

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

---

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S.C. Supreme Court

ILLYA T. SALTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001773

---

APPENDIX

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ATTORNEYS FOR RESPONDENT

INDEX

INDEX .....i

GUILTY PLEA HEARING TRANSCRIPT (JANUARY 31, 2011) ..... 1

APPLICATION FOR POST-CONVICTION RELIEF .....20

MOTION FOR DEFAULT JUDGMENT .....33

AMENDMENTS TO POST CONVICTION RELIEF APPLICATIONS .....37

RETURN .....47

POST-CONVICTION RELIEF HEARING TRANSCRIPT (JUNE 18, 2013) .....54

ORDER OF DISMISSAL .....71

CLERK OF COURT RECORDS .....78

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	2010-GS-23-1872
	)	2010-GS-23-1874
	)	2010-GS-23-1879
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ILLYA TRAMELL SALTER,	)	<b>ORIGINAL</b>
DEFENDANT.	)	
	)	

January 31, 2011  
 Greenville, South Carolina

B E F O R E:

THE HONORABLE G. EDWARD WELMAKER, JUDGE.

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

JONATHAN M. GREGORY, ESQ.  
 Assistant Solicitor

DANIEL J. FARNSWORTH, ESQ.  
 Attorney for the Defendant

HOLLIE M. JENKINS  
 Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1  
2 THE CLERK: Your Honor, this is case 2010-GS-23-1872,  
3 the State v. Illya Tramell Salter, who is indicted for  
4 carjacking and is pleading to the same. In the case of  
5 2010-GS-23-1874, Mr. Salter is indicted for failure to  
6 stop for a blue light, pleading to the same. In the case  
7 of 2008-GS-23-1879, Mr. Salter is indicted for armed  
8 robbery. He's pleading to the same.

9 And these, Your Honor, are all true bills.

10 Sir, would you, the best you can, raise your right  
11 hand.

12 WHEREUPON,

13 ILLA TRAMELL SALTER,

14 after first having been duly sworn, testified as follows:

15 THE COURT: Mr. Farnsworth, do you represent  
16 Mr. Salter in these matters?

17 MR. FARNSWORTH: Yes, Your Honor.

18 THE COURT: Have you had an opportunity to talk with  
19 your client about the charges pending against him, the  
20 possible punishments he faces, and his Constitutional  
21 rights?

22 MR. FARNSWORTH: I have, Your Honor.

23 THE COURT: Do you believe he understands the  
24 discussions you've had with him?

25 MR. FARNSWORTH: Yes, Your Honor.

1 THE COURT: Have you had an opportunity to review  
2 with your client all the State's evidence?

3 MR. FARNSWORTH: I have, Your Honor.

4 THE COURT: Based upon your investigation of all the  
5 facts and circumstances, do you believe the State could  
6 produce sufficient evidence to convince a jury of his  
7 guilt beyond any reasonable doubt?

8 MR. FARNSWORTH: Yes, Your Honor.

9 THE COURT: Do you believe if a trial were to be  
10 held, his conviction would be most probable?

11 MR. FARNSWORTH: Yes, Your Honor.

12 THE COURT: Mr. Salter, how old are you, sir?

13 DEFENDANT SALTER: 36, sir.

14 THE COURT: Are you married?

15 DEFENDANT SALTER: No. I'm single.

16 THE COURT: Do you have children?

17 DEFENDANT SALTER: Yes, sir.

18 THE COURT: How many children do you have?

19 DEFENDANT SALTER: Two.

20 THE COURT: And how old are your children?

21 DEFENDANT SALTER: My son is five, and my daughter is  
22 four.

23 THE COURT: How far did you go in school, Mr. Salter?

24 DEFENDANT SALTER: 14, sir.

25 THE COURT: Where did you finish high school?

1           DEFENDANT SALTER: In Dolton, Illinois, in Chicago.  
2           And I went to Kennedy-King College.

3           THE COURT: What did you study at college?

4           DEFENDANT SALTER: I took a journalism [phonetic]  
5           class, and an apprenticeship class to learn how to read  
6           blue prints.

7           THE COURT: Mr. Salter, have you ever been treated  
8           for alcohol or drug abuse?

9           DEFENDANT SALTER: No, sir.

10          THE COURT: Have you ever been treated for any sort  
11          of mental illness?

12          DEFENDANT SALTER: No, sir.

13          THE COURT: Do you have any physical, mental, or  
14          emotional problem of any kind that would effect your  
15          ability to understand what we're doing here today?

16          DEFENDANT SALTER: No, sir.

17          THE COURT: Have you taken any prescription drugs, or  
18          do you have anything in your system that would interfere  
19          with your abilities here today?

20          DEFENDANT SALTER: No, sir.

21          THE COURT: These indictments that I have before me  
22          say that here in Greenville County back in December of  
23          '09, around the 19th, that you were armed with a deadly  
24          weapon, or alleging either by actions or words that you  
25          were armed representing a deadly weapon that you committed

1 a robbery so that those people could reasonably believe  
2 that you did have a deadly weapon, and you took by force  
3 or intimidation goods or monies, that being clothing  
4 belonging to Wal-Mart from the person of -- or in the  
5 presence of a Michael McKinney.

6 Are you here to plead guilty today to that armed  
7 robbery?

8 DEFENDANT SALTER: Yes, sir.

9 THE COURT: I, also, have an indictment, Mr. Salter,  
10 that states that on or about December the 19th, 2009, you  
11 took or attempted to take a motor vehicle, that being a  
12 2004 Toyota Camry from Thomas Scott Cox by force or  
13 violence, or by intimidation.

14 Are you here to plead guilty to that carjacking?

15 DEFENDANT SALTER: Yes, sir.

16 THE COURT: And I have an indictment that says on or  
17 about that same date of December 19th, 2009, that you  
18 willfully, knowingly, and unlawfully failed to stop for a  
19 police vehicle that you saw as you were driving along the  
20 road or street, that you intentionally refused to stop  
21 when signaled to do so by a blue light and/or siren.

22 Are you pleading guilty to that failing to stop, as  
23 well?

24 DEFENDANT SALTER: Yes, sir.

25 THE COURT: Solicitor, I'll be glad to hear about the

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facts of the cases.

MR. GREGORY: May it please the Court.

Your Honor, on December 19th, 2009, this Defendant entered Wal-Mart on White Horse Road in Greenville County and concealed clothing items in a Wal-Mart bag. The clothing items were four pairs of jeans. A loss prevention officer recognized the Defendant as the same subject that he attempted to stop for shoplifting the night before. The loss prevention officer attempted to apprehend the Defendant outside in the parking lot. At this time, ~~the Defendant pulled a cutting instrument from his pocket and lunged at the loss prevention officer's head.~~

The Defendant then approached a vehicle. He attempted to open several car doors, the handles. He could not get into several of the car doors, but came upon Mr. Cox, who was seated in his silver Camry. ~~He grabbed Mr. Cox by the arm and told him to get the "E" out of his~~ car and to give him the keys. The Defendant then left the Wal-Mart parking lot at a high rate of speed almost causing a collision with a Greenville County Sheriff's Office vehicle. They followed him out of the parking lot and down West Marion Road.

The Defendant ran five stop signs and one red light before he lost control of the car, hit a tree. He fell

1 out of the car and began to run. He was tased and,  
2 eventually, brought into custody. All facts and incidents  
3 occurred in Greenville County.

4 He does have a prior record, Your Honor.

5 And I would add that Mr. McKinney and Mr. Cox both  
6 are here today. They do not wish to address the Court,  
7 but they are here today.

8 THE COURT: Mr. Salter, you heard the facts recited  
9 by the Solicitor. Are those substantially the facts for  
10 which you're here to plead guilty to today?

11 DEFENDANT SALTER: Yes, sir.

12 THE COURT: Do you understand that by entering a plea  
13 of guilty, you're giving up substantial rights that you  
14 enjoy as a citizen? You have a right to have a trial by  
15 jury. A jury could be assembled, and the State of South  
16 Carolina would have the burden of proving your guilt  
17 beyond a reasonable doubt. You'd be presumed innocent.  
18 You could remain silent throughout the entire proceedings.

19 You could confront those witnesses against you, let  
20 your lawyer ask questions of those witnesses. You could  
21 call witnesses in your own behalf, if you wanted to put up  
22 a defense. You'd have a right to challenge the evidence  
23 that the State offers, and bring evidence on your own  
24 behalf, if you chose to. You have these and several  
25 rights. But you understand, you're giving all those

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rights up by pleading guilty.

Do you understand that?

DEFENDANT SALTER: Yes, sir.

