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Nov 16 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

On Certiorari to the Court of Common Pleas
Appeal from Berkeley County
Honorable R. Kirk Griffin, Post-Conviction Relief Judge

Appellate Case No. 2024-001521

EMORY W. ROBERTS, #373393,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

SUPPLEMENTAL APPENDIX

Emory W. Roberts, #373393
Q2B-0217-T
Perry Correctional Institution
430 Oaklaw Road
Pelzer, SC 29669
PRO SE PETITIONER

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Attorney General

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Volume IV
Pages 1501-1755

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concludes should he so desire." (See Order of Dismissal Without Prejudice - Marked "Exhibit A" included in Applicants subsequent application-filed May 13, 2021).

It should be noted that: On page 3 of 11 of Respondents "Amended Return And Partial Motion To Dismiss The Application For Post-Conviction" - (Filed on Feb. 4, 2021 PM 12:07, accompanied with correspondence from Megan Harrigan Jameson, Senior Assistant Deputy Attorney General dated July 12, 2021) -, page 3 of 11, Respondent states: "Respondent submitted a [proposed order] of dismissal without prejudice at the same time to the chief administrative judge for common pleas. This order was neither signed nor acknowledged by the court". Applicant directs the Courts attention to "Exhibit A" - that it does not indicate or state that it was "proposed", it explicitly states: "Order OF Dismissal Without Prejudice". Accordingly, at the direction of this "Order OF Dismissal Without Prejudice" sent to Applicant, Applicant, at the conclusion of his direct appeal, filed subsequent application on May 13, 2021, as directed, and claim of "ineffective assistance of counsel (appellate counsel)" was included in subsequent application [before] Respondents "Amended Return and Partial Motion to Dismiss" that was received on July 16, 2021 - though "Amended Return And Partial Motion to Dismiss" is dated Feb. 4, 2021 Filed PM 12:07 - Ms. Jameson's correspondence to serve as "proof" of this fact, and Ms. Jameson's correspondence is dated July 12, 2021 (Enclosed), just to also be clear that the [substance] of Respondents "Amended Return And Partial Motion To Dismiss" seems to be applicable to "intial PCR application" (Emphasis), therefore issue relating to "ineffective assistance of appellate counsel" and "Response To Allegations of Trial Court Misconduct" in Respondent's "Amended Return And Partial Motion To Dismiss" should be [inapplicable] to Mr. Roberts subsequent application (PCR) Filed May 13, 2021 - Mr. Roberts states these facts on the basis of ongoing "public corruption" and continued prejudice against his due process of law and S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP; and Rules 15(a)-(b) SCRCP mentioned on page 10 of 11 of Respondents "Amended Return And Partial Motion To Dismiss" dated Feb. 4, 2021 - which seems to be [inapplicable] to subsequent PCR.

Additionally, the following was received by Mr. Roberts (Applicant) on July 16, 2021 ... 1.) Remittitur From The South Carolina Court of Appeals dated October 19, 2020; 2.) Verdict Forms Filed by State Grand Jury Clerk dated July 28, 2017; 3.) Return And Motion To Dismiss Without Prejudice (Initial PCR) dated August 5, 2020; 4.) Amended Return And Partial Motion To Dismiss dated Feb. 4, 2021; 5.) Order From South Carolina Court Of Appeals Filed March 27, 2020; 6.) Transcript Of Record dated July 19, 2017; 7.) Petition For Writ of Certiorari received April 24, 2020 by S.C. Supreme Court; 8.) Initial PCR Application dated July 2, 2020; 9.) Sentencing Sheets Filed July 28, 2017; 10.) Petition For Rehearing dated Feb. 13, 2020; 11.) Return To Petition For Writ Of Cert. dated May 6, 2020; 12.) Final Brief Of Respondent dated September 20, 2018; 13.) Final Brief of Appellant dated October 4, 2018; 14.) Indictment 2016-GS-47-02 Filed 4-13-2016; 15.) Record on Appeal Pages 1-500; Pages 501-924; 16.) Correspondence from Megan H. Jameson dated July 12, 2021; 17.) Consent ORDER Relieving Counsel dated April 13, 2021 and Filed Apr. 26, 2021 PM 3:27; 18.) Protective Order Filed Feb. 10, 2021 by James R. Parks, Clerk of State Grand Jury ... and is dated Feb. 4, 2021.

I, Emory W. Roberts Jr., ~~that~~ State I explicitly reserve my rights pursuant to the following Sections: §§ 14-7-1700, 14-7-1720(A) and (D) and Rule 5, 14-7-1720(A)(4) and (A)(5), Evans V. State, 363 S.C. 495, 507, 611 S.E.2d 510, 516 (2005). Pursuant to Evans V. State, Supreme Court of South Carolina, April 4, 2005, 363 S.C. 495, 611 S.E.2d 510. Removing the veil of secrecy after a defendant has been indicted is consistent with the [legislative intent] expressed in Section 14-7-1770 and the "Act as a whole." - Mr. Roberts is proceeding (Pro se) in this matter (Subsequent PCR Application - Case No.: 2020-CP-08-01349), and that "Protective Order" dated Feb. 4, 2021 that is signed by Robert E. Hood, Presiding Judge of the State Grand Jury, and Filed Feb. 10, 2021 by the Clerk

of the State Grand Jury, James R. Parks, states on its cover page: "This matter comes before the Court upon motion of the Attorney General of South Carolina, pursuant to South Carolina Code §§14-7-1700 and 14-7-1720, requesting authorization for State Grand Jury material to be disclosed to Christopher L. Murphy, Esquire ("PCR Attorney")."

