prior date, but because of the scheduling change was now unavailable. (PCR Tr. 2). Applicant stated he believed he had suffered prejudice as a result of Mr. Murphy's failure to inform him or his family about the change in schedule and therefore wished to relieve Mr. Murphy as counsel. (PCR Tr. 2-4). When questioned by this Court whether Applicant wished to proceed forward with the hearing without his aforementioned witness, Applicant unequivocally responded yes. (PCR Tr. 5). Applicant informed this Court he had other claims he was willing to raise at this evidentiary hearing that did not require the unavailable witness to be present. (PCR Tr. 5-6). Therefore, this Court granted Applicant's motion to relieve counsel, but requested Mr. Murphy remain as stand-by counsel (PCR Tr. 11).

JBW/11

the records from Applicant's direct appeal, including the trial transcript; and the pleadings and records in this post-conviction relief action including: Applicant's initial 2011 post-conviction relief application, the transcript from Applicant's 2011 evidentiary hearing the Honorable Deadra L. Jefferson, the Order of Dismissal signed by Judge Jefferson in December 2011, and the documents from the subsequent post-conviction appeal, including the Supreme Court Order remanding this matter back to the circuit court for a *de novo* post-conviction relief hearing.

After hearing the testimony and evidence presented at the post-conviction relief hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel and due process violations are without merit. Therefore, for the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

#### **I. Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the September 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-10805), assault and battery with intent to kill (ABWIK) (2007-GS-10-10806), and kidnapping (2007-GS-10-10807). James W. Smiley, IV, Esquire (Counsel), represented Applicant. Trip Lawton, Esquire and Kevin Hales, Esquire, prosecuted the case. On February 23-26, 2009, Applicant proceeded to trial before the Honorable J.C. Nicholson, Jr. and a jury. At the conclusion of the trial, the jury found Applicant guilty as indicted. Judge Nicholson sentenced Applicant to concurrent sentences of twenty years for each offense.

Applicant filed a notice of appeal which was perfected by Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense—Office of Appellate Defense.

On appeal, Applicant raised two issues:

- I. Whether the trial court erred in overruling defense counsel's objection to the solicitor's burden shifting closing argument?

JBW/2

II. Whether the trial counsel erred in refusing to allow defense counsel to impeach the victim with a pending charge of counterfeiting goods?

Following further briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. *State v. Goss*, Op. No. 2011-UP-214 (Ct. App. filed May 17, 2010). The Remittitur was returned to the circuit court on June 9, 2011.

On May 27, 2011, Applicant filed a *pro se* application for post-conviction relief alleging trial counsel was ineffective for failing to present an alibi; for failing to properly investigate the facts and circumstances of the case; for failing to present witnesses; and for failing to provide Applicant with discovery. The State filed a return to the application requesting an evidentiary hearing be held on Applicant's allegations. On September 16, 2011, an evidentiary hearing was convened at the Charleston County Courthouse before the Honorable Deadra L. Jefferson. Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office, represented the State. At the outset of the hearing, Applicant requested Judge Jefferson allow him to proceed *pro se*. Judge Jefferson apprised Applicant of the pitfalls of self-representation and suggested Applicant allow counsel to represent him. Applicant testified on his own behalf. Counsel also testified at the hearing. During the hearing, Applicant entered into evidence a visitor's log from the jail, a memorandum of law, and two letters addressed to Counsel. Present at the hearing were witnesses, Angelique Gaskins, the mother of Applicant's child; Lucretia Douglas, a friend; Bernard Godfrey, Applicant's uncle; and Felicia Henderson, a friend. Also, present were Clifford Hartwell, Applicant's brother, and Sharon Goss, Applicant's cousin. Judge Jefferson took judicial notice of each witness's testimony.

TBM/3

On December 1, 2011, Judge Jefferson signed an Order of Dismissal finding Applicant had failed to establish any constitutional violations or deprivations. Specifically, Judge Jefferson found Counsel's testimony credible while also finding Applicant's testimony not credible. Regarding Applicant's claims of ineffective assistance of counsel, the court found Applicant failed to meet his burden of proof, and Counsel's representation did not fall below an objective standard of reasonableness. Additionally, the court found Counsel made a valid strategic decision to only call Applicant's mother as a witness at trial, and was not ineffective for failing to call Sharon Goss or other named witnesses. Similarly, the Court found Counsel was not ineffective for failing to pursue the alibi witnesses where neither Applicant nor Applicant's mother informed counsel of a potential alibi defense. Lastly, the court found Applicant failed to prove the prejudice prong of *Strickland*.

Applicant filed a notice of appeal from the Order of Dismissal on December 5, 2011. On July 23, 2012, Applicant filed his petition for writ of certiorari and accompanying appendix in the Supreme Court of South Carolina. Thereafter, the Court transferred Applicant's case to the Court of Appeals pursuant Rule 243(1), SCACR. On November 21, 2014, the Court of Appeals granted certiorari. Following briefing and oral argument, the Court of Appeals affirmed the PCR court's decision in an unpublished opinion. *State v. Goss*, Op. No. 2016-UP-382 (Ct. App. filed July 27, 2016). Applicant filed a petition for rehearing, which was denied on September 26, 2016.

On November 14, 2016, Applicant filed a petition for writ of certiorari and accompanying appendix with the Supreme Court of South Carolina. On October 19, 2017, the Court granted certiorari and ordered additional briefing. Following further briefing and oral argument, the Supreme Court of South Carolina remanded the matter to the circuit court for a *de novo* PCR hearing, instructed Applicant it would be incumbent for him to secure the attendance of his witnesses for the *de novo* hearing, and emphasized that neither party may rely upon testimony

presented at the initial hearing. (*Goss v. State*, 425 S.C. 101, 820 S.E.2d 373 (2018)). After this matter was remanded back to the circuit court by Supreme Court Order on October 17, 2018, Applicant filed a Motion to Stay Proceedings on January 7, 2019. On January 29, 2019, an Order was filed staying this post-conviction relief matter for one year while Applicant's federal habeas case existed. This hearing followed.