THE COURT: Do you want to give those rights up?

DEFENDANT SALTER: Yes.

THE COURT: Are you satisfied with your attorney's representation of you in this case?

DEFENDANT SALTER: Yes, sir.

THE COURT: Has he done everything to defend you that you've asked him to do?

DEFENDANT SALTER: Yes.

THE COURT: Have you met with him as often and as long as you feel is necessary?

DEFENDANT SALTER: Yes.

THE COURT: Have you understood those discussions you've had with him?

DEFENDANT SALTER: Yes.

THE COURT: Do you have any complaints whatsoever about your lawyer's representation?

DEFENDANT SALTER: No, sir.

THE COURT: Is there any recommendation from the State, Solicitor?

MR. GREGORY: There is no recommendation, Your Honor.

THE COURT: Has anybody threatened you in any way to get you to plead guilty today, Mr. Salter?

1           DEFENDANT SALTER: No, sir.

2           THE COURT: Has anyone promised you anything, or held  
3 out any hope of reward in order to get you to plead?

4           DEFENDANT SALTER: No, sir.

5           THE COURT: Has anybody suggested to you that you  
6 would receive a particular sentence, or condition, or  
7 other matter by pleading guilty?

8           DEFENDANT SALTER: No, sir.

9           THE COURT: You're pleading guilty then of your own  
10 free will?

11          DEFENDANT SALTER: Yes.

12          THE COURT: Are you pleading guilty to these charges  
13 because you are guilty?

14          DEFENDANT SALTER: Yes.

15          THE COURT: Do you understand that for armed robbery,  
16 you can be sentenced up to 30 years in jail?

17          DEFENDANT SALTER: Yes, sir.

18          THE COURT: You have a minimum sentence of 10 years.

19          DEFENDANT SALTER: Yes.

20          THE COURT: And do you understand that the  
21 carjacking, you can be sentenced to 20 years in jail?

22          DEFENDANT SALTER: Yes.

23          THE COURT: Do you understand that?

24          DEFENDANT SALTER: Yes.

25          THE COURT: And failure to stop for a blue light, do

1 you understand you can be sentenced up to three years in  
2 jail?

3 DEFENDANT SALTER: Yes, sir.

4 THE COURT: Have you understood all of my questions,  
5 Mr. Salter?

6 DEFENDANT SALTER: Yes.

7 THE COURT: Have you been truthful in your answers to  
8 me?

9 DEFENDANT SALTER: Yes, sir.

10 THE COURT: The law gives you a right, if you meet  
11 our Appellate Court rules, to appeal this proceeding  
12 within 10 days. And if you can't afford an attorney, one  
13 could be appointed for you.

14 Do you understand that?

15 DEFENDANT SALTER: Yes.

16 THE COURT: I find there is a substantial factual  
17 basis for the plea, that it has been freely, voluntarily,  
18 knowingly, and intelligently made by Mr. Salter with the  
19 advice of competent legal counsel with whom he has  
20 expressed his satisfaction. And I will accept your plea,  
21 sir.

22 Mr. Farnsworth, I'll be glad to hear from you, from  
23 your client, and anyone else who would like to address the  
24 Court.

25 MR. FARNSWORTH: Thank you, Your Honor.

1           May it please the Court.

2           Your Honor, Mr. Salter is -- he's already told you  
3 about his age, his education. He went two years to  
4 college, passed high school. His most recent employment  
5 in Greenville, he worked at Columbia Farms for a good  
6 while, a year or two. He got hurt out there on the job  
7 and was laid off because of that. And, also, at the same  
8 time, he developed double pneumonia. So that would have  
9 kept him from getting another job anywhere.

10           After he got through -- got well from his pneumonia,  
11 he kind of got down because he didn't have any money. He  
12 couldn't really continue helping support his children, his  
13 two children like he had been. And so he developed a drug  
14 habit with crack, which probably was -- or as it was is  
15 the worst thing he could have done.

16           This case, Your Honor, as you've heard, started out  
17 as a routine shoplifting case. Mr. Salter took about four  
18 pairs of jeans and headed outside. ~~And he was on crack as~~  
19 ~~and that was going on~~ He got outside. And when he did,  
20 the -- one of the employees there in security came outside  
21 in the parking lot and, you know, told him that he needed  
22 for him to come back in, that he had taken some goods  
23 without paying.

24           They go back and forth. There's a video on this.  
25 They go back and forth. Most of it is Mr. Salter trying

1 to keep away from him. But there is a point and the  
2 testimony would have been that a pair of scissors is what  
3 he had -- or appeared to be a pair of scissors. And the  
4 intimidation of -- the force and the violence was directed  
5 toward him out in the parking lot with those scissors  
6 within a matter of seconds.

7 ~~Judge, I've explained to him -- and this is maybe one~~  
8 ~~of the reasons this got on the trial list.~~ I explained to  
9 him about the continuous offense theory under our robbery  
10 law, which has been in effect now since 2008, 2009. And  
11 he, finally, understands that. And he understands that  
12 it's a continuous offense and that the taking would -- the  
13 taking and assertion would continue until he left the  
14 parking lot or escaped. But there's no question that he  
15 understands the elements of robbery in his particular  
16 case.

17 But, as I said, it was a, you know -- and then he --  
18 after he was -- had his altercation with the employee  
19 there, he grabbed the car of Mr. Cox and took off in that.  
20 I don't think there was any injury -- I know there wasn't  
21 to Mr. Cox. And he just took off. He was in a panic. He  
22 was on the drugs. And he took off. They chased him, no  
23 question. He had a wreck. He got out, tried to run.  
24 They tased him. And so those are the facts, Your Honor,  
25 which are virtually the same as the Solicitor told you.

1           Judge, he has been in jail since December 19th, 2009.  
2           He's been in there for about 14 months now. He has told  
3           you he has a -- had a severe problem with crack. He  
4           understands that he's going to receive some active time  
5           today. He wants me to ask that he be given -- or be  
6           ordered to have some drug rehabilitation in jail, which, I  
7           assume, ATU still does that. And he's been very, very  
8           cooperative with me. I think I spent more time with him  
9           last week than I did with my wife.

10           So we -- he's had access to the discovery. We've  
11           been over it. And, again, he's cooperated with me 100  
12           percent in working on his case. And this is just an  
13           example, Your Honor, of being on drugs and starting out  
14           with something that wasn't that serious and it ended up  
15           that it was. So we just ask you to take that into  
16           consideration.

17           And I think he may have something he wants to say.

18           THE COURT: Yes, sir, Mr. Salter. I'll be glad to  
19           hear from you.

20           DEFENDANT SALTER: First, I want to apologize to the  
21           victims and to the Court as well. I was a productive  
22           member of society before I acquired this drug habit. And,  
23           like I said, I want to apologize.

24           And the reason for me being -- the reason for me  
25           doing what I have done is to continuously take care of my

1 kids and provide for my drug habit. And, once again, I  
2 just want to say I'm sorry. And if it so pleases you and  
3 the Court, if I could be sentenced to drug court, some  
4 probation and -- so I can continuously find out the things  
5 about the -- my drug habit, if it so pleases the Court.

6 Thank you.

7 THE COURT: When did you get addicted?

8 DEFENDANT SALTER: It was after I got laid off from  
9 my job. So it was maybe --

10 THE COURT: When did you first use a drug, marijuana,  
11 whatever? Back in high school?

12 DEFENDANT SALTER: Yes.

13 THE COURT: Or before then?

14 DEFENDANT SALTER: Back in high school is when I  
15 first started using marijuana.

16 THE COURT: That's when you started using marijuana?

17 DEFENDANT SALTER: Yes.

18 THE COURT: When did you start using crack?

19 DEFENDANT SALTER: Crack cocaine was in 2009.

20 THE COURT: You didn't use any of that in high  
21 school?

22 DEFENDANT SALTER: No, sir.

23 THE COURT: Just marijuana?

24 DEFENDANT SALTER: Just marijuana.

25 THE COURT: You continued to use marijuana?

1 DEFENDANT SALTER: Yes.

2 THE COURT: Did you get tired of marijuana and decide  
3 to start on crack?

4 DEFENDANT SALTER: No, it wasn't that. It was just I  
5 tried something new. And, at the time, I thought I liked  
6 it, and it escalated to --

7 THE COURT: You did like it.

8 DEFENDANT SALTER: And it escalated to something that  
9 wasn't useful.

10 THE COURT: What's the prior record, Solicitor?

11 MR. GREGORY: 1995, petit larceny; 1999, failure to  
12 appear, seven counts of fraud check; 2000, ~~bank robbery~~;  
13 2005, violation of federal probation; 2005, loitering to  
14 engage in drug activity; 2007, four counts of financial  
15 transaction card fraud; 2008, two counts of shoplifting,  
16 forgery; 2009, four counts of shoplifting.