I, Emory W. Roberts Jr., further state the following facts under the penalty of perjury, that ...: 1.) Mr. Roberts is his own lawyer proceeding (pro se) in this matter; 2.) Christopher L. Murphy, Esquire is [not] my attorney in this matter, and has been removed as Counsel upon motion of Emory W. Roberts Jr. See Consent Order Relieving Counsel Ordered by Judge on 4-13-2021, and [has not] provided Mr. Roberts with any State Grand Jury material pursuant to S.C. Code §§ 14-7-1700 and 14-7-1720, as he [cannot] because of the [indisputable Fact] that as evidenced by South Carolina Supreme Court (Court Administration), Ms. Desiree Allens correspondence to Mr. Roberts dated 10-23-17 and 11-6-17, explicitly states: "You are requesting a transcript from State Grand Jury proceedings. This is to advise that there is" no court reporter assigned to record Grand Jury proceedings, and therefore, there is no transcript available." (Emphasis); 3.) I have not been provided any State Grand Jury material by the Office of the Attorney General, nor the Clerk of the State Grand Jury & though I demand and reserve my rights pursuant to §§ 14-7-1700 and 14-7-1720, this demand, in reality, constitutes an [impossibility] - See Court Admin. correspondence dated 10-23-17 and 11-6-17 (Enclosed) (Emphasis)

An Indictments Failure To State An Offense Has Consequences That Are Necessarily Unquantifiable, Indeterminate And Not Logically Amenable To Harmless Error Analysis, As Indeed So With PCR Proceeding Regarding Transcript And Applicants Right To Conduct A Defense Pursuant To §§ 14-7-1700, 14-7-1720. (11.)

The prejudice caused by the error in this case is "unquantifiable and indeterminate", Sullivan, 508 U.S. at 281-82, and not properly reviewed under harmless error analysis. This error continues to prejudice even Defendants PCR Application (Hearing) pursuant to §§ 14-7-1700 and 14-7-1720. The error here occurred in the grand jury context, where a [transcript] was not made. As a result, defendant is prejudice from being able to establish or "prepare a defense" for [PCR proceedings], in addition, a reviewing court is incapable of assessing what a grand jury did or did not do. (See Court Admin. Corr. dated 11-6-17).

Indeed, a reviewing court can have no confidence that it was error at all because the grand jury might deliberately have declined to find probable cause for an overt act and therefore removed that element from the indictment. While remote, this possibility demonstrates the absolute inability of a reviewing court to assess what a grand jury did or did not do. (In addition an PCR Applicant will suffer great prejudice to his right pursuant to §§ 14-7-1700 and 14-7-1720)

There is no object, so to speak, upon which harmless-error scrutiny can operate. Id. at 280. Thus, "even if a grand jury's determination of probable cause is confirmed in hindsight by a conviction", we cannot be sure that the error leading to the indictments insufficiency did not affect the "very existence of the proceedings to come". Vasquez, 474 U.S. at 263 (Emphasis). Failure of Respondent to abide by PCR procedures relating to §§ 14-7-1700 and 14-7-1720(A) and (D)(A)(4)-(A)(5) creates "circumstances" that render PCR process ineffective to protect Applicants rights, and deprives him of his [right] to determine the best way to protect his liberty. Defendant need not demonstrate prejudice resulting from the error because harm to a defendant is irrelevant to the principals underlying his autonomy right and liberty interests. McKaskle, 465 U.S. at 177 n.8, 104 S.Ct. 944. Thus, the error is structural regardless of the strength of the prosecution's evidence or whether the error would have affected the ultimate outcome of the proceedings. Id. The error is structural because

the deprivation of defendant's autonomy interest under the 5th and 14th Amend. due process clause has consequences that "are necessarily unquantifiable and indeterminate", see Gonzalez-Lopez, 548 U.S. at 150, 126 S.Ct. 2557, rendering the impact of the district courts error simply too difficult to measure. See Id. at 149 n.4, 126 S.Ct 2557 (quoting Vasquez, 474, U.S. at 263, 106 S.Ct. 617) (finding structural error where "the precise effect of the violation cannot be ascertained).

In sum, in light of deprivation of a specific constitutional guarantee, the constitutions articulation of a remedy for such a deprivation and the pernicious effects of such a deprivation, the Court should hold that the error that occurred, and that will, without a doubt occurs regarding (PCR) is structural. To hold otherwise, as would effect a fundamental change in the criminal process.

(Showing Of Good Cause To Be Granted Leave of Court)

Applicant Ask That Leave Be Granted From Court Upon Showing Of Good Cause To Order That He May Invoke formal Discovery Processes To Issue Subpoenas And Obtain Discovery Materials....