## **II. Factual Summary**

In the Supreme Court's opinion remanding this PCR matter back to the circuit court for a *de novo* hearing, the facts of the case were summarized as follows:

Goss was charged in connection with the armed robbery of Urban Wear, a clothing store in North Charleston. The store owner, Andy Ayazgok, reported that five unmasked black males entered the store through the main storefront door at about 7:30 p.m., just before closing time, and proceeded to beat him, tie him and his employee up, and flee after stealing merchandise and cash. Of the five assailants, Andy was able to identify only Joy Mack as one of the assailants. Goss and Mack were tried jointly. Andy did not identify Goss as a perpetrator but identified him as having been in the store the week before the robbery.<sup>2</sup>

Sergeant Al Hallman was a member of the crime scene unit that processed the scene and was qualified by the trial court as an expert in fingerprint identification. He testified that when he arrived on the scene, he observed what he described as "wet" prints on the exterior of the glass storefront door; specifically, Sergeant Hallman testified the prints were a "simultaneous impression" of three fingers and a palm. The door from which the prints were lifted was the door through which the perpetrators gained entry and was also the door used by customers. Sergeant Hallman testified the prints were wet from either sweat or some other substance, which indicated to him the prints were fresh. He waited until the prints were dry and lifted them for possible later comparison. Andy testified at trial that he customarily cleaned the inside and outside of the storefront door each morning, and he testified he did so when he opened the store on the morning of the robbery.

Within hours after the robbery, a man named Lorenzo Johnson advised lead detective O.J. Faison that [Applicant] Goss

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<sup>2</sup> Andy's proffered trial testimony detailing his recollection of seeing Goss in the store the week before the robbery was that Goss was shoplifting and Andy ran him off. The trial court granted Goss's motion to exclude these details from Andy's testimony before the jury.



and his brother, Benjamin Goss, were two of the perpetrators. Detective Faison relayed this information to Sergeant Hallman. Hallman compared the prints he lifted from the storefront door to inked impressions from [Applicant] Goss; he testified the prints matched. After the prints were matched to Goss, law enforcement obtained a warrant to search Goss's residence and any vehicles on the premises. The warrant was executed at approximately 9:30 p.m. the night following the robbery. A .357 Magnum handgun with blood on the barrel was found in a car parked in the yard of the residence occupied by Goss and eight or nine other people, including several black males. DNA testing established the blood was Andy's. Clothing with tags was found in a bedroom in the residence, and Andy identified some of the clothing as being part of the merchandise stolen during the robbery. Goss's mother, Thomasina Goss, was trial counsel's primary contact prior to trial because trial counsel had known her for many years and because Goss was in jail the entire twenty months before trial. She was the only defense witness called at trial and testified to the following: Goss lived in the house with her and eight other people, she bought the stolen clothing from some unidentified men in the street in front of her house on the same day law enforcement searched her home, she knew the clothes were likely stolen, she had never seen Goss drive or ride in the car in which the bloody gun was found, and everyone who lives in the house uses the bedroom in which the stolen clothing was found. The State impeached her with a shoplifting conviction and two convictions for giving false information to the police.

### **III. Issues Before This Court**

In his original application for post-conviction relief, filed May 27, 2011, Applicant alleges he is being held in custody unlawfully based on:

1. Ineffective assistance of counsel
  - a. "Violation of the Sixth Amendment to the United States Const.";
  - b. "Violation of the Fourteenth Amend. to the U.S. Const."; and
  - c. "Violation of Article 1 Section 3 of S.C. Const."

On August 6, 2020, Applicant amended his application *pro se* to include the following allegations:

1. Ineffective assistance of counsel
  - a. "Trial counsel was ineffective in failing to prepare [Applicant's] case and object to the 'hands of one, hands of all' theory";

## 2. Due Process Violation

- a. The indictments did not put Applicant on notice of the charges he was facing.
  - i. “[Applicant] was not informed by indictment that he allegedly conspired with Joy Mack to commit the crimes convicted for”
- b. “The State did not also indict [Applicant] on a criminal conspiracy charge, but it nonetheless, pursued a conviction against him based on that theory”;

## 3. Subject Matter Jurisdiction

On August 4, 2021, Applicant amended his application *pro se* to include the following allegations:

- 1. Ineffective assistance of counsel
  - a. “Trial Counsel was ineffective in failing to object to “the hand of one, the hand of all” jury charge.
- 2. Unfair jury trial
  - a. “The State failed to prove each element of “the hand of one, the hand of all” accomplice liability theory beyond a reasonable doubt”; and
- 3. Due process violation
  - a. “There has been excessive and unjustified delay in the disposition of [Applicant’s] PCR proceedings”.

At the hearing on December 8, 2021, Applicant moved to incorporate an unfiled third amendment to his application<sup>3</sup> to include the following allegation:

- 1. Ineffective assistance of counsel
  - a. “Trial counsel was ineffective for failing to properly argue for a directed verdict of acquittal because the State failed to meet its burden of proof as to each element of “the hand of one, the hand of all” theory of accomplice liability. Specifically, (1) the State failed to produce any evidence – direct or circumstantial – of a prior plan or scheme between Applicant and his alleged codefendants to commit an illegal act. The State presented entirely no evidence at all proving or tended to prove that Applicant joined together with any codefendant(s) to accomplish an illegal purpose; and

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<sup>3</sup> Though not filed prior to the evidentiary hearing, this amendment was filed on February 11, 2022. For purposes of this order, this Court incorporates this amendment with the allegations raised in Applicant’s initial amended applications and addresses the claims made within as they were raised at the evidentiary hearing.

- i. "The State failed to produce any direct or substantial circumstantial evidence of Applicant's participation in carrying out that common plan or scheme between him and his alleged codefendants. The State presented no substantial evidence proving or tended to prove that Applicant aided, abetted, or assisted the perpetrators (in any way) during the commission of a crime pursuant to a prior common plan or scheme."

To the extent the allegations set forth in Applicant's application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, the Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

#### **IV. Testimony Presented at Evidentiary Hearing**

##### ***Pro se Applicant Darrell Goss Testimony***

Applicant testified (and argued) on his own behalf before this Court. Applicant argued trial counsel was ineffective for failing to properly argue his directed verdict motion at trial<sup>4</sup>. (PCR Tr. 14). Applicant testified the basis for Counsel's motion for a directed verdict centered on the State's failure to produce enough evidence to prove Applicant was guilty as a principle. (PCR Tr. 15). Applicant testified the State argued his charges should be submitted to the jury under a hand of one, hand of all theory while conceding Applicant was an accomplice, not a principal. (PCR Tr. 15). Applicant argued that because the State identified Applicant as an accomplice, Counsel's argument was improper as it focused on the State's lack of evidence in relation to Applicant as a principle in the crimes. (PCR Tr. 15).

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<sup>4</sup> Applicant stated Counsel argued the motion for directed verdict on pages 346-446 of the trial transcript. (PCR Tr. 14). However, this Court notes the relevant pages pertaining to the motion for a directed verdict are 438-446 of the trial transcript.

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Applicant testified Counsel stated his case could only go forward and be brought to the jury under the hand of one, hand of all theory. (PCR Tr. 15). Applicant testified the State agreed with Counsel and the trial judge, Judge Nicholson, acknowledged the theory of hand of one, hand of all was all the State had against Applicant. (PCR Tr. 15). Applicant argued the State failed to prove all elements required under this theory, failed to produce any evidence showing a common plan or a common scheme existed, and failed to produce any evidence showing Applicant participated in the crime in any manner. (PCR Tr. 16-17).