17 THE COURT: So your drug charge in 2007 dealt with  
18 marijuana?

19 DEFENDANT SALTER: Sir?

20 THE COURT: Your drug charge in 2007 was marijuana?

21 DEFENDANT SALTER: Yes.

22 THE COURT: How much time did you do on the bank  
23 robbery?

24 DEFENDANT SALTER: Three years and six months.

25 THE COURT: All total after your probation violation

1 and everything, or was that before your violation?

2 DEFENDANT SALTER: Before the violation.

3 THE COURT: Did you do some more time after the  
4 violation?

5 DEFENDANT SALTER: Six months.

6 Actually, Your Honor, it was unarmed bank robbery  
7 after the fact.

8 THE COURT: You've got a lot of abilities, talents,  
9 and education.

10 DEFENDANT SALTER: Yes, sir.

11 THE COURT: Why did you waste it?

12 DEFENDANT SALTER: I turned to drugs at the time. I  
13 didn't know how to deal with me not being able to provide  
14 for my family like I was at the time.

15 THE COURT: You weren't providing for your family in  
16 2000.

17 DEFENDANT SALTER: I didn't have any kids in 2000,  
18 Your Honor.

19 THE COURT: You didn't -- you did all these things  
20 without drugs being involved?

21 DEFENDANT SALTER: Besides marijuana, yes.

22 THE COURT: It was marijuana?

23 DEFENDANT SALTER: Yes, sir.

24 THE COURT: Were you high or did you just do them?

25 DEFENDANT SALTER: Both.

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(Pause.)

THE COURT: This is case 2010-GS-23-1879, the sentence of the Court is the Defendant be committed to the State Department of Corrections for a period of 230 months. Case 2002-1872, a 230-month sentence, concurrent. Case 2010-1874, a 36-month sentence, again, concurrent to that previously imposed.

I wish you the best, Mr. Salter. I'm recommending the ATU program while you're there. And, hopefully, they can help you get a grip on the drug problem you have.

I wish you the best.

\*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*

CERTIFICATE OF REPORTER

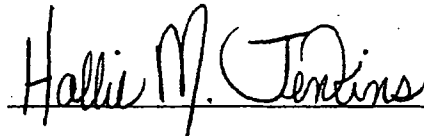
STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 31st day of January, 2011.

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

August 22, 2011



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Greenville )  
 )  
Eilya Trameil Salter, #270347 )  
 Full name and prison number (if any) of Applicant. )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )

IN THE COURT OF COMMON PLEAS

2011-CP-23-42

APPLICATION FOR

POST-CONVICTION RELIEF

FILED  
 PAUL W. KASIMIR  
 CLERK  
 GREENVILLE CO. S.C.  
 2011 APR 28 AM 11:42

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 veified (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 thfees 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 Perry Correctional Institution
2. Name and location of Court which imposed sentence General Sessions, Greenville Co
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 

	(a) <u>2010-GS-23-001879</u>	<u>Armed Robbery</u>
	(b) <u>2010-GS-23-001872</u>	<u>Carjacking</u>
	(c) _____	_____
5. The date upon which sentence was imposed and the terms of the sentence:
 

	(a) <u>Jan. 31, 2011</u>	<u>230 months</u>	_____
	(b) <u>Jan. 31, 2011</u>	<u>230 months</u>	_____

- (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?  
 \_\_\_\_\_  
No

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_

- (b) the result in each such Court to which you appealed:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- (c) the date of each such result:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My attorney received my letter concerning the appeal late.
  - (b) My attorney never discuss my rights to an appeal.
  - (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) Involuntary Guilty Plea
- (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? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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

- (a) the specific nature thereof:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

(d) the date of each such disposition:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

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

i. N/A

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?

N/A

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

(a) which grounds have been presented:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. N/A

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) This is the first petition/motion that has been filed

(b) concerning these convictions.

(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? \_\_\_\_\_
- (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. Daniel Farnsworth, Sr.
  - ii. P.O. Box 18196
  - iii. Greenville SC 29603
- (b) the proceedings at which each such attorney represented you:
  - i.  plea
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Vacate Judgment or in the Alternative a negotiated plea of time s

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

n/A

STATE OF SOUTH CAROLINA )  
 )  
County of Greenville )

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.

Allysa T. Salter

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

Danya Mune (L.S.)  
Notary Public

My Commission Expires: Jan 28, 2018

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

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.

Allysa T. Sutto  
Applicant

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

[Signature]  
Notary Public

My Commission Expires: Jan 28, 2018

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

ILLYA TRAMELL SALTER,  
S.C.D.C. No. 270347,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLE

FILED  
PAUL B. WAINWRIGHT  
GREENVILLE CO. SC  
COURT

2011 JUN 28 AM 11:12

Case No.:

POST-CONVICTION RELIEF  
ISSUES' PRESENTMENT

The Applicant submits this document to this Honorable Court to address questions #10 and #11 of the post-conviction relief application attached.

I.

10) A) Ineffective Assistance of Counsel:

11) A) Failure to investigate and prepare for a defense at trial.

DISCUSSION

(A)

To establish counsel was inadequately prepared to go to trial, an Applicant must present evidence of what evidence could have been discovered and what defense could have been pursued had the case proceeded to trial.

In the present case the victim of the carjacking submitted to producing an unwritten statement to be used as probable cause for an arrest warrant. However, after one has read the statement, it will manifest an understanding that at the time this incident took place the victim's mental state was one of confusion and very conflicting.

Due to the fact he stated in his statement that he was loading his groceries in his trunk and started to drive away when a black male heavy set gray sweat shirt came up to him and said give me your fucking keys and get out of the car.

In analyzing the literal meaning of the English language we find that words ending in the suffix -ing concerns a present action. Thus the victim could not have been in his car and loading his trunk at the same time. Moreover, to show that the victim was on the outside of the car one must understand word phrases and utilize logic. A person does not have a need to ask for one's keys for the purpose of carjacking if the car is already in motion. Therefore if this matter had been submitted to a jury the Applicant could not have been convicted beyond a reasonable doubt as required by In Re Vinship, 90 S. Ct. 1048 (1970), for carjacking because the victim must have been inside the vehicle or operating the vehicle not on the outside. And anything less would reject logic, experience, and common sense.

(B)

Applicant was charged with Armed Robbery for a shoplifting incident at Walmart. In utilizing Mr. McKinney's statement he has stated "While on the phone with dispatch I asked Sutter to return to the store with me." This sentence alone provides the knowledge that Applicant had moved the merchandise from inside to the outside of the store without presenting or using a weapon. Armed Robbery is defined as presenting a weapon during the commission of a crime of Robbery, however looking to the facts this "crime" was completed after the Applicant gained access to the outside of the store with no altercation

(A)

with anyone. Therefore if this matter had been presented to a jury Applicant if convicted would have been convicted of a lesser offense than Armed Robbery.

## II.

10) B) Involuntary Guilty Plea

11) B) Plea was given under duress and misrepresentation of facts and is a free

While plea agreements are a matter of criminal jurisprudence, most courts have held they rest on contractual principles. Yet the analysis of the plea agreement must be conducted at a more stringent level than in a commercial contract because the rights involved are generally fundamental and constitutionally based. Reed v. Beck, 511 S.E.2d 394 (1999).

Moreover, under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case. Therefore the government is held to a greater degree of responsibility than the defendant (or possibly than would be either of the parties to a commercial contract).

In determining the facts of this issue, it would be wise to understand what duress means: it is defined as a condition of the mind produced by improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition. Holler v. Holler, 612 S.E.2d 469 (2005).

Applicant contends he was told that a plea of guilty was in his best interest considering his past record, because proceeding to trial by jury he would get a life sentence without the ~~possibility~~ possibility of parole. When in fact if he had proceeded to trial by jury "if" convicted he would have

only received no more than 30 years if convicted as indicated with all sentences to run concurrent. However, after a careful review of Applicant's record, we find he has one unexpired bank robbery.

Thus, pursuant to S.C. Code Ann. § 17-25-45 (A), a defendant convicted of a most serious offense must be sentenced to life imprisonment without the possibility of parole, or the defendant has one or more prior convictions for a most serious offense or two or more prior convictions for a serious offense.

Therefore, keeping with the language of the law and reciting Applicant's rec it is clear the facts that influence Applicant's plea of guilty was greatly misrepresented.