1.) Applicant is pro se., and prior counsel of record - Christopher L. Murphy has since been relieved as counsel (See Consent Order Believing Counsel ordered by Judge on 4-13-2021), and Applicant has not been provided State Grand Jury material pursuant to S.C. Code §§ 14-7-1700 and 14-7-1720, — from Christopher L. Murphy or Attorney Generals Office. (Emphasis)

2.) Applicant reserve's his right to "offer the testimony of witnesses", and to compel their attendance", "right to present a defense", "the right to present the defendant's version of the facts", and to have the "compulsory process for obtaining witnesses in his favor", these rights are fundamental elements of due process of law pursuant to the 14th Amendment of U.S. Const. And the 6th Amendment of the U.S. Const.

3.) Applicant reserve's his rights to "prepare a defense" pursuant to the 14th Amend. U.S. Const. and §§ 14-7-1700, 14-7-1720(A)(4) and (A)(5)-(A) and (D) and Rule 5, South Carolina Rules of Criminal Procedure, Evans V. State, 363 S.C. 495, 611 S.E. 2d 510, and defendants right to "conduct his own defense as necessary pursuant to the 6th Amend. U.S. Const., And thereby suffers great prejudice if "leave of court is not granted to [resolve] the matter" that state grand jury material has not been provided to Applicant", and "that it doesn't exist" pursuant to Court Admin. correspondence, dated 10-23-17 and 11-6-17. (Emphasis) (Correspondence Enclosed).

4.) Applicant has a meritorious defense and would suffer prejudice if not granted a leave of court" to acquire the mentioned materials" from Respondent and prior counsel of record. See Rules Civ. Proc., Rule 55(c).

SPECIFIC CLAIMS Intended TO Be Raised

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing: ① Self-Representation., deprivations of the Sixth Amendment right to self-representation are "structural errors" not subject to harmless error review because the right is either rejected or denied; its deprivation cannot be harmless. U.S. Const. Amend. 6.

② Brady Material, and defendants disclose right regarding §14-7-1700; §14-7-1720(A) and (D) and Rule 5, South Carolina Rules of Criminal Procedure. (See Tr. Page 15, lines 5-25); And defendant's sustained prejudice suffered when he was "unable to mount or prepare a defense" in violation of the 14th Amendments Due Process Clause.

③ The Fact that Ms. Deseree Allen's correspondence to Applicant Explicitly Proves" that there was "absolutely" no convening of the state grand Jury on April 12-13, 2016 that returned an indictment against defendant - in fact "A court reporter" was not assigned to grand jury proceedings and there is no record of transcript" because of this fact, and surely a "legal grand jury" requires the provisions of a State Grand Jury Act. Art. 15 §14-7-1700 and §14-7-1750 be adhered too as it is Statutory "law - And "Structural Error" based on the fact defendants conviction is "Constitutionally invalid", relying on Supreme Court precedent, defendant contends that a "constitutionally invalid" conviction affects substantial rights as a per se matter. ④ Defendant was never "informed about the nature of the charges against him", in violation of the Sixth Amendment to U.S. Const.

(5.) Ineffective Assistance of Counsel, in violation of Six Amendment Guarantee to the "Effective Assistance of Counsel". Trial Counsel's failure to consistantly "fail to object" trial courts erroneous ruling refusing defendant the state grand jury impanelment documents (Tr. July 24-28, 2017, page 15, lines 5-9)(Tr. July 24-28, 2017, page 19, lines 8-20)(Tr. July 24-28, 2017, page 73, lines 3-25). (Emphasis) Trial Counsel abandoned any defense or strategy when he consistantly tried to coerce defendant to take a Plea; Trial Counsel's deficient performance prejudice defendants "preparation of a defense" and defendant's right to confront all witness in the "chain of custody" in violation of the 6th Amend. U.S. Confrontation Clause. When trial Counsel refused to object to "oral or written statements from absent witnessies; abridging defendants right to Confrontation; Trial Counsel failed to "investigate claims" concerning "mitigating evidence" and the fact that defendant had not had "proper notice" of charges; Trial Counsel refused to "produce alibi" for defendant; Trial Counsel committed a serious breech of his fiduciary and ethical duties when he failed to "object" to structural error, etc..

(6.) Trial counsel "conspired" with prosecution to bring about the object of Fraud Upon The Court".

(7.) Judicial Partiality - Trial judge was "bias", Partial to prosecution, and used her "erroneous rulings" and prestige influence the outcome in the proceding.

Stated Simply: Applicant intends to raise every "claim" mentioned in PCR App. Filed May 13, 2021 and Briefs 1-9 (Each & every claim) I, Emory Roberts hereby "reserve all rights" to raise all [issues] including ineffective assistance of Appellate Counsel and the absolute violations of Art. 1, §11, Art. 5, §22 §17-19-10 and "Insufficient Evidence" regards elements of Trafficking and that prosecution never established "how much heroin" and "Purchase or Brought to State".

(16.)

VERIFICATION

I, Emory W. Roberts Jr., being duly sworn upon my oath, depose and say that the matters and allegations herein set forth are true and accurate.

Emory W. Roberts Jr.
Emory W. Roberts Jr.

Enclosure: The South Carolina Court of Appeals correspondence to Appellant dated June 14, 2019; Correspondence received by SC Court of Appeals dated June 11, 2019; June 5, 2019; June 3, 2019 correspondence from Appellant, received by SC Court of Appeals on June 6, 2019 (constituting Applicants evidence of "ineffective Assistance of Counsel Claims" (Emphasis).