Regarding evidence, Applicant testified there were three pieces of evidence presented in this case: a wet fingerprint found at the crime scene – specifically on the outside of the glass door of the store in which the armed robbery occurred; a gun with the victim's DNA on it<sup>5</sup>; and clothing items found inside the residence of his mother's house in a room Applicant did not reside in. (PCR Tr. 17-19). Applicant argued none of the State's evidence showed a common plan or showed Applicant participated under the hand of one, hand of all theory. (PCR Tr. 19). Applicant further argued the fingerprint was the only piece of evidence that "[could] be substantially used" to place Applicant at the crime scene. (PCR Tr. 19). Applicant testified the fingerprint alone is not proof Applicant was at the store at the time of the incident<sup>6</sup>. (PCR Tr. 19). Applicant testified no evidence was presented concerning the location of the print, the fingerprint could not be dated, and the substance that created the fingerprint (sweat) was never tested for DNA. (PCR Tr. 19-21). Applicant argued that because the victim testified he cleaned the windows every morning, the State was able argue the fingerprint had to have been made after the windows were cleaned. (PCR Tr.

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<sup>5</sup> Applicant testified the gun in this matter was found in a vehicle located outside his residence. (PCR Tr. 18). Applicant argued the gun was not his and was found in Sharon Goss's, Applicant's cousin, car. (PCR Tr. 18).

<sup>6</sup> This Court inquired whether mere presence was charged to the jury, to which Applicant responded it was not. (PCR Tr. 19-20).

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20-21). Applicant asserted that because the incident occurred at night, there was plenty of time in between the cleaning of the windows and the time of the incident for the fingerprint to have been placed on the door. (PCR Tr. 21). Applicant further argued there was no testimony presented regarding which way the door swung and it was left to the “pure speculation [of] the jury” to determine which way the door swung. (PCR Tr. 22-23). Applicant argued Counsel was ineffective for failing to make the above arguments at trial during the motion for a directed verdict; further Applicant asserted Counsel invited the State to charge hand of one, hand of all despite a lack of evidence to support the jury charge. (PCR Tr. 21-24). Applicant contended that the evidence presented at trial only amounted to mere suspicion of guilt and therefore, Counsel was ineffective for failing to properly argue the directed verdict motion<sup>7</sup>. (PCR Tr. 24-25).

Applicant also argued his due process rights and equal protection rights were violated. (PCR Tr. 27). Specifically, Applicant argued the excessive delay in the disposition of this post-conviction relief action caused him prejudice. (PCR Tr. 27). Applicant testified he filed his post-conviction relief application on May 27, 2011. (PCR Tr. 27). Applicant testified that the initial evidentiary hearing for this application was heard September 2011 by the Honorable Deadra Jefferson who denied Applicant relief on all claims raised within the application. (PCR Tr. 30). Applicant stated the matter was then appealed and sat before the Supreme Court for seven years without a final resolution. (PCR Tr. 31). Applicant testified after the case was remanded back to the circuit court for *de novo* review, it sat pending for an additional three years without a resolution. (PCR Tr. 28, 32). Applicant alleges that as a result of this delay he has lost contact with the

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<sup>7</sup> Applicant requested this Court render a “directed verdict on [the] charges based on the lack of evidence that the State failed to produce beyond a reasonable doubt that [Applicant] committed the crime under the hand of one, hand of all theory.” (PCR Tr. 25). Applicant further stated that because he believed the State had failed to meet the elements required under the hand of one, hand of all theory, the conviction should be vacated. (PCR Tr. 25-26).

witnesses who were present and willing to testify at his initial evidentiary hearing, therefore resulting in prejudice. (PCR Tr. 31). Applicant further argued, as he did during his motion to relieve counsel (Christopher L. Murphy), that this hearing was originally scheduled on December 7, 2021, and because the matter was continued to December 8, 2021, he was prejudiced. (PCR Tr. 32-33). This Court asked Applicant again, as it did at the start of the hearing, whether he wished to move forward without his alleged alibi witness. (PCR Tr. 33). Applicant stated he wanted to make his argument regardless of this alleged alibi witness's unavailability to testify. (PCR Tr. 33). Applicant testified that as a result of the continuance, his alibi witness was lost and he was denied a full and fair opportunity to present his alibi. (PCR Tr. 34). Applicant testified that he had further been denied equal protection of law because he believed the State had purposely discriminated against him by using delay tactics which caused his case to be delayed for ten and a half years. (PCR Tr. 35).

Lastly, Applicant argued Counsel was ineffective for failing to object to the hand of one, hand of all jury charge. (PCR Tr. 37-38). Applicant asserted that because Counsel argued the elements of hand of one, hand of all in his motion for a directed verdict, his failure to object to the jury charge of hand of one, hand of all, Counsel was ineffective. (PCR Tr. 38). Applicant again argued the State failed to produce any evidence supporting the hand of one, hand of all jury charge and failed to produce evidence supporting a prior plan scheme between Applicant and codefendant. (PCR Tr. 39). After the State rested its case at this hearing and over the State's objection, Applicant further testified the jury charge did not include mention of mere presence, mere knowledge, and or mere association. (PCR Tr. 66). Applicant argued there was evidence in the case to support all three. (PCR Tr. 66).

*Trial Counsel James W. Smiley, IV Testimony*

The State called Applicant's trial counsel, James W. Smiley, IV (Counsel), as a witness. Counsel testified he has been practicing law since 1993 and that one hundred percent of his practice during that time has been in criminal law. (PCR Tr. 41). Counsel testified he was retained early on in this case and felt he had adequate time to prepare for Applicant's trial. (PCR Tr. 41-42). Counsel testified that despite the age of this case, he remembered it well. (PCR Tr. 41). Counsel testified he has known Applicant from the time he was "knee-high" and talked frequently with Applicant's mother, Tomasina, prior to Applicant's trial. (PCR Tr. 49). When asked by the State to provide a brief recitation of the facts in this case, Counsel testified the State alleged Applicant, another man, and another man who was never identified, went into a clothing store in Charleston, put the owner on his stomach, and beat him with the butt of an AK-47 gun<sup>8</sup>. (PCR Tr. 42). Counsel stated police collected evidence from the scene and found a fingerprint on the front door of the store where the incident occurred. (PCR Tr. 42). Counsel testified law enforcement's investigation led them to Ranger Drive where Applicant lived. (PCR Tr. 43). Counsel testified law enforcement located a pistol with DNA from the victim/store owner on it in a car in the front yard of the home Applicant lived in. (PCR Tr. 43). Counsel further testified clothes from the store where the incident took place were found in the home Applicant lived in, had the tags still on them, and were being sold. (PCR Tr. 43).