Furthermore, where untrue conclusions has been induced by representations of one party, made with the knowledge of their untruth and with the intention of deceiving, it is fraud. To constitute fraud in law there must be a false representation of the facts and the falsity must be known. The South Carolina Supreme Court requires that a defendant entering in a guilty plea be made aware of the nature and crucial elements of the offense, the maximum and any minimum penalty and the nature of the constitutional rights being waived. Pittman v. State, 524 S.E.2d 623 (1999). Also, a contract perpetrated by fraud is voidable and not void until the Applicant has presented the matter to the court.

### III.

10) C) Prosecutorial Misconduct

11) C) Failed to follow criminal procedures when acquiring indictments

Applicant was arrested on these charges on December 19, 2009 and was indicted by a grand jury December 14, 2010. Pursuant to Rule 3(c)(1-2) S.C.R. Crim. P. which is as follows:

(c)

(c) Action on Warrant: Within ninety (90) days after receipt of an arrest warrant from the Clerk of Court, the Solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the grand jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the grand jury; (2) formally dismissing the warrant, noting on the face of the warrant the action taken . . .

After acknowledging the language of the procedures in which an indictment is to be obtained, we are forced to understand the establishment for rules of procedures and statutes, also the effects of any violation of the procedures and statutes.

Becoming the "fiduciary" under misrepresentation of the Presidential Executive Order issued on March 5, 1933, we volunteered to be citizens of the jurisdiction and all of their laws of the assumed ten square miles of Washington, DC. Once we became 14<sup>th</sup> Amendment citizens, we entered into a contract with the government to abide by all of their rules and regulation, if not one who is in violation would be held to pay the debt of such violation.

However, the solicitor in this case failed to acknowledge the fact that the government created procedures in which must be followed before a "person" can be legally held to pay the debt for such violation and once the government has failed to follow these procedures the contract becomes void for such violation. Because such conduct by the government violates the defendant's rights to "due process and equal protection of law."

Applicant also reserves his rights to amend this application in the future.



Ilyia Trammell Salter, # 270347

Perry Correctional Institution

Q3B-207

430 Oaklawn Rd.

Pelzer, SC 29669

**RECEIVED**

JUN 23 2011

P.C.I. MAILROOM

Paul B. Wickensimer  
Clerk of Court

305 East North Street

Greenville, SC 29601

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

ILLYA TRAMELL SALTER, #270347,

Applicant,

Case No.: 2011-CP-230-4280

VS.

MOTION FOR DEFAULT JUDGMENT

STATE OF SOUTH CAROLINA,

Respondent.

Applicant, ILLYA TRAMELL SALTER, submits this motion for a judgment by default to be entered in this matter due to the following facts:

PROCEDURAL HISTORY

Applicant was said to have been indicted by the Grand Jury of Greenville County on December 14, 2010, of Armed Robbery and Carjacking. After proceeding to Court on an plea of guilty he was sentenced to 230 months on January 31, 2011. Applicant did not appeal his plea and sentence.

On June 22, 2011, Applicant filed a Post-Conviction Relief (PCR) Application concerning this conviction.

DISCUSSION

Pursuant to Rule 12 of S.C.R.C.P. "the 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." As of the date of the filing of this motion there has not been an answer or an response filed concerning this application.

Thus, the Attorney General Office has violated the provisions of this rule, which in the setting is mandatory language. Therefore due to the State's lack of keeping with the rules the charges of Armed Robbery and Carjacking should be dismissed against Applicant.

WHEREFORE, stating the facts concerning this motion. Applicant asks this Honorable Court to grant this motion and any other relief that is just and proper for such matter.

Respectfully Submitted,

Date: September 12, 2011

S/ Tramell Salter  
Tramell Salter,  
Applicant.

Perry Correctional Institution  
430 Oaklawn Rd.  
Petzer, S.C. 29465

AFFIDAVIT OF CERTIFICATE OF NON-RESPONSE

That I, Illya Trammell Salter, herein "Affiant", a living breathing man, being first duly sworn, depose and say and declare by my signature that the facts of this motion and herein are true and complete to the best of my knowledge and belief.

That, Affiant has forward a true and correct copy of the Motion for Default Judgment to Alan Wilson, Attorney General for South Carolina. Affiant request that Mr. Wilson submit a rebuttal point for point to all issues presented in the PCR Application and to the amended issue within ten (10) days from day stamp of the P.C.I. Mailroom.

That, if Mr. Wilson refuse or otherwise do not submit a rebuttal to the issues stated point for point shall constitute an agreement to all issues standing as truth in the public records and is an agreement that Affiant is entitled to the relief of dismissal of all crimes charged.

That, Mr. Wilson's silence or non-rebuttal will constitute an agreement for Applicant to be compensated by the state of South Carolina at the sum of One Million Dollars (\$1,000,000.00) a year of physical confinement and Ten Thousand Dollars (\$10,000.00) for each day that does not constitute a year.

Further Affiant Swith Not.  
Date: This 12 day of September, 2011 A.D.

Without Prejudice  
s/ Illya Salter  
Illya Trammell Salter,  
Affiant.

SWORN TO and SUBSCRIBED before me  
this 12 day of September, 2011 A.D.

[Signature]  
Notary Public for South Carolina

My Commission Expires: Jan 29 2018

Perry Correctional Institio.  
430 Oaklawn Rd.  
Pelzer, S.C. 29669

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

ILLVA TRAMELL SALTER, # 270347,

Applicant,

Case No. : 2011-CP 270-4281

vs.

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,

Respondent.

I, Illva Trammell Salter, under the penalty of perjury certify that a true and correct copy has been served on Alan Wilson, Attorney General for South Carolina at P.O. Box 11549, Columbia, S.C. 29211 and the original was filed with the Clerk of Court for Greenville County, Paul B. Wickensimer at Greenville County Courthouse, 305 East North Street, Greenville, S.C. 29601, by way of United States Mail through the ~~Perry~~ Correctional Institution's Mailroom.

Without Prejudice

SI *Illva Salter*  
Illva Trammell Salter,  
Applicant.

Perry Correctional Institution  
430 Dunlawton Rd.  
Pulzer, S.C. 29669

SWORN TO and SUBSCRIBED before me  
this 12 day of September, 2011 A.D.

*[Signature]*  
Notary Public for South Carolina

My Commission Expires: Jan 28, 2018

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMONS PLEAS )  
CASE NO: 2011-CP-23-4280 )

Illya Salter SCDC# 270347, )  
Applicant, )

AMENDMENTS TO )  
POST CONVICTION )  
RELIEF APPLICATIONS )

vs. )

THE STATE OF SOUTH CAROLINA, )  
Respondent. )

FILED-CLERK OF COURT )  
STEWELL CO. S.C. )  
MAR 21 2012 )  
3:13 PM )

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

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

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

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

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.
15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were

or whether or not I understood exactly what the term "criminal" element" actually meant.

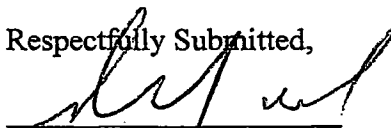
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
21. My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.
22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
25. My defense attorney did not subject the prosecution's case to any adversarial testing.
26. My defense attorney failed to oppose the prosecution's case with any adversarial litigation.
27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.

29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leeke, S.C. 362, F. 2<sup>nd</sup> 221 (1987), citing Strickland v. Washington 46 S.E.2D. 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,

  
Rodney Richey  
Richey and Richey, P.A.  
Post Office Box 10916  
Greenville, South Carolina 29603  
Attorney for the Applicant

January 23, 2013

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Illya Salter SCDC# 270347, )  
 )  
 vs. )  
 )  
 THE STATE OF SOUTH CAROLINA )

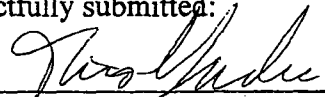
IN THE COURT OF COMMONS PLEAS  
 CASE NO: 2011-CP-23-4280

**AFFIDAVIT OF SERVICE**


FILED  
 CLERK OF COURT  
 GREENVILLE CO. S.C.  
 JAN 23 2013  
 9 6 PM 3: 13

I certify that I have served the Amendments to PCR Application on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on January 23, 2013, addressed to their attorney of record, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Respectfully submitted:

  
 Tina Garduno, paralegal  
 Richey and Richey, P.A.  
 Post Office Box 10916  
 Greenville, South Carolina 29603

Sworn to before me on  
 January 23, 2013.