Clerk of Court - Please File and copy Enclosure and/or add to "exhibits", the SC Court of Appeals exhibits to exhibits filed in Subsequent PCR Application as well as this matter regarding raising the claim of "ineffective assistance of Appellate Counsel".

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 27th DAY OF July
20 21
Linda K. Bar...
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 6-20-26

Emory W. Roberts Jr.

Devon Wilson

From:	Courtmail08_DoNotReply@sccourts.org
Sent:	Wednesday, August 11, 2021 11:59 AM
To:	ninthcircicuitpcr@scag.gov
Cc:	Devon Wilson
Subject:	2020-CP-08-1349/Emory Roberts vs State of SC/
Attachments:	2020CP0801349_LETTER_393205.PDF

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~~~

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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June 14, 2019

Emory Warren Roberts, Jr., 373393
Lieber Correctional Institution
P. O. Box 205
Ridgeville SC 29472

Re: The State v. Emory W. Roberts
Appellate Case No. 2017-001676

Dear Mr. Roberts:

The Court has received you correspondence dated June 3, 2019, and June 5, 2019. Because you are represented by counsel, we are returning your filings to you. See Miller v. State, 388 S.C. 347, 347, 697 S.E.2d 527, 527 (2010) ("Since there is no right to 'hybrid representation' that is partially pro se and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed pro se by a person represented by counsel are not to be accepted unless submitted by counsel.").

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
Susan Barber Hackett, Esquire
Jonathan Scott Matthews, Esquire

Susan B. Hackett
Appellate Defender

6-5-19

RECEIVED
JUN 11 2019
SC Court of Appeals

Hello Ms. Hacket, I'm writing to you in order that you may Address the various Federal Constitutional violations that Appellant has suffered in violation's of the 5th, 6th, 8th, and 14th Amendments to the United States Constitution. I ASK that you may consider, as my Appellant Defender to raise these issues to the Supreme Court, S.C. Court of Appeals, and in Appellants Brief. You have direct Knowledge of the "substance" of my transcript, and the Supreme Court will not Allow me to A "Review" of this substance because I am represented by Counsel. It would be ineffective Assistance of Appellate Counsel to ignore Appellants Constitutional claims therefore depriving Appellant of his constitutional right to counsel pursuant to the 6th Amendment to the United States Constitution. Appellant suffers "irreparable injury" due to All the violations of defendants right to due process of law and equal protections under the law pursuant to the 14th Amendment to the United States Constitution. Further, Ive made you Aware of Court Administration's Correspondence to me that "no court reporter was assigned to record grand jury proceedings" in violation of Section 14-7-1700 and A deprivation of defendants right to due process under the law pursuant to the 14th Amend. to U.S. Constitution, Ive provided you A copy of this correspondence to "challenge" subject matter jurisdiction because I have not been indicted in violation of the 5th Amend. to U.S. Constitution, this is indisputable Ms. Hackett. Continued prosecution in my case is and constitutes "Cruel and Unusual Punishment in violation of the 8th Amend. to the United States Constitution.

As my Appellate Defender I ASK you to "Alert" the Supreme Court, and S.C. Court of Appeals to All of Constitutional violations defendant has suffered because you are Knowledgeable of the substance in my trial transcript.

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk

6-5-19

RECEIVED
JUN 11 2019
SC Court of Appeals

Re: Review Constitutional Claims

: Hearing On Sufficiency of Evidence
(South Carolina Supreme Court)

: Freedom From Cruel and Unusual Punishment

Please Clock, Stamp, File
And Return Copy To Defendant
Thank You.

C.C. Appellate Defender
Susan B. Hackett

C.C. South Carolina Supreme Court
(Clerk)

I Also ask you to Challenge these issues. As follows: . . .

① Defendants rights to "Confrontation" pursuant to the Sixth Amend. to the U.S. Constitution, and due process of law and equal protection under the law was violated when "chain of custody" was "stipulated too" without on record colloquy... See. Tr. Dated July 24-28, 2017, Page 74, Lines 4-25; Defense Counsel stipulated to "chain of custody" to [greatly truncate list of witnesses] therefore prejudicial to defendants right to confrontation and due process of law pursuant to 14th Amend. See Also (Crawford V. Washington, U.S. Sup. Ct. 2004)

② In regards to Subject Matter Jurisdiction / Insufficient Evidence

The State must prove that the Amount of heroin or any mixture containing heroin was 4 grams or more but less than 14 grams; 14 grams or more but less than 28 grams; and 28 grams or more." State lacked sufficient proof to charge or convict defendant with "Trafficking" [which must be proven element by element] U.S. V. Jordan, United States Court of Appeals, Fourth Circuit, December 4, 2007 509 F.3d 191 held "No one element of A crime is more essential than another. Tr. dated July 24-28, 2017, Page 861, Lines 14-25; 862, Lines 1-5. See., Supreme Court of South Carolina (Sam Brown, Petitioner V. State South Carolina)