When asked whether Counsel discussed possible defenses with Applicant, Counsel testified he sat down with Applicant at the beginning of his representation and told him: "Darrell, the way I do this is, I get the State's case and I look at it. If the State can't make up the allegations, you and I aren't ever going to have a talk, all right, about that if I don't need you, quite frankly."

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<sup>8</sup> Counsel also noted he believed there was a pistol involved in the incident. (PCR Tr. 42).

(PCR Tr. 43-44). Counsel posited that as a result of that conversation Applicant could have believed he was not supposed to talk to Counsel at all. (PCR Tr. 44). Counsel elaborated he and Applicant did have discussions regarding specific pieces of evidence the State had. (PCR Tr. 44).

Counsel stated he focused his defense on the State not being able to meeting their burden because the State did not have any direct evidence linking Applicant to the incident. (PCR Tr. 44). Counsel testified he recalled Applicant admitting to being in the store earlier on the day of incident. (PCR Tr. 44). Counsel testified he did not allow Applicant to tell him he had nothing to do with the incident; but rather, would discuss each part of the case with Applicant. (PCR Tr. 44). Counsel stated he and Applicant discussed the print and the gun found in the front yard with the victim's DNA on it<sup>9</sup>. (PCR Tr. 44-45). Counsel testified Applicant maintained he had never seen the gun before. (PCR Tr. 45). Counsel testified he also spoke with Applicant's mother, Tomasina Goss, about the clothing that was found. (PCR Tr. 45). Counsel stated Tomasina told him clothes were regularly sold and traded at the house; Counsel referred to this practice as a jockey lot. (PCR Tr. 45). Counsel testified he presented each piece of circumstantial evidence to the jury and attempted to show there were other reasonable explanations for the evidence. (PCR Tr. 45). Counsel testified he believed he had a thorough, well-thought-out defense to the State's evidence. (PCR Tr. 45).

Regarding Applicant's allegation Counsel failed to properly argue the directed verdict motion, Counsel testified he argues for a directed verdict in all cases on general grounds and add specifics if there are additional points to be made. (PCR Tr. 46). Counsel testified he made an accomplice liability argument in this matter and argued the circumstantial evidence that existed did not rise to a level that allowed the matter to go to a jury. (PCR Tr. 46-47). Counsel testified he attacked the State's case by going after the circumstantial evidence and attempting to differentiate

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<sup>9</sup> Counsel testified he believed he elicited some testimony at trial from Tomasina Goss, Darrell's mother, that the gun was Darrell's brother's gun. (PCR Tr. 45).



Applicant's case from Applicant's co-defendant's case. (PCR Tr. 47). Counsel noted he remembered specifically asking the victim whether he could identify Applicant at trial and that the victim responded he could not. (PCR Tr. 47). Counsel testified that because the victim had stated Applicant was not present, Applicant was therefore not a principal. (PCR Tr. 47). Counsel further testified the State had failed to present any evidence of a plan. (PCR Tr. 48). Counsel testified he moved for a directed verdict again after the close of evidence to preserve the record but did not bring up any additional points at that time. (PCR Tr. 48).

Regarding alibi witnesses, Counsel testified he did not hear about alibi witnesses prior to trial and if he did, did not explore any alibi witnesses. (PCR Tr. 48-49). Counsel testified he believed there was strong evidence to support the defense that there was not a common scheme or plan. (PCR Tr. 49). Counsel further testified he did not think the exploration of alibi witnesses would be congruent with his defense strategy and was leery of presenting an alibi in this case -- again, reiterating he believed he had a good defense. (PCR Tr. 49). Counsel further testified he did not have a good faith belief an alibi existed and should he have believed one did, he would have investigated further. (PCR Tr. 50). Counsel testified that even if there was an alibi, he would not have pursued the defense based on the timeline of the incident and the evidence found. (PCR Tr. 51). Counsel stated he believed the case would have been "dead on arrival" should they have tried to introduce an alibi. (PCR Tr. 51). Counsel stated he has rarely used an alibi defense in career because "if your alibi doesn't work, the jury doesn't believe a damn word you say." (PCR Tr. 51). Counsel agreed the risk of presenting an alibi defense in this case outweighed the benefit. (PCR Tr. 51).

On cross-examination, Counsel testified his motion for a directed verdict was focused on the lack of evidence presented by the State to support a hand of one, hand of all theory and argued

the State had not presented substantial evidence for the question to go to the jury. (PCR Tr. 52-53). Counsel testified he argued there was no direct evidence placing Applicant at the store. (PCR Tr. 53). Counsel testified he argued that to charge Applicant under hand of one, hand of all, the State would have to show Applicant was present at the scene of the crime to be considered a principal. (PCR Tr. 54). Counsel stated that because there was no evidence placing Applicant at the scene of the crime, the State's theory could only survive if they had proven Applicant was a planner or had aided in the commission of the crime. (PCR Tr. 54). Counsel testified he argued there was no evidence of either of those things – there was nothing to show Applicant was a planner or that Applicant had conspired to commit this crime – and therefore, the State's hand of one, hand of all theory could not survive. (PCR Tr. 54-55). Counsel maintained he did not believe the State had proven Applicant planned to commit the crimes, nor did the State show any evidence of Applicant's participation in the crime. (PCR Tr. 56).

Regarding the jury charge, Applicant inquired whether Counsel, upon refreshing his recollection, saw anywhere the judge mentioned a plan as an element of the hand of one, hand of all theory. (PCR Tr. 58). Counsel testified he did not. (PCR Tr. 58). Counsel testified that in his experience, under common scheme and plan, hand of one, hand of all, it is required to show two or more person commensurate for an illegal purpose and that one or both do acts in further of that. (PCR Tr. 59). Counsel testified that the jury charge did not state anything about a plan or a scheme as an element to hand of one, hand of all. (PCR Tr. 59). Applicant inquired if Counsel believed there was anything missing from the jury charge. (PCR Tr. 60). Counsel responded that the charge given was a "bare" hand of one, hand of all charge. (PCR Tr. 60). Counsel testified that eleven years after this trial he would argue for more in the charge while noting that the charge did state "two or more people acting together, the act of one is the act of all". (PCR Tr. 60). Counsel stated

that he did not believe at the time of trial that the charge was objectionable. (PCR Tr. 61).