  
 Notary Public of South Carolina  
 My Commission Expires: 7/15/2013

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

ILLYA TRAMELL SALTER, # 270347,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-230-4280

AMENDMENT TO POST-CONVICTION  
RELIEF APPLICATION

FILED  
GREENVILLE COUNTY, S.C.  
COURT CLERK  
2011 SEP 22 AM 10:59

Applicant, Ilyya Trammell Salter, submits this matter to be amendment to the PCR application that's on file, in support of a demand for relief.

ISSUE

Trial Court lack of jurisdiction due to the use of fraud indictment.

DISCUSSION

Fraud upon the Court is "fraud which subverts the integrity of the Court itself, or is a fraud perpetrated by officers of the Court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."

There is but one Circuit Court in South Carolina, with uniform subject matter jurisdiction "throughout the state." The Circuit Court is made up of the court of common pleas, which hears civil actions, and the court of general sessions, which hears criminal cases. Case v. Gold Kist, Inc., 442 S.E.2d 598 (1994). Therefore, this issue does not have anything to do the issue of subject matter jurisdiction.

South Carolina Constitution absolutely requires an indictment by a legally qualified Grand Jury. (Art. I, §11 and Art. V, §22) and hence to try a defendant under an indictment not so found would be to jeopardize the life of the defendant without due process of law, and thus deny him his constitutional rights, both under the constitution of this state, Art. I section 3, and the Federal Constitution's 14<sup>th</sup> Amendment.

Moreover, it has been well-established that a defendant has a constitutional right to demand that his case be considered by a grand jury which is properly established and constituted under the laws of this state. Evans v. State, 411 S. E.2d 510 (2005). Thus if in fact these indictments are fraud there has never been a crime charged which fail to confer jurisdiction upon the trial court.

In acknowledging the fact that South Carolina afford its citizens the process of being held to answer for a crime upon a presentment of an indictment by a grand jury pursuant to the S.C. Const. Art. I, §11, we are forced to look to the laws of this state that governs such procedure.

S.C. Code Ann. §14-9-170, mandates as follows:

... the grand jury as drawn in accordance with law for service upon the Court of General Sessions in each of the counties shall constitute the grand jury for the County Court and shall meet with the County Court at each of its terms. ...

S.C. Code Ann. §14-9-210, mandates in relevant part:

... the County Solicitor shall prepare and, through the presiding judge of the Court of General Sessions, submit to the grand jury, while in attendance upon the Court of General Sessions, bills of indictments in all cases pending in the County Court, when such

cases have not been previously acted on by the grand jury...

It is clear by utilizing the literal construction of § 14-9-210 and reviewing the Court Term Calendar for December of 2010, we find that the Court of General Sessions did not convene on the day of December 14, 2010, in Greenville County as indicated on Applicant's indictments. In fact this calendar shows that the Court of General Sessions convened in Greenville County on December 17, 2010. Therefore, these indictments were returned by a grand jury that was not legally in session pursuant to § 14-9-210, and operates as a fraud which fail to confer jurisdiction upon the trial court to accept Applicant's plea.

Furthermore, it has been held that if Applicant's conviction is not based on lawfully sworn-to-indictments, which is tantamount to Aggravated Kidnapping; it is a bar to all prosecution, in accordance to the Constitution of the United States. Hamilton v. McGatter, 772 F.2d 171 (5th Cir. 1985).

### CONCLUSION

Applicant has amended this issue to insure that relief granted. Therefore if the State fail to answer this issue in its return, then it admits to this issue being truth. Whithead v. State, 574 S.E.2d 200 (2002). And if the Court issue an order without specifically addressing this issue point for point, then it agrees to this issue standing as truth in the public record, in which would entitle Applicant to relief.

Respectfully Submitted,

Ellye T. Salter  
Ellye Trameil Salter  
Applicant. Ellye T. Salter

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

ILLYA TRAMELL SALTER, #270347,  
Applicant,

vs.

STATE OF SOUTH CAROLINA,  
Respondent.

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-230-72

PROOF OF SERVICE

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
2011 SEP 2 AM 10:59

I, ILLYA TRAMELL SALTER, certify that a true copy of the Amendment to Post-Conviction Relief Application has been served S.C. Attorney General Office at P.O. Box 11549, Columbia, S.C. 29211, by way of United States Mail, through Perry Correctional Institution's Mailroom.

*Illya T. Salter*  
Illya TrameLL Salter  
Applicant *Illya T. Salter*

Perry Correctional Institution  
430 Oaklawn Rd.  
Pelzer, S.C. 29669

18<sup>th</sup> day of August 2011

~~Illya TrameLL Salter~~

February 21, 2012

**Terms of Circuit and Family Court  
December 2010**

**Holidays:**  
**Fri Dec 24 - Christmas Eve**  
**Mon Dec 27 - Christmas Day (Observed)**  
**Tue Dec 28 - Day after Christmas (Observed)**

<b>Circuit Number</b>	<b>12/6/2010</b>	<b>12/13/2010</b>	<b>12/20/2010</b>	<b>12/27/2010</b>
<b>13</b>	General Sessions Greenville Pyle, C.  <b>JOHNSON</b>	Common Pleas Greenville Hill, D.  <b>JENKINS</b>	Common Pleas Non- Jury 20 Greenville Simmons, Charles  <b>DIGIROLAMO 20</b>	Common Pleas Non- Jury 29 Hill, D.  <b>JENKINS 29</b>
	General Sessions Greenville Miller, Edward  <b>HERRON</b>	Common Pleas Non- Jury Stilwell, Robin  <b>DIGIROLAMO</b>	Common Pleas Non- Jury 20 Miller, Edward  <b>HERRON 20</b>	
	Common Pleas Greenville Hill, D.  <b>JENKINS</b>	General Sessions Pickens Welmaker, G.  <b>HANKS</b>	<b>HERRON 20</b>  General Sessions 20  Greenville Stilwell, Robin	
	General Sessions Greenville Stilwell, Robin  <b>MOFFITT 6</b> <b>HISKELL 7, 8, 9,</b> 10	General Sessions 17  Greenville Simmons, Charles  <b>HERRON 17</b>	<b>DIGIROLAMO 20</b>  Common Pleas Non- Jury 20 Hill, D.  <b>HISKELL 20</b>	
	Common Pleas Non- Jury Welmaker, G.  <b>HANKS</b>		<b>HISKELL 20</b>  General Sessions 22  Greenville Stilwell, Robin  <b>DIGIROLAMO 22</b>	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-4280
COUNTY OF GREENVILLE	)	
	)	
Iliya Tramell Salter,	)	
S.C.D.C. No. 270347,	)	
	)	
Applicant,	)	
	)	<b>RETURN</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed June 28, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant for carjacking (2010-GS-23-1872) and armed robbery (2010-GS-23-1879). Daniel J. Farnsworth, Esquire represented the Applicant.

On January 31, 2011, the Applicant pled guilty as indicted. The Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of two hundred thirty (230) months for carjacking and two hundred thirty (230) months for armed robbery. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

## II.

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

1. Ineffective assistance of counsel:
  - a. Failure to investigate and prepare for a defense at trial.
2. Involuntary guilty plea:
  - a. "Plea was given under duress and misrepresentation of facts and is a fraud."
3. Prosecutorial misconduct:
  - a. "Failed to follow criminal procedures when acquiring indictments."

In an amendment to the PCR application filed September 2, 2011, the Applicant makes the following allegations:

1. "Trial court lack of jurisdiction due to the use of fraud indictment."

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume 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. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting 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.” 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 of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

The Applicant’s assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d

742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State,

339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

#### V.

The Applicant alleges a ground of prosecutorial misconduct. The Respondent would submit the Applicant cannot meet his burden of proving this allegation. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989) (finding the burden is on the defendant to prove actual vindictiveness).

#### VI.

The Respondent submits the Applicant's assertion that the plea court lacked subject matter jurisdiction is without merit. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently appries the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). The Respondent further notes that indictments are not evidentiary or jurisdictional documents – they

are merely notice documents. Id. at 102, 610 S.E.2d at 500. The indictments in this case were true-billed and clearly sufficient to put the Applicant on notice of the charges he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

## VII.

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

## VIII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON  
Attorney General


JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

KAREN C. RATIGAN  
Assistant Attorney General

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

By:

  
Attorneys for Respondent

Nov.  
~~October~~ 1, 2011

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2011-CP-23-4280

ILLYA TRAMELL SALTER, 270347

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

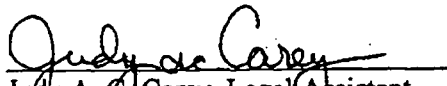
STATE OF SOUTH CAROLINA,

Respondent.

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

**Illya Tramell Salter, 270347  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer SC 29669**

DATED this 1st day of November, 2011.