③ Defendants right to "Effective Assistance of Counsel" to the Sixth Amend. to the United States Constitution, and dueprocess of law and equal protections pursuant to the 14th Amend. to U.S. Const. was violated. Defense Counsel "stipulated too" chain of custody" to Accomadate prosecutions "long line of witnesses" to "greatly truncate" list of witnesses prejudicing defendants right to confront Chemist/Analyst As to "actual Amount of heroin" (Tr. Date July 24-28, 2017, Page 74, Lines 6-25.; Page 75, Lines 1-5. In violation of Rule 6 S.C. Rules Criminal Procedure, and violating defendants due process of law in violation of 14th Amend. to U.S. Const. Also, trial counsel completely abandoned any defense for defendant when counsel was acting As second prosecutor, and in middle of trial Advised defendant to plead. (Tr. Dated July 24-28, 2017, Page 235, Lines 5-18. See Strickland, 466 U.S. At 690. Also See. U.S. V. Aguilar-Tamayo, 300 F.3d 562, 566 [illegible]

④ Defendants right to the 5th Amend. to the U.S. Const. and due process of law pursuant to the 14th Amend. was violated when defendant had not been indicted, also see Art. 1. §11, and Art. 5. §22 of S.C. Const. "The fifth Amendment requires a [legally constituted] and [unbiased] grand jury for a valid indictment. See Costello V. U.S., 350 U.S. 359, 363 (1956) Also See. Correspondence from Court Admin. dated 10-23-17 and Nov. 6, 2017. Code 1976, §17-19-20.

⑤ Defendants right to due process of law pursuant to the 14th Amend. to the U.S. Const was violated when statutory and constitutional provisions were denied defendant. See Court Admin. Correspondence. In violation of Section 14-7-1700 "no court reporter was assigned to record grand jury proceedings, therefore no transcript being available also in violation of §14-7-1750, and §14-7-1720(D); U.S.C.A. Const. Amend. 14; Code 1976 §§ 14-7-1700, 14-7-1720, 14-7-1770, Rule 5 Crim. Proc. Rule 5. Code 1976, §17-19-20.

⑥ In Brady V. Maryland, the Supreme Court held that due process, pursuant to 14th Amend. requires the prosecution to disclose evidence favorable to an accused upon request when such evidence is material to guilt or punishment. See Tr. dated July 24-28, 2017, Page 15, Lines 5-6, when defendant requested "impanelment documents" and was denied, Also see. Correspondence from Court Admin. advising defendant that "no court reporter had been assigned to record grand jury proceedings, therefore no transcript available. Whether judge in retrospect prejudice defendant a fair trial when judge denied defendant impanelment documents to which he is entitled pursuant to §14-7-1700, 14-7-1770, 14-7-1720 Brady V. Maryland, Rule 5 S.C. Rules Criminal Procedure.

(7.) Defendants right to "Confrontation" to the 6th Amend. to the U.S. Const., and due process of law and equal protection under the law pursuant to the 14th Amend. to the U.S. Const. was violated when co-defendants confession/statement was admitted as testimony when he was not present at trial. See Crawford V. Washington, 124 S.Ct. 1354, 1374 (2004). (Tr. dated July 24-28, 2017, Page 721 of trial transcript)

S.C. Court of Appeals, I ask that this substance be considered by the S.C. Court of Appeals, the Supreme Court, for Evidentiary Hearing regarding "Insufficient Evidence" and All mentioned Constitutional violations in that the current issue/Brief of Appellant is inadequate to free defendant from unreasonable and oppressive prosecution. I ask that these Courts Review Constitutional deprivations to defendant/Appellant and to Rule on them. Thanking You in Advance.

Please Clock, Stamp, File
And Return Copy To Defendant,
Thanks Again

Sincerely,
Appellant
Emory Roberts

C.C. Susan B. Hacket
Appellant Defender

C.C. S.C. Supreme Court,
(South Carolina Supreme Court)

RECEIVED
JUN 06 2019
SC Court of Appeals

6-3-19

South Carolina Court Of Appeals (Original Copy of 3)

Re: Order Filed May 23, 2019
: Requesting Copy of "Petition for Redress of Grievances" dated May 20, 2019

① I Bring the Courts Attention too," Myers V. Johnson, 76 F.3d 1330, 1339 (5th Cir. 1996) (per curiam) ("The violation of the constitutional right to self-representation on direct appeal, limited to the right to present "pro se" briefs and motions, is not amenable to harmless error analysis.")

② Though I have Addressed My Petition For a Redress of Grievances to the South Carolina Supreme Court, dated May 20, 2019 for "discretionary review", and instead of the high court responding, and the South Carolina Court of Appeals has instead responded, I ask that you may provide me with a stamped Copy of the Petition and all Attachments, thanking you in advance, please enjoy your day.

Please Stamp, Clock, File
This Correspondence and
provide copy to Appellant,
thanks.

Sincerely
Emory W. Roberts Jr.
Appellant.

Desiree Allen
Court Reporter Manager,

10/31/17

I am writing to you in response to your letter dated October 23, 2017, requesting a copy of a transcript from a "State Grand Jury" proceeding that "may have occurred on the dates of April 12-13, 2016 in Richland County.

Presiding Judge: Newman, C - Of State Grand Jury
Date: April 12-13, 2016
Warrant Numbers: 2016-GS-47-02
2016-GS-47-03

> Were These Warrant #'s submitted To A State Grand Jury For Indictment

If, indeed there was a transcript for those dates, and my request has been forwarded to the Court Reporter, as a courtesy will you make me aware of the existence of the transcript, and as you have done with my previous correspondence make a copy of my request and send back to me? This way I can be in anticipation of recieving/or knowing if the transcript will be available within the next sixty days, and I'll have a copy of my dated request, thanking you in advance, please enjoy your day.