Regarding Sharon Goss, Applicant inquired whether Counsel was familiar with the name. (PCR Tr. 62). Counsel testified that he knew the name but was unaware of how he became familiar with it. (PCR Tr. 62). Counsel testified he did not recall if there was discovery disclosed showing the car where the gun with victim's DNA on it was found belonged to Sharon Goss. (PCR Tr. 63). Counsel did agree the car where the gun was found did not belong to Applicant. (PCR Tr. 63). Regarding investigation, Applicant questioned Counsel whether he investigated the man who owned the car in which the gun was found. (PCR Tr. 63). Counsel responded he did not. (PCR Tr. 63). Counsel stated he did not conduct an investigation because he did not believe it would be fruitful. (PCR Tr. 63). Counsel stated that any investigation would not have changed his defense that the gun was not Applicant's gun. (PCR Tr. 64). Counsel stated he did not expect to find Sharon Goss, the owner of the car, and have him testify that he bought a gun which had DNA all over it. (PCR Tr. 64).

***Witness Sharon Goss's Testimony***

Applicant called Sharon Goss, his cousin, to testify after the State rested their case. (PCR Tr. 67). Sharon testified that a gun was found in a car registered to him in 2007. (PCR Tr. 67). Sharon testified he obtained the pistol when he purchased some merchandise – clothes and firearms - from “some guys”. (PCR Tr. 67). Sharon testified he paid around \$500 dollars for all of the merchandise, including the pistol. (PCR Tr. 68). Sharon testified that after purchased the gun, he placed it in his vehicle that was parked in front of his residence. (PCR Tr. 68). Sharon testified that at the date of Applicant's trial he had been charged with possession with intent to distribute cocaine charge. (PCR Tr. 69). Sharon testified at the time of Applicant's trial he would have been willing to testify that he had purchased the gun illegally despite having a pending charge of his own. (PCR

Tr. 69). Sharon testified he did not talk to Counsel during the course of Applicant's case. (PCR Tr. 69).

## V. Standard of Review

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. 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 post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in *Strickland* to

determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. *Id.*

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonably professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. "The burden of rebutting this presumption 'rests squarely on the defendant,' and '[i]t should go without saying that the absence of evidence cannot overcome [i]t.'" *Dunn v. Reeves*, 594 U.S. \_\_\_, \_\_\_, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, "even

if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if '[t]he record does not reveal' that counsel took an approach that *no competent lawyer would have chosen.*" *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24).

"When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." *Dunn*, 594 U.S. \_\_\_, 141 S. Ct. at 2410 (quoting *Harrington*, 562

U.S. at 106–107). “Such decisions are particularly difficult because certain tactics carry the risk of ‘harm[ing] the defense’ by undermining credibility with the jury or distracting from more important issues.” *Id.* (quoting *Harrington*, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial*.” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had

no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Id.* at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).



## **VI. Findings of Fact & Conclusions of Law**

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments made by counsel and Applicant, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised and finds each to be without merit. Therefore, pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

### ***Allegation Counsel Failed to Properly Argue Motion for Directed Verdict***

Applicant testified his attorney did not properly argue his motion for a directed verdict. Applicant testified he believed Counsel should have argued the State did not have enough evidence to support a jury charge under hand of one, hand of all, and that the State's evidence only raised a mere suspicion of Applicant's guilt. Applicant further argued Counsel invited the State to charge Applicant under hand of one, hand of all despite a lack of evidence to support the charge.

When considering a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. *State v. Larmand*, 415 S.C. 23, 30, 780 S.E.2d 892, 895 (2015) (citing *Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). The role of the trial court is only to determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." *State v. Bennett*, 415 S.C. 232, 781 S.E.2d 352 (2016). If there is any direct or circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. *State v. Cherry*, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004). "In deciding motions for a directed verdict. . . the evidence and all reasonable inferences which may be drawn from it must

be viewed in the light most favorable to the non-moving party. If more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury.” *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 611, 518 S.E.2d 591, 597 (1999). “[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge’s ruling upon a motion for a directed verdict must stand absent an error of law.” *State v. Nix*, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986). The trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. *State v. Hernandez*, 382 S.C. 620, 625-26, 677 S.E.2d 603, 605-06 (2009). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *State v. Ladner*, 373 S.C. 103, 120, 644 S.E.2d 684, 693 (2007).

This Court has reviewed the relevant portion of the transcript and finds no deficiency in Counsel’s handling of this motion. (Trial Tr. 438 – 446). Counsel credibly testified he argued for a directed verdict as to all three charges – assault and battery with intent to kill, armed robbery, and kidnapping – raising the issues of whether the State had sufficiently proved Applicant was present during the robbery and whether the State had proved a link to Applicant and the gun used in the incident. (Tr. p. 439 – 440). At trial during his motion, Counsel noted the victim in this case, when asked directly, testified Applicant was not present in the store during the armed robbery. (Trial Tr. 438). In response, the trial court stated it believed Counsel’s interpretation of the victim’s testimony was a play on words. The trial court further noted victim’s testimony was not contradictory to the State’s case because though victim testified he did not see Applicant in the store, he knew there were four black males who he did not know present at the time of the incident<sup>10</sup>. (Trial Tr. 439). Counsel further argued during his motion to the trial court that the State

<sup>10</sup> The trial court later inquired whether the victim stated Applicant was not in the store. (Trial Tr. 478-479). Counsel represented to the trial court he had asked victim whether he recognized Applicant from the

could only pursue this case under the hand of one, hand of all theory, and to do so, must show Applicant was a planner or some kind of accessory. (Trial Tr. 438-439). Counsel argued the State had produced no evidence to place Applicant at the store during the robbery, nor had the State shown any link between the State's evidence and Applicant. (Trial Tr. 439-440). The trial court denied the motion for a directed verdict. (Trial Tr. 446). At the close of the Defense's case, Counsel renewed the motion for directed verdict and the trial judge declined to change his ruling. (Trial Tr. 480).

When considering a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. *State v. Larmand*, 415 S.C. 23, 30, 780 S.E.2d 892, 895 (2015) (citing *Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). If there is any direct or circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. *State v. Cherry*, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004). This Court finds there were clear factual issues for the jury to consider at the close of the State's case; the trial court correctly denied the motion. Therefore, this Court finds no deficiency with Counsel's handling of the motion and further finds Applicant did not suffer prejudice. Accordingly, this allegation is therefore **DENIED**.

***Allegation Applicant's Due Process and Equal Protection Rights Have Been Violated***

Applicant further asserted his continued incarceration is in violation of his due process and equal protection rights due to excessive delay in the disposition of this matter. At the evidentiary hearing, in support of this allegation, Applicant testified to the procedural history of this matter over all, as well as testified to the continuance occurring during this term of court and the prejudice

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robbery, to which victim had testified he did not. (Trial Tr. 478). The trial court warned Counsel of mischaracterizing the witness's testimony in closing by stating victim testified Applicant was not in the store during the robbery. (Trial Tr. 479).