  
Judy A. Carey, Legal Assistant  
For Respondent



I N D E X

(AW) - Denotes Applicant's Witness  
(RW) - Denotes Respondent's Witness

Page No.

(AW) ILLYA TRAMELL SALTER:

Direct Examination by Mr. Richey.....5  
Cross-Examination by Ms. Ratigan.....12

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1  
2 THE COURT: This is 2011-CP-23-4280, Illya Tramell  
3 Salter v. State of South Carolina. Mr. Salter is in the  
4 courtroom with his counsel, Mr. Richey.

5 Ms. Ratigan, yes, ma'am.

6 MS. RATIGAN: Thank you, Your Honor.

7 May it please the Court.

8 Mr. Salter was indicted for car jacking, armed  
9 robbery, and failure to stop for a blue light. He was  
10 represented on these charges by Dan Farnsworth, Sr. On  
11 January 31st of 2011, he pled guilty before Judge  
12 Welmaker. He received concurrent sentences of 230 months  
13 for car jacking, and 230 months for armed robbery, and 36  
14 months for failure to stop for a blue light. That,  
15 basically, shakes out to an active sentence of 19 years  
16 and two months.

17 He did not file an appeal. I would note for the  
18 record, Your Honor is, obviously, aware of  
19 Mr. Farnsworth's health condition. But just for the  
20 appellate record, he is not available to testify due to  
21 having had some medical issues in the past year.

22 So we are prepared, especially since it's a guilty  
23 plea, to go forward based on the -- basically, the four  
24 corners of the plea document. And so we're ready to  
25 proceed today.

1 THE COURT: Thank you.

2 Mr. Richey.

3 MR. RICHEY: Judge, at this time, I'm going to  
4 request a continuance. I'll tell the Court my basis for  
5 this. Mr. Salter has written me for his file a bunch of  
6 times. I -- the file is the public defender file. I went  
7 downstairs and got the file, but there was nothing,  
8 essentially, in the file.

9 And I wrote Mr. Salter and told him, hey, there's  
10 nothing in the file to give to you. I later received a  
11 phone call from Mr. Farnsworth saying that he had had the  
12 file. And there was a letter in the file. And they sent  
13 the file to Mr. Salter and did not keep the originals.  
14 Okay. So, I mean -- so there's no file that I can give to  
15 him.

16 Apparently, Mr. Salter believes that there was a  
17 videotape in the case that -- but, as I've told him, the  
18 office said they sent him the original. So I don't know  
19 if there's a file I can give him.

20 So he's asked me to request a continuance. But, I  
21 mean, they claim he has the file. So I don't know. I  
22 guess I could backtrack and try to, you know, go through  
23 the Solicitor's Office, but I don't know. But they claim  
24 he has the file. But he says it's an incomplete file.

25 But I don't know if it's complete or not complete

1 because they gave it to you.

2 THE COURT: Well, let's go ahead with the hearing.  
3 And if we need to leave the record open at the end, we  
4 can.

5 MR. RICHEY: Thank you, Your Honor.

6 I call Mr. Salter.

7 THE CLERK: Mr. Salter, please, place your left hand  
8 on the Bible and raise your right hand the best you can.

9 WHEREUPON,

10 ILLYA TRAMELL SALTER,  
11 after first having been duly sworn, testified as follows:

12 THE CLERK: Thank you.

13 Please state your name for the record.

14 THE WITNESS: Iliya Tramell Salter.

15 THE CLERK: Thank you.

16 You may be seated.

17 DIRECT EXAMINATION

18 BY MR. RICHEY:

19 Q Mr. Salter, you're currently in the Department of  
20 Corrections; is that correct?

21 A Yes, sir.

22 Q And what are you in the Department of Corrections  
23 for?

24 A For car jacking, armed robbery, and failure to stop  
25 for a blue light.

1 Q Okay. And who represented you on those charges?

2 A Mr. Farnsworth, Dan Farnsworth.

3 Q Okay. And where did this, supposedly, happen?

4 A At Wal-Mart on White Horse Road.

5 Q Is that the Wal-Mart going towards Travelers Rest by  
6 the Kentucky Fried and all?

7 A Yes.

8 Q There's a McDonald's in that area?

9 A Yes, sir.

10 Q Okay. This incident, it was alleged that you were  
11 there shoplifting and it kind of got out of hand sort of.  
12 Is that a fair statement?

13 A I wouldn't say out of hand. I was there shoplifting,  
14 yes.

15 Q And they allege -- let me say this. Did you and  
16 Mr. Farnsworth talk about this case?

17 A No, sir.

18 Q Did you know -- did you see the discovery in the  
19 case?

20 A After maybe a year or so.

21 Q Was it before you pled that you saw the discovery?

22 A No. It was after.

23 Q Okay. Did you have any conversations with  
24 Mr. Farnsworth about, hey, where's the discovery, or any  
25 of that stuff?

1 A At the time I knew anything [sic] about a discovery  
2 as far as that goes. But he came to see me maybe once or  
3 twice. And the conversation that we had wasn't about too  
4 much of anything.

5 Q So when he came down to talk to you, what did he talk  
6 about? He didn't talk about soccer, or something. What  
7 did he talk about?

8 A No. He asked me how did I want to plead. I told him  
9 I didn't do a car jacking or an armed robbery. So I  
10 didn't want to plead to it. Then he told me that I had a  
11 bank robbery charge. And by me having a bank robbery  
12 charge, they could seek life -- they was willing to seek  
13 life without parole. And so that's how I ended up  
14 pleading to the charges.

15 Q So you're saying you pled based off the assertion  
16 that the bank robbery charge would -- a conviction on --  
17 your conviction for bank robbery would lead to a life  
18 sentence if you got -- if you did not plead on these  
19 charges?

20 A Yes. That's what he told me. He told me that if  
21 I -- the bank robbery was a most serious offense. And if  
22 I didn't plead to these charges that the State would seek  
23 life without parole. And that's the only reason why I  
24 pleaded [sic] to them.

25 Q So the armed robbery and car jacking -- the armed

1 robbery, that -- there was no discussions about how the  
2 armed robbery would effect it?

3 A No, sir.

4 Q Okay. So you pled in lieu of facing a potential life  
5 sentence?

6 A That's what I was told, yes.

7 Q Well, in this case, they allege that you tried to  
8 shoplift out of the store when you got out there. They  
9 allege that you had some type of knife or something; is  
10 that correct? I'm not saying that's true, but that's what  
11 was alleged; correct?

12 A Yes.

13 Q And when you got out in the parking lot, they claim  
14 that you took a car from a gentleman; correct?

15 A Yes.

16 Q And you talked to Mr. Farnsworth, and you told him  
17 that was not true?

18 A Yes.

19 Q Okay. Did you see any -- first of all, were you  
20 armed that day with anything?

21 A No.

22 Q Knife, gun, switch blade, anything?

23 A No, sir.

24 Q Nothing?

25 A I -- well, I'm sorry. I had some scissors that I was

1 cutting the tags off the clothes. But as far as me  
2 pulling it out on anyone, I did not do that.

3 Q So you did not use the scissors in a threatening way  
4 at all?

5 A No, sir.

6 Q Okay. What about in terms of this alleged car  
7 jacking. You did not take anybody's car?

8 A I took the car. But the guy's car that I took, he  
9 was at the trunk of his car when I jumped in his car.

10 Q Okay. He was at the trunk of his car?

11 A Yes.

12 Q Okay. And in terms of the failure to stop, did you  
13 stop for the blue light?

14 A No, sir.

15 Q So you're saying you're, basically, not guilty of the  
16 first two charges, but you're guilty of the failure to  
17 stop?

18 A The failure to stop. I did not stop.

19 Q Okay. You said that you saw the discovery. Did you  
20 get -- how did you see the discovery? How did you get it?

21 A He -- when I was at the county jail, he brought it  
22 with him and was showing me different things in it. But  
23 he didn't leave it with me at that time.

24 Q Do you have any discovery in your possession now, any  
25 of it? Any police reports? Anything?

1       A     I have -- yes, I do have a -- something from the  
2       police report.  It's saying about the videotape that I  
3       had.  I had one...

4       Q     Where did you get that stuff from?

5       A     It was out of the discovery.

6       Q     Out of the discovery?

7       A     It's a supplemental report that's stating --

8       Q     Okay.  So you got this supplemental report.  But did  
9       you get the original report?  Do you have the original  
10      report?