Thanks Again!

Sincerely
Emory W. Roberts Jr.

Desiree Allen
Court Reporter Manager

10/16/17

Hello, how are you? Im writing to you to obtain a transcript/or name of Court Reporter that may have been appointed to record a "State Grand Jury" proceeding that may have occurred on the dates of April 12-13, in Richland County.

(State Grand Jury Of South Carolina Vs. Emory W. Roberts Jr.)
(Case No. 2016-GS-47-02/2016-GS-47-03)

I would like the name of the Court Reporter so that I may purchase a transcript if one for those dates are available, thanking you Kindly For your time concerning this matter, looking forward to your reply A.S.A.P., thanks again, enjoy your day.

I Ask that you may provide the Court Reporters Name And Address so that I may request transcript And Obtain the cost that I may make the funds available, thank you.

Sincerely
Emory W. Roberts Jr.

RECEIVED
MAY 23 2019
SC Court of Appeals

Exhibit B

South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

TONNYA K. KOHN
INTERIM DIRECTOR

1220 SENATE STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201

October 23, 2017

Emory W. Roberts #2016003071
Kirkland Reception and Evaluation Center
4344 Broad River Rd.
Columbia, SC 29210-4098

Dear Mr. Roberts:

I am writing in response to your letter dated October 16, 2017, requesting a copy of a transcript from a State Grand Jury proceeding that "may have occurred on the dates of April 12-13, in Richland County." In order for me to assist you in obtaining the transcript of record from your proceedings, please provide the following information:

1) **presiding judge;**
2) **exact date (with year) of hearing.**

This information is required in order for us to assist you. When this information is received we will forward the request to the court reporter, who will then contact you to make arrangements for payment and delivery of the transcript. Please be advised that court reporters have 60 days to prepare a transcript after satisfactory payment arrangements have been made. Please contact this office at your earliest convenience with this required information.

Sincerely,

Désiree Allen
Court Reporter Manager

South Carolina Court Administration

South Carolina Supreme Court

Columbia, South Carolina

TONNYA K. KOHN
INTERIM DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201

November 6, 2017

Emory W. Roberts, Jr. #373393
Kirkland Reception and Evaluation Center
4344 Broad River Rd.
Columbia, SC 29210-4098

Dear Mr. Roberts:

Your inquiry has been received by this office. The convening of the State Grand Jury is not dependent upon a term of General Sessions court and often does not meet at the same time as General Sessions terms. You are requesting a transcript from State Grand Jury proceedings. This is to advise that there is no court reporter assigned to record Grand Jury proceedings, and therefore, there is no transcript available.

I am sorry that we are unable to assist you further.

Sincerely,

Desiree Allen
Court Reporter Manager

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
County of BERKELEY)
) Case No. 2020-CP-08-01349
Emory Roberts)
Applicant / Petitioner)
vs.) **ORDER**
)
State of South Carolina,)
)
Respondent.)

FILED
21 SEP 16 PM 2:49
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, S.C.

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

____ 1. The application for post-conviction relief is hereby: _____denied _____granted _____under advisement; a formal order will be filed (see below - No.6)

X 2. Motion(s) was/were heard in this case and the court orders:
The motion to dismiss and/or for summary judgment is hereby _____granted _____denied _____under advisement, based upon the _____statute of limitations and/or _____the successive nature of the application or _____other reason as follows:
Applicant's Motion to proceed Pro Se was granted.

____ 3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

____ Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

____ The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or _____no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

____ 4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed _____ with prejudice _____ without prejudice.

____ 5. Other: _____

_____

_____.

____ 6. The court further orders:

____ The _____Attorney General _____Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within _____days.

____ Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____days.

____ The court does not request proposed orders.

IT IS SO ORDERED.

Date: 9 / 8 / 2021
Sumter, S.C.

_____
Presiding Judge

Court Reporter: Joy Rueger
Attorney for Plaintiff: Lindsay McAllister
Attorney for Defendant: Pro Se

Revised 12/10/04

FILED
2022 FEB 15 AM 9:20
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Emory W. Roberts, Jr., #373393; Applicant, v. State of South Carolina, Respondent.	Case No.: 2020-CP-08-01349 **ORDER GRANTING LIMITED DISCOVERY AND APPOINTING STAND-BY COUNSEL TO FACILITATE REVIEW OF STATE GRAND JURY MATERIALS**

This matter comes before the Court by way of a motion for discovery filed by Applicant Emory W. Roberts, Jr. in his pending post-conviction relief application. A hearing was convened on this motion on December 6, 2021, in this Court's virtual courtroom. Applicant was present and appeared *pro se*. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Following argument from both parties, this Court grants Applicant's motion for discovery pursuant to S.C. Code Ann. § 17-17-150(A) and Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005). However, in light of the Protective Order issued by the Presiding Judge of the State Grand Jury that explicitly prohibits Applicant from personally receiving a copy of these materials, this Court finds it is necessary to appoint standby counsel to assist Applicant with obtaining and reviewing a copy of these discovery materials and transcripts with Applicant but will still allow Applicant to appear *pro se* at his evidentiary hearing on the underlying post-conviction relief action. These specific findings are set forth below:

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. In April 2016, the South Carolina State Grand Jury indicted Applicant and five co-conspirators under a multi-count indictment stemming from an

JBM\ Atty General Mail 2/15/22

investigation into a drug trafficking ring throughout Dorchester and Berkeley Counties (2016-GS-47-02). Under this indictment, Applicant was indicted for one count of trafficking in heroin of twenty eight grams or more, three counts of distribution of heroin, one count of trafficking in heroin between four and fourteen grams, one count of possession with intent to distribute methamphetamine, and one count of possession of a firearm during the commission of a violent crime.