Applicant believes he has incurred. Specifically, Applicant argued post-conviction relief counsel, Christopher L. Murphy, failed to inform him of the scheduling change for this hearing from December 7, 2021, until December 8, 2021. As such, Applicant argued one of his out-of-state witnesses, Felicia Henderson, was unavailable to testify. Applicant further alleged that he has been denied equal protection because the State of South Carolina has purposefully discriminated against him by using delay tactics.

As an initial matter, this Court notes it entered into a colloquy with Applicant regarding his alleged unavailable out-of-state witness. This Court specifically inquired whether Applicant wished to proceed with the hearing without his witness, to which Applicant unequivocally responded he did. Applicant informed this Court he had other claims to raise that did not require the unavailable witness. This Court notes it again inquired into Applicant's understanding and willingness to proceed without all alleged necessary witnesses during Applicant's testimony, to which Applicant again indicated he understood and wished to proceed. Therefore, to the extent Applicant alleges he was prejudiced by the one-day continuance in this matter during the December 2021 post-conviction relief term of court, this Court finds that allegation meritless.

As to allegation alleging excessive delay in the disposition of the matter, Applicant asserted he filed this application in May 2011. Applicant testified that following his initial evidentiary hearing denying relief he filed an appeal. Applicant testified that his appeal sat pending for seven years before the Court before being remanded. Applicant testified that after this matter was remanded back to the circuit court for a *de novo* evidentiary hearing it sat for an additional three years in the circuit court without a resolution. Applicant claims that as a result of these delays he has lost contact with witnesses who were present and willing to testify at his initial evidentiary hearing.

As to the allegations of excessive delay relating to the length of time this post-conviction relief matter has been pending, this Court finds Applicant has failed to show his due process rights were violated. This matter was remanded back to the circuit court for a *de novo* evidentiary hearing on October 17, 2018. After this matter was remanded, Applicant filed a Motion to Stay Proceedings on January 7, 2019, requesting the matter be stayed for one year as Applicant had filed a federal habeas corpus action. On January 29, 2019, an Order staying Applicant's PCR matter for one year was filed. Additionally, prior to this hearing, Applicant filed a motion to appoint counsel on July 26, 2021. That motion was heard and granted during the September 2021 term of court in the 9<sup>th</sup> Circuit. Therefore, based on Applicant's procedural history, this Court finds Applicant finds this allegation meritless.

As to Applicant's allegation he has been denied equal protection because the State of South Carolina has purposefully discriminated against him by using delay tactics. This Court finds that allegation wholly meritless as Applicant has shown no evidence to support a claim his equal protection rights were violated. This Court finds Applicant cannot show prejudice as a result of the alleged delay. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

***Allegation Counsel Failed to Object to Jury Charge of Hand of One, Hand of All***

Applicant further alleges Counsel should have objected to the hand of one, hand of all jury charge. Applicant asserts Counsel maintained the elements of hand of one, hand of all were not met when arguing Applicant's motion for a directed verdict, and therefore was ineffective for failing to object to the jury charge as a whole.

“‘Under the ‘hand of one is the hand of all’ theory [of accomplice liability], one who joins with another to accomplice an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.’” *State v. Thompson*,

374 S.C. 257, 261-62, 647 S.E.2d 702, 704-05 (Ct. App. 2007) (quoting *State v. Condrey*, 394 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002)). Though “[m]ere presence and prior knowledge that a crime was going to be committed, without more is insufficient to constitute guilt”, “presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a [principal].” *Id.* (quoting *State v. Hill*, 268 S.C. 390, 395-96, 234 S.E.2d 219, 221 (1977)). “In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties.” *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010).

At the evidentiary hearing, Counsel credibly testified he did not believe the hand of one, hand of all charge was objectionable at the time of trial. Counsel further testified his defense was to show the State had not met their burden – specifically, that the State did not have any direct evidence linking Applicant to the incident. Counsel testified he believed he had a thorough, well-thought-out defense and that he presented each piece of circumstantial evidence to the jury, attempting to show there were other reasonable explanations for the evidence.

This Court finds Applicant has failed to meet his burden and finds no deficiency on the part of Counsel nor prejudice therefrom in regards to this allegation. Evidence in the record supports a charge on the hand of one is the hand of all and the charge was appropriately given to the jury. Therefore, this Court finds Counsel would have had no valid basis for an objection to the instruction. Accordingly, this Court finds Counsel was not deficient for failing to object to the charge given, finds Applicant was not prejudiced by Counsel’s failure to object to the jury charge, and dismisses this allegation. Accordingly, this Court finds this allegation must be **DENIED**.

***Allegation Counsel Failed to Investigate Sharon Goss as Witness***

Applicant argues Counsel performed an inadequate pre-trial investigation into Applicant's cousin, the owner of the car where the gun with victim's DNA was found, Sharon Goss. A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. *Strickland*, at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney's "[f]ailure 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." *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing *Kibler v. State*, 267 S.C. 250, 227 S.E.2d 199 (1976)).

An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* at 690; *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

This Court finds Applicant has failed to establish any deficiency in Counsel's preparation for trial. Counsel testified he knew the car in which the gun was found did not belong to Applicant. Counsel further testified he did not investigate the owner of the car where the gun was found

because it would not have changed his defense strategy – that Applicant was not the owner of the gun. Therefore, this Court finds Counsel was not constitutionally ineffective and did not fail to conduct an adequate pre-trial investigation. As such, Applicant has failed to show any deficiency in Counsel's performance and any resulting prejudice. Accordingly, this allegation is **DENIED**.

***Allegation Counsel Failed to Request Mere Presence,  
Mere Knowledge, Mere Association Jury Charges***

Though Applicant did not make this allegation in his original application or amended applications, he alleged through his testimony at the evidentiary hearing Counsel was ineffective for failing to request a mere presence, mere knowledge, and/or mere association jury charge. Applicant presented no evidence regarding how he was prejudiced by Counsel's alleged failure to request these jury charges.

Mere association with another who committed a crime does not make that person an accomplice or a co-conspirator to the guilty perpetrator, nor does mere presence at the scene of the crime make a person an accomplice or a co-conspirator. *State v. Kelsey*, 331 S.C. 50, 76, 502 S.E.2d 63, 77 (1998). Counsel testified at this evidentiary hearing that his defense was focused on the State's inability to meet their burden. Counsel testified the State did not present any direct evidence linking Applicant to the incident. Counsel further testified that throughout the trial he attempted to show reasonable explanations for each piece of circumstantial evidence the State presented. Counsel maintained at this hearing he did not believe the State had proven Applicant either participated or planned to commit these crimes.