11      A     What do you mean?

12      Q     Do you have any other police report, other than that  
13      one?

14      A     With me, no, I do not.

15      Q     In your possession anywhere?

16      A     That's in the discovery that I have, yes.

17      Q     And you got that discovery -- where did you get that  
18      discovery from?

19      A     The Public Defender's Office.

20      Q     Okay.  So had Mr. Farnsworth not told you that you  
21      were going to get a life sentence, would you have pled  
22      guilty?

23      A     No, sir.

24      Q     You would have -- what would you have done?

25      A     I would have insisted on going to trial.  Because I

1 didn't armed rob nor car jack anyone.

2 Q Okay.

3 A And the car -- the videotape that I'm requesting  
4 would have, clearly, shown that.

5 Q Tell me your version of what happened.

6 A I went to Wal-Mart in the men's department. And I  
7 had a Wal-Mart bag with me. And I was concealing the  
8 clothes in the Wal-Mart bag.

9 I was on my way out of the store. And the loss  
10 prevention guy seen me and recognized me. So I continued  
11 to walk. And he walked out of the store with me. And he  
12 told me -- he was on the phone and he told me that I  
13 needed to come back into the store with him. This was --  
14 I had done made it outside with the clothes and all. And  
15 he told me that I needed to come back into the store with  
16 him.

17 So I kept walking. And I was going around cars  
18 trying to evade him, elude him, get away from him. At the  
19 time, he kept walking up on me. So I started running.  
20 When I started running, that's about the time that I ran  
21 up on the guy with his -- at his trunk. And I jumped in  
22 his car and sped away.

23 Q When you got in his car, did you drive forward or  
24 back?

25 A I went forward to the right.



1 what is -- what videotape? Is it from Wal-Mart, or is it  
2 from the dashboard camera of the cop car?

3 A No, ma'am. It's from the -- supposedly, from the  
4 incident at the Wal-Mart inside the store and in the  
5 parking lot.

6 Q Is that something you looked at before you pled  
7 guilty?

8 A I never seen it.

9 Q Okay. Is that something Mr. Farnsworth told you  
10 about?

11 A Yes.

12 Q Did he tell you that he had seen it?

13 A Yes.

14 Q Okay. Did he tell you what was on the video after he  
15 looked at it?

16 A Yes.

17 Q Now, Mr. Farnsworth, did he say you would absolutely  
18 get a life sentence if this went to trial, or just that  
19 the State could seek a life sentence?

20 A No. He said that I would receive a life sentence if  
21 it went to trial.

22 Q Okay. Now, at the plea hearing, the State kind of  
23 went through the facts of the case. And one of the things  
24 they said was that the gentleman in the car was seated in  
25 his car and you got him out of the car. Do you remember

1       them saying that?

2       A       They said he was seated in his car?

3       Q       Yes. Let's see. On Page 7 of the transcript, the  
4       State, at your plea, said that you came upon Mr. Cox, who  
5       was seated in his car, that you grabbed Mr. Cox by the arm  
6       and told him to get the "F" out. And that you hopped in  
7       the car and drove off. Do you remember that being said at  
8       the plea?

9       A       I would say so.

10      Q       Now, the Judge asked you after that if you agreed  
11      with the State's version of the facts and you said, yes.  
12      Why did you say that you agreed with the facts if today  
13      you're saying that he was never in the car?

14      A       I only agreed because my counsel told me to say yes  
15      to all the questions that was going to be asked of me.  
16      And that was the only reason why.

17      Q       Okay. Now, Mr. Farnsworth, during your plea, also,  
18      told the Judge that the two of you had looked over the  
19      discovery materials. Do you remember him telling the  
20      judge that?

21      A       Yes.

22      Q       But you're saying today that you just didn't look at  
23      all the discovery materials?

24      A       To my knowledge, I didn't see the whole...

25      Q       Okay. Well, why didn't you tell the Judge that

1 day -- when you had a chance to speak to the Judge, why  
2 didn't you tell him, you know, Mr. Farnsworth says we've  
3 looked at this stuff, but I haven't looked at the video,  
4 we haven't talked about X, Y, or Z? Why didn't you take  
5 that opportunity to tell the Judge that you hadn't looked  
6 at all the discovery?

7 A Because on the advice of counsel, I didn't know no  
8 better. And I just told him what I was told to say.

9 Q Okay. And you were given an opportunity to talk to  
10 Judge Welmaker. And one of the things you told him is  
11 that you were sorry for all this. Do you recall that?

12 A Yes.

13 Q But your testimony today is that you were guilty of  
14 the shoplifting and of the failure to stop. So your  
15 testimony today is that you're sorry for that?

16 A I mean, I took the car. I'm sorry for the incident,  
17 period.

18 MS. RATIGAN: That's all I have, Your Honor.

19 MR. RICHEY: No other questions.

20 THE COURT: Mr. Salter, I was looking through this  
21 paperwork. Is today your birthday?

22 THE WITNESS: Yes, sir.

23 THE COURT: Happy birthday.

24 THE WITNESS: Thank you.

25 THE COURT: All right. Anything further?

1 MR. RICHEY: No, Your Honor.

2 MS. RATIGAN: And the State has no witnesses to call,  
3 Your Honor. We would just rest on the plea record.

4 THE COURT: Okay. Well, I'll review the arguments in  
5 light of the testimony and let you know my decision as  
6 soon as I can.

7 Thank you.

8 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*  
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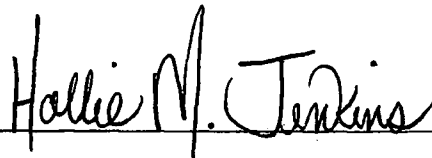
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA            )  
COUNTY OF GREENVILLE            )

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 18th day of June, 2013.

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

November 21, 2013

  
\_\_\_\_\_

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Illya Tramell Salter, )  
 S.C.D.C. No. 270347, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2011-CP-23-4280

**ORDER OF DISMISSAL**

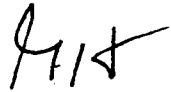
2013 AUG -7 PM 3:39  
 FILED: CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSINKER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 28, 2011. The Respondent made its return on November 1, 2011. An evidentiary hearing into the matter was convened on June 18, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Greenville County Grand Jury indicted the Applicant for carjacking (2010-GS-23-1872), failure to stop for a blue light (2010-GS-23-1874), and armed robbery (2010-GS-23-1879). Daniel J. Farnsworth, Sr.,

1  


Esquire represented the Applicant.

On January 31, 2011, the Applicant pled guilty as indicted. The Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of two hundred thirty (230) months for carjacking, thirty-six (36) months for failure to stop for a blue light, and two hundred thirty (230) months for armed robbery. The Applicant did not appeal.

### ALLEGATIONS

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

1. Ineffective assistance of counsel:
  - a. Failure to investigate and prepare for a defense at trial.
2. Involuntary guilty plea:
  - a. "Plea was given under duress and misrepresentation of facts and is a fraud."
3. Prosecutorial misconduct:
  - a. "Failed to follow criminal procedures when acquiring indictments."

In an amendment to the PCR application filed September 2, 2011, the Applicant makes the following allegation:

1. "Trial court lack of jurisdiction due to the use of fraud indictment."

The Applicant, through counsel, submitted an amendment to his application dated January 23, 2013, in which he alleged the following:<sup>1</sup>

1. Ineffective assistance of counsel:
  - a. Failed to conscientiously discharge professional responsibilities.
  - b. Failed to effectively challenge search and seizure.
  - c. Failed to act as a diligent and conscientious advocate.
  - d. Failed to give complete loyalty.
  - e. Did not have Applicant's best interest in mind.

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<sup>1</sup> This Court notes the Applicant filed several pro se amendments to his PCR application. These amendments, however, were filed while the Applicant was represented by counsel. This Court cannot consider these amendments. See Rule 11(a), SCRCP; Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (holding there is no constitutional right to hybrid representation either at trial or on appeal).