On July 19, 2017, Applicant appeared before the Honorable Deadra L. Jefferson, circuit court judge, for pre-trial motions hearings alongside appointed counsel Timothy L, Griffith, Esquire. Thereafter, on July 24-28, 2017, Applicant and co-conspirator Justin Hunter (Hunter) proceeded to trial before a jury on all counts in the Berkeley County Court of General Sessions with Judge Jefferson, presiding. Applicant was again represented by Counsel Griffith. The State was represented by Assistant Attorneys General Joshua Underwood and David Fernandez of the South Carolina Attorney General's Office. Hunter was not present for trial and was tried in his absence.

At the conclusion of trial, the jury convicted Applicant of all counts. Following the verdict, Judge Jefferson sentenced Applicant to twenty-five years' imprisonment for trafficking in heroin of twenty-eight grams or more, fifteen years' imprisonment for each count of distribution of heroin, fifteen years' imprisonment for trafficking in heroin four grams to fourteen grams, five years' imprisonment for possession of a weapon during the commission of a violent crime, and fifteen years' imprisonment for possession with intent to distribute methamphetamine. All of Applicant's sentences ran concurrently with each other, resulting in an aggregate total of twenty-five years' imprisonment.

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Applicant timely appealed his convictions and was represented on appeal by Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense—Office of Appellate Defense. On appeal, Applicant asserted the trial court violated his constitutional rights by denying his right to self-representation. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences on January 29, 2020. State v. Roberts, Op. No. 2020-UP-017 (S.C. Ct. App. filed January 29, 2020). On February 13, 2020, Applicant filed a Petition for Rehearing with the Court of Appeals. The Court of Appeals denied the Petition for Rehearing on March 27, 2020. Applicant then filed a petition for a writ of certiorari to the South Carolina Supreme Court on April 24, 2020. The State filed its return to the petition for writ of certiorari on May 6, 2020. On October 16, 2020, the Supreme Court denied certiorari. The Remittitur was returned to the circuit court on October 19, 2020.

CURRENT POST-CONVICTION RELIEF ACTION

While Applicant's direct appeal was pending, he filed this instant post-conviction relief action on July 21, 2020, asserting claims of due process violations based in an allegation that the grand jury never legally convened and did not lawfully indict him, that he was denied the right to review grand jury impanelment documents (which he also characterizes as a *Brady* violation), that the prosecutors made false and misleading statements against him, that the trial court lacked subject matter jurisdiction to indict him, as well as claims of ineffective assistance of trial counsel, prosecutorial misconduct, and judicial misconduct relating to the grand jury process and purported irregularities. Respondent moved to dismiss the application without prejudice because his direct appeal was still pending before the South Carolina Supreme Court. See Rule 71.1, SCRCP ("An application for post-conviction relief cannot be made while an appeal from the conviction or sentence is pending or during the time in which an appeal may be perfected.").

JBm13

Respondent submitted a proposed order of dismissal without prejudice at the same time to the chief administrative judge for common pleas. This order was neither signed nor acknowledged by the court before Applicant's direct appeal concluded.

On February 1, 2021, Respondent filed an amended return, indicating that because Applicant's direct appeal had concluded, the matter was now appropriate for post-conviction relief. Respondent moved to dismiss the judicial misconduct and prosecutorial misconduct allegations as direct appeal issues procedurally barred from being raised in a post-conviction relief action and asking the Court to convene an evidentiary hearing on his claims of ineffective assistance of counsel.

Respondent also requested the court appoint counsel to represent Applicant pursuant to Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court, S.C. Sup. Ct. Order filed October 6, 2008 and Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). On January 20, 2021, the Berkeley County Clerk of Court appointed Christopher L. Murphy, Esquire, to represent Applicant.

On February 4, 2021, the Honorable Robert E. Hood, acting in his capacity as the Chief Judge of the State Grand Jury, issued a protective order allowing Applicant's PCR counsel to obtain one copy of the discovery and other state grand jury materials in accordance with South Carolina Code Ann. § 14-7-1720 and Evans v. State, 363 S.C. 495, 507, 611 S.E.2d 510, 516 (2005) (holding state grand jury secrecy concerns "diminish following issuance of a true bill of indictment," as a "defendant's right to obtain such information necessarily arises post-indictment" but that all concerns of secrecy do not diminish). In this order, Applicant may access the protected materials by viewing a copy with counsel but is expressly prohibited from

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obtaining his own copy. See Protective Order ("IT IS FURTHER ORDERED that TRIAL ATTORNEY is permitted to allow PCR attorney to make one (1) copy of State Grand Jury information related to this case in TRIAL ATTORNEY's file that PCR Attorney believes is necessary to handle the PCR matter. This copy must be made in a secure fashion by either TRIAL ATTORNEY or PCR ATTORNEY, and all of TRIAL ATTORNEY's file must ultimately remain in TRIAL ATTORNEY's custody after review and copying by PCR Attorney. Aside from this one copy, TRIAL ATTORNEY and PCR Attorney are prohibited from further copying or disseminating copies of any State Grand Jury material to anyone, including defendant. Any and all copies of State Grand Jury material must be securely kept in PCR attorney's office or in the possession of PCR attorney (any use of computer network storage for State Grand Jury materials shall be encrypted and otherwise separate from other case files)."