Therefore, this Court finds Applicant has failed to meet his burden of showing any ineffectiveness. This Court finds Counsel's defense strategy was centered around proving Applicant was not involved in the commission of these crimes in any capacity. This Court further



finds a request for a mere presence, mere knowledge, and/or mere association jury charge wholly conflicts with Counsel's strategy.

Thus, this Court cannot find any prejudice to Applicant. Accordingly, Applicant has failed to meet his burden under *Strickland*, and his request for relief by way of this allegation is **DENIED**.

### **VII. Conclusion**

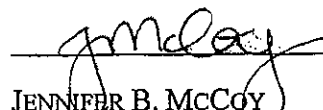
Based on the evidence presented at the PCR hearing and a thorough review of the record before this Court, this Court finds Applicant has not proven any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application is denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203 SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

### **IT IS THEREFORE ORDERED:**

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

**AND IT IS SO ORDERED** this 14 day of June, 2022.

  
 JENNIFER B. MCCOY  
 Presiding Circuit Court Judge  
 Ninth Judicial Circuit

Charleston, South Carolina

# EXHIBIT B

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Darrell L. Goss, #305517,  
Applicant,

vs.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE 9th JUDICIAL CIRCUIT

Case No. : 2011-CP-10-378a

MOTION TO ALTER OR  
AMEND JUDGMENT

**FILED**

JUN 27 2022

JULIE J. ARMSTRONG  
CLERK, C.P. & G.S.

TO: THE HONORABLE JENNIFER B. MCCOY ; PRESIDING JUDGE:

NOW COMES Applicant, Darrell L. Goss, pro se, and moves this Honorable Court, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and the South Carolina Supreme Court's ruling in both Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) and Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), for an Order altering or amending its judgment entered on June 15, 2022, and received on June 20, 2022.

The basis for this motion is as follows :

ARGUMENTI. The PCR Court should Alter or Amend its Judgment and Address Applicant's Claim of an Unfair Jury Trial.

At his PCR hearing, Applicant informed the Court about his outstanding motions to amend. (PCR Tr. 28-29)

The Court ruled :

THE COURT : All right. Second motion to amend filed August 4th of this year. You're seeking to add new grounds, is that what it was ?

Okay. I'll allow you to amend. I mean, I'm going to consider all the grounds that you allege, so --

MR. GOSS : Yes, ma'am. I just wanted to make sure I get it before the court, because I don't want to forget anything -- if this case has to go on appeal, that my issues were properly before the court.

THE COURT : I'll allow your amendments. Go ahead.

MR. GOSS : Yes, ma'am, thank you.

( PCR Tr. 29, II. 7-22 )

In its order of dismissal, the Court acknowledged that Applicant amended his PCR application to include the following allegation:

Unfair Jury Trial : The State failed to prove each element of " the hand of one, the hand of all " accomplice liability theory beyond a reasonable doubt

( Order of Dismissal, p. 6-8, III. Issues Before This Court, No. 2 )

The Court went further and explained :

To the extent the allegations set forth in Applicant's application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, the Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90

Id.

Applicant hereby Object to the Court's finding that he has voluntarily waived and abandoned his claim of an unfair trial. Applicant contends the Court's finding is not supported by the evidence contained in the record.

Indeed, Applicant argued / testified at his PCR hearing that he was denied a fair trial. ( PCR Tr. 14-36 ) It follows :

MR. GOSS : So, Your Honor, that's my argument. And I would be asking that the Court today render a directed verdict on these charges based on the lack of evidence that the state failed to produce beyond a reasonable doubt that I committed the crime under the hand of one, hand of all theory. And, as a result, my lawyer was ineffective. He allowed the State to violate my due process right to a fair trial, to have no case -- to have the State prove their case -- to prove each element of their case beyond a reasonable doubt.

As I stated, Your Honor, again, the stated failed to meet these elements of the hand of one, hand of all law that they charged me with.

So this whole conviction is wrongful, Your Honor, and should be vacated. And I should be immediately released from custody, Your Honor,

because I have spent the last 14 and half years of my life in prison for a crime that I did not even commit.

(PCR Tr. 25-26, II. 12-25 and 1-7)

However, the PCR Court did not specifically address this issue fair and square on its face in the order of dismissal. Therefore, Applicant respectfully asks the Court to alter or amend its order to address his claim of an unfair trial. Specifically, Applicant asks the PCR judge to make specific findings of fact and conclusions of law as to this issue, so that it can be properly preserve for appellate review, should Your Honor deny such claim. Id., Marlar.

In reviewing this claim, Applicant draws the Court's attention to the landmark case, Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979) (citing, In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 35 L.Ed. 2d 368 (1970)) ("Reasonable - doubt standard of criminal law has constitutional stature, and due process clause protects accused against conviction except upon proof beyond reasonable doubt of every fact necessary to constitute crime with which he is charged"), where the United States Supreme Court held:

Due process requires that no person

be made to suffer the onus of a criminal conviction except upon sufficient proof, defined as evidence necessary to convince a trier of fact beyond reasonable doubt of the existence of every element of the offense .

In the case at hand, it is undisputed that the State failed to prove each element of accomplice liability (commonly known as "hand of one, hand of all" ) .(PCR Tr. 54-55 ) Thus, Applicant was denied a fair trial under the Sixth and Fourteenth Amendment to the United States Constitution . 6th, 14th Amend. Const. .

## II. The PCR Court should Alter or Amend its Judgment and Address Applicant's Claim of Ineffective Appellate Counsel .

Recently, on June 16th 2022, after have receiving a copy of the (unsigned) proposed order of dismissal from the State's attorney general's office, Applicant filed a fourth motion to amend with the Court . In that motion, Applicant re-raised his claim of ineffective trial counsel for improperly arguing for a directed verdict, and he raised an entirely new claim of ineffective appellate counsel



for failing to advance the directed verdict motion on appeal. In the order of dismissal, which was filed on June 15, 2022 and received June 20, 2022, this Court did not address Applicant's new amended claim regarding the ineffectiveness of his appellate counsel pertaining to the issue(s) surrounding the directed verdict motion that he [Applicant] and his trial lawyer testified to before this Court at the PCR hearing.

Accordingly, Applicant asks the Court to grant his fourth motion to amend his PCR application, and to make specific findings of fact and conclusions of law related to this new allegation of ineffective appellate counsel.<sup>1</sup>

### CONCLUSION

Based on all the above reasons, this Court should grant Applicant's motion.

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<sup>1</sup> Should the Court deem it necessary to hold a new hearing regarding this issue of appellate counsel, Applicant concurs.

Respectfully Submitted,

Darrell L. Goss

Darrell L. Goss #305517

Lieber Corr. Inst.