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- f. Failed to serve the cause in good faith.
- g. Neglected necessary investigations and preparation.
- h. Did not do necessary factual investigations.
- i. Did not do necessary legal research.
- j. Did not conscientiously gather information to protect rights.
- k. Did not try to have the case settled in a manner that would have been to my best advantage.
- l. Did not advise me of all my rights or take any of the actions that were necessary to protect and preserve them.
- m. Never properly ascertained whether or not I actually understood or comprehended all of the issues involved in the case.
- n. Never properly consulted with me or kept me informed.
- o. Never explained to me or discussed with me any of the elements.
- p. Never made any attempt to ascertain whether or not I actually knew the elements of the crime charged or whether or not I understood exactly what "criminal element" meant.
- q. Never explained or discussed with me how the elements of the crime charged and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State v. Boyd.
- r. Never informed me of any of the defenses that were available to me.
- s. Never intended to offer any defense to the court on my behalf.
- t. Never explained to me or discussed with me any kind of defense strategy.
- u. Never explained to me or discussed with me any of the tactical choices that were made or planned to be made.
- v. Dictated to me exactly how my case was going to be handled and offered no alternative options.
- w. Failed to properly acquaint herself with the law and facts surrounding my case and, as a result, there was a very serious error in the assessment of both the law and the facts.
- x. No defense at all was put in issue for me during the Court proceedings.
- y. Did not subject the prosecution's case to any adversarial testing.
- z. Failed to oppose the prosecution's case with any adversarial litigation.
- aa. Failed to function as the government's adversary in any sense of the word.
- bb. Failed to pursue any of the legal recourse that was available.
- cc. Failed to function as the counsel that the Constitution's Sixth Amendment guarantees.
- dd. Failed to call alibi witnesses on my behalf.
- ee. Failed to appeal my case.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their 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).

**Ineffective Assistance of Counsel/Involuntary Guilty Plea**

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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

9<sup>4</sup>  
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1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he had two meetings with plea counsel before the plea hearing and that they reviewed some of the discovery materials. The Applicant stated they also discussed his version of events and that he told plea counsel he was not guilty of either carjacking or armed robbery. The Applicant stated he took the car in question but that the victim was standing by the trunk of the car at the time. The Applicant stated he pled guilty because plea counsel told him the State would seek a sentence of life imprisonment without parole (LWOP) if he went to trial.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.8; p.10). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.8-10). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective. This Court notes the Applicant's allegations are refuted by the guilty plea transcript. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007) (citing Rayford v.

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State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994)). While the Applicant argues he only had two meetings with plea counsel and was not able to review some of the discovery materials, he told the plea judge that he was satisfied with counsel and did not object when counsel told the judge he had been given access to the discovery. (Plea transcript, p.9; p.14). While the Applicant stated he was not guilty of carjacking and armed robbery, he told the plea judge he was guilty of these charges and agreed with the State's factual recitation (which noted the victim had been seated in his car at the time of the carjacking). (Plea transcript, p.8; p.10). While the Applicant stated that he only pled guilty because plea counsel said the State would seek an LWOP sentence if he went to trial, he told the plea judge that he had not been threatened into entering a guilty plea. (Plea transcript, pp.9-10).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### 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 testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

**CONCLUSION**

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants 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 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 1<sup>st</sup> day of AUGUST, 2013.



\_\_\_\_\_  
D. Garrison Hill  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.

WITNESSES

A C Sexton *Enc*

Greenville County Sheriffs Office

12/19/2009

ARREST WARRANT NUMBER

M177488

ACTION OF GRAND JURY

**TRUE BILL**

*Amelia J. ...*  
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-  
JMG

001872

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2010

1-31-11

THE STATE

vs.

ILLYA TRAMELL SALTER

Indictment for

✓ 2599

CARJACKING

VIOLATION § 16-03-1075

**RECEIVED**

MAR 17 2010

Clerk of Court  
Greenville County



ARREST WARRANT

M-177488

5005  
12-29-09

STATE OF SOUTH CAROLINA

County/  Municipality of

Greenville

THE STATE 01-2008-197383

against

Illya Tramell Salter

Address:

11-

Phone: SSN: 251-23-1320

Sex: M Race: B Height: 6 5 Weight: 275

DL State: SC DL #:

DOB: Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: A C Sexton - 1011

Offense: Carjacking / Take or attempt a vehicle from person by force without great bodily harm

Offense Code: 2599

Code/Ordinance Sec: 16-03-1075(B)(1)

This warrant is CERTIFIED FOR SERVICE in the  County/  Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Illya T. Salter on 12-29-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions  
305 E. North Street  
Greenville County Courthouse  
Greenville, SC 29601-2120

(Horett)

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/  Municipality of

Greenville

Personally appeared before me the affiant A C Sexton who

being duly sworn deposes and says that defendant Illya Tramell Salter did within this county and state on or about 12/18/2009 violate the criminal laws of the

State of South Carolina (or ordinance of  County/  Municipality of Greenville)

In the following particulars:

DESCRIPTION OF OFFENSE Carjacking / Take or attempt a vehicle from person by force without great bodily harm

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE AFFIANT HAS A WRITTEN STATEMENT FROM THE VICTIM STATING THAT THE DEFENDANT DID FORCE HIM FROM HIS VEHICLE, A 2004 SILVER TOYOTA CAMRY LE SC LICENSE PLATE AND DRIVE AWAY WITH THE VEHICLE. THE VICTIM STATED THAT THE DEFENDANT WAS ARMED WITH A PAIR OF SCISSORS DURING THE INCIDENT. THIS OFFENSE DID OCCUR IN GREENVILLE COUNTY SOUTH CAROLINA.

Signature of Affiant

Handwritten signature and initials

STATE OF SOUTH CAROLINA

County/  Municipality of

Greenville

Affiant's Address 4 McGee Street

Greenville 29601-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/18/2009 defendant Illya Tramell Salter did violate the criminal laws of the State of South Carolina (or ordinance of

County/  Municipality of Greenville) as set forth below.

DESCRIPTION OF OFFENSE: Carjacking / Take or attempt a vehicle from person by force without great bodily harm

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

on 12/19/2009

Signature of Issuing Judge

Vilvin Garrison

Judge Code: 5946

Judge's Address

Judge's Telephone

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

ORIGINAL

ORIGINAL

WITNESSES

A C Sexton

Greenville County Sheriffs Office

12/19/2009

ARREST WARRANT NUMBER

M177485

ACTION OF GRAND JURY  
**TRUE BILL**

*Ann Swerette*

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-  
JMG

001879

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2010

1-31-11

THE STATE

VS.

ILLYA TRAMELL SALTER

Indictment for

0139

ARMED ROBBERY

VIOLATION § 16-11-0330

RECEIVED

MAR 17 2010

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
ARMED ROBBERY

**MAY 04 2010**

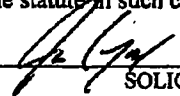
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That ILLYA TRAMELL SALTER did in Greenville County, on or about the 19th day of December, 2009, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: articles of clothing, belonging to WALMART, from the person or presence of MICHAEL McKINNEY. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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

  
\_\_\_\_\_  
SOLICITOR

ARREST WARRANT

M-177485

5005  
12-19-09

STATE OF SOUTH CAROLINA

County/  Municipality of

Greenville

THE STATE

01-2008-197363

against

Illya Trammel Salter

Address: \_\_\_\_\_ ve. \_\_\_\_\_

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_

Sex: M Race: B Height: 6 5 Weight: 275

DL State: SC DL #: \_\_\_\_\_

DOB: 4 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriff's Office

Prosecuting Officer: A.C. Sexton - 1011

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the  County/  Municipality of \_\_\_\_\_

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

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

RETURN

A copy of this arrest warrant was delivered to defendant Illya T. Salter on 12-19-09

Russell  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions  
305 E. North Street  
Greenville County Courthouse  
Greenville, SC 29601-2120

Cogie

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/  Municipality of

Greenville

Personally appeared before me the affiant A.C. Sexton who

being duly sworn deposes and says that defendant Illya Trammel Salter

did within this county and state on or about 12/18/2009 violate the criminal laws of the

State of South Carolina (or ordinance of  County/  Municipality of Greenville)

In the following particulars:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE AFFIANT HAS A WRITTEN STATEMENT FROM A LOSS PREVENTION WORKER AT \_\_\_\_\_ ROAD (WAL-MART) STATING THAT IN AN ATTEMPT TO FLEE THE AREA AFTER TAKING POSSESSION OF MERCHANDISE BELONGING TO THE STORE, THE DEFENDANT DID SWING AT HIM WITH A PAIR OF SCISSORS IN HIS HAND. THIS OFFENSE DID OCCUR IN GREENVILLE COUNTY SOUTH CAROLINA.

Signature of Affiant

A.C. Sexton \*1011 A35

STATE OF SOUTH CAROLINA

County/  Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville 29601-

Affiant's Telephone \_\_\_\_\_

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/18/2009 defendant Illya Trammel Salter

did violate the criminal laws of the State of South Carolina (or ordinance of

County/  Municipality of Greenville) as set forth below.

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 12/19/2009 Judge's Address \_\_\_\_\_

Vilvin Garrison (L.S.) Judge's Telephone \_\_\_\_\_

Signature of Issuing Judge  
Vilvin Garrison

Judge Code: 5946 Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by  
U.S. Attorney General  
April 21, 2003  
9CCA 518

ORIGINAL

AFFIDAVIT