Thereafter, Applicant moved to relieve PCR counsel Murphy. By order signed April 13, 2021, the Honorable Roger M. Young, Sr., acting in his capacity as Chief Administrative Judge for the Ninth Judicial Circuit Common Pleas, relieved Murphy as counsel of record for Applicant.

On May 13, 2021, Applicant filed an amended application, listing additional grounds for relief, including numerous grounds of ineffective assistance of trial counsel and appellate counsel.

On August 9, 2021, Applicant filed a motion for discovery pursuant to Section 17-27-150(A), seeking to issue subpoenas for both documents and the presence of various individuals related to his case, including the prosecutors, the former Clerk of Court for the State Grand Jury, employees from the South Carolina Law Enforcement Division (SLED), and the South Carolina Judicial Department Court Administration's former Court Reporter Manager.

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On September 8, 2021, a hearing to determine if Applicant could proceed *pro se* pursuant to Hilton v. State, 422 S.C. 204, 810 S.E.2d 852 (2018), was convened before the Honorable R. Kirk Griffin, circuit court judge. Following a colloquy with Applicant, Judge Griffin determined Applicant made a knowing, intelligent, and voluntary decision to represent himself despite the dangers of doing so and determined Applicant could proceed *pro se* in this case.

CURRENT MOTION BEFORE THE COURT

Applicant has filed a motion seeking to invoke discovery pursuant to Section 17-27-150(A). Specifically, Applicant seeks impanelment documents from the state grand jury, including the State's petition and the court order impaneling the state grand jury, testimony from the witnesses who appeared before the state grand jury. He also seeks to issue subpoenas to the South Carolina Judicial Department Court Administration's former Court Reporter Manager, Desiree Allen, the prosecutors, the former Clerk of Court of the State Grand Jury James R. Parks, SLED Agents Wingo and Bass, and Corporal Frederick Samuel of the Berkeley County Detention Center.

Pursuant to Section 17-27-150(A), an applicant in a non-capital post-conviction relief proceeding may only invoke the processes of discovery based on leave of court after a showing of good cause. See Section 17-27-150(A) ("A party in a noncapital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for the effective utilization of discovery procedures, counsel may be appointed by the judge for an applicant who qualifies for appointment pursuant to Section 17-27-60 or similar applicable provisions of law.").

JBM/LO

In the present case, Applicant seeks to invoke the discovery process to obtain impanelment documents from the state grand jury, which he asserts are necessary to prove his various claims related to the impanelment and indictment process that he asserts render his conviction unconstitutional.

In Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005), Evans sought post-conviction relief following his conviction on state grand jury indictments. During the post-conviction relief process, Evans sought the state grand jury impanelment documents related to his case. Id. The clerk of court of the state grand jury refused to release the documents pursuant to S.C. Code Ann. § 14-7-1770. Id.; see also S.C. Code Ann. § 14-7-1770 ("Records, orders, and subpoenas relating to state grand jury proceedings must be kept under seal to the extent and for that time as is necessary to prevent disclosure of matters occurring before a state grand jury."). Upon agreement of the parties, the clerk of court released the documents directly to the post-conviction relief judge for an *in-camera* review. Id. Following this *in-camera* review, the court denied post-conviction relief, finding the petition and order relating to impanelment were proper and the state grand jury that considered Evans' case was properly impaneled, and, therefore, the court had subject matter jurisdiction in Evans' case and Evans' counsel was not ineffective for failing to challenge the state grand jury impanelment. Id. On appeal, Evans asserted the post-conviction relief court improperly prevented him from obtaining and reviewing the petition, supporting materials, and the judge's order impaneling the state grand jury which indicted him, amongst other issues. Id. The South Carolina Supreme Court determined Evans was entitled to review the documents, finding:

> [W]e conclude impanelment documents, including the State's petition, supporting materials, and the impaneling judge's order, may be released to a defendant prior to trial upon timely request or to an applicant in a PCR proceeding. The State may, of course, redact information not related to a particular defendant's case or

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> information concerning other persons or matters under consideration by the state grand jury. Release of the documents may be appropriate because (A) Section 14–7–1770 is not a complete prohibition on the release of the information; (B) release of the documents usually is not prohibited by secrecy provisions or other concerns following the issuance of a true bill of indictment; and (C) a defendant has the right to review the documents to determine whether to timely challenge the legality of the state grand jury which indicted him.
>
> [. . .]
>
> The terms of the statute do not impose a complete prohibition on the release of impanelment documents or other records, such that they must remain secret forever. The emphasized language indicates that, at some point in cases in which the grand jury returns a true bill of indictment, matters other than the grand jury's deliberations and voting may be disclosed to a defendant. Removing the