P.O. Box 305

Ridgeville, SC 29472

June 22, 2022

# The Supreme Court of South Carolina

Darrell L. Goss, Petitioner,

v.

State of South Carolina, Respondent.

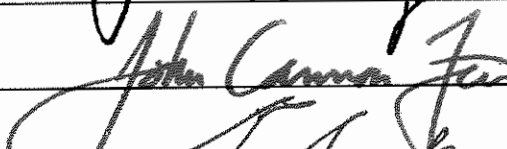
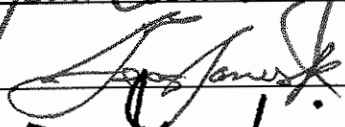
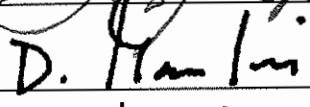
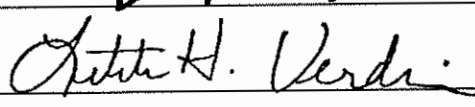
Appellate Case No. 2025-000218

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## ORDER

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Petitioner filed his second post-conviction relief (PCR) application alleging ineffective assistance of counsel for failure to file a notice of appeal from a prior PCR order issued by the Honorable Jennifer B. McCoy and entitlement to belated appellate review of Judge McCoy's order pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). The Honorable Jocelyn Newman found that Petitioner's request for belated appellate review of Judge McCoy's order was premature and dismissed his second PCR application because the time for serving and filing the notice of appeal from Judge McCoy's order has not yet started, due to a pending Rule 59(e), SCRCP, motion. This finding was correct. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (holding a timely Rule 59(e), SCRCP, motion stays the time for an appeal until the lower court rules on the motion). Therefore, we dispense with briefing and affirm Judge Newman's order.

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

Columbia, South Carolina  
August 14, 2025

cc:  
Danielle Dixon  
Jessica M. Saxon

## The Supreme Court of South Carolina

Darrell L. Goss, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2022-000924

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### ORDER

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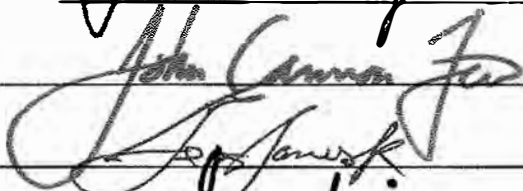
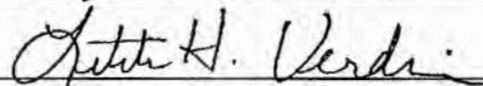
By order dated June 14, 2022, the Honorable Jennifer B. McCoy denied Petitioner's first post-conviction relief (PCR) application. On June 27, 2022, Petitioner filed a Rule 59(e), SCRCP, motion to alter or amend the judgment asserting constitutional violations and ineffective assistance of counsel.

While the Rule 59(e) motion was pending, Petitioner filed a notice of appeal of Judge McCoy's denial of his PCR application and moved to proceed *pro se*. This Court denied the motion to proceed *pro se*. In an accompanying letter, the Clerk of Court instructed Petitioner to submit proof that he had retained counsel or applied for counsel through the South Carolina Commission on Indigent Defense within twenty days.

By order dated October 24, 2022, this Court dismissed the case because Petitioner failed to comply with the Court's letter. The remittitur was sent on November 9, 2022.

Because the Rule 59(e) motion seeking to alter or amend Judge McCoy's order had not been ruled on, the notice of appeal was premature, and the Court should have dismissed the appeal on that ground rather than for Petitioner's failure to provide proof of counsel. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (holding a timely Rule 59(e), SCRCP, motion stays the time for an appeal until the lower court rules on the motion). Therefore, we recall the remittitur in this case sent on November 9, 2022; vacate the order dated October 24, 2022, dismissing Petitioner's notice of appeal from Judge McCoy's order for

failing to provide proof of counsel; and remand the matter to Judge McCoy to rule on Petitioner's Rule 59(e) motion. *See Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) (holding, when a remittitur has been properly sent, the appellate court no longer has jurisdiction over the case and no motion can be heard thereafter unless the remittitur is sent down by mistake, error, or inadvertence of the Court (citing *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893))). We direct Judge McCoy to rule on the motion within thirty days from the date of this order. Within thirty days following that ruling, Petitioner must serve and file a notice of appeal if he wishes to seek appellate review of Judge McCoy's order.

|                                                                                     |      |
|-------------------------------------------------------------------------------------|------|
|   | C.J. |
|   | J.   |
|   | J.   |
| D. Hanlin                                                                           | J.   |
|  | J.   |

Columbia, South Carolina  
August 14, 2025

cc:

Danielle Dixon

Jessica M. Saxon

Darrell Goss

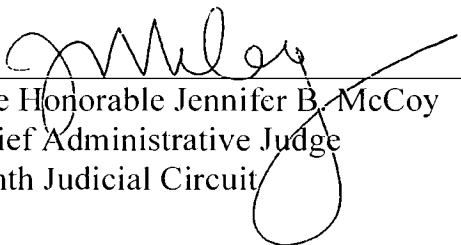
The Honorable Jennifer B. McCoy

The Honorable Julie J. Armstrong

|                          |   |                                    |
|--------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS       |
|                          | ) | NINTH JUDICIAL CIRCUIT             |
| COUNTY OF CHARLESTON     | ) | CIVIL ACTION NO.: 2011-CP-10-03782 |
|                          | ) |                                    |
| Darrell L. Goss,         | ) |                                    |
|                          | ) |                                    |
| Petitioner,              | ) |                                    |
|                          | ) | ORDER DENYING PETITIONER'S         |
| v.                       | ) | MOTION TO ALTER AND AMEND          |
|                          | ) | JUDGMENT                           |
| State of South Carolina, | ) |                                    |
|                          | ) |                                    |
| Respondent.              | ) |                                    |
| _____                    | ) |                                    |

Petitioner Darrell L. Goss filed a Motion to Alter or Amend Judgment on June 27, 2022, seeking a review of this court's order on multiple grounds.<sup>1</sup> Having reviewed Applicant's Motion and the arguments therein, this Court hereby DENIES Applicant's Motion to Alter or Amend Judgment, without necessity of a hearing.

IT IS SO ORDERED!

  
 The Honorable Jennifer B. McCoy  
 Chief Administrative Judge  
 Ninth Judicial Circuit

August 19, 2025  
 Charleston, South Carolina

FILED  
 2025 AUG 19 PM 1:20  
 JULIE J. ANTHONY  
 CLERK OF COURT  
 BY

<sup>1</sup> This court was made aware of the long-pending Motion to Alter or Amend Judgment by Order of the Supreme Court of South Carolina on August 14, 2025, and instructed to issue a ruling within thirty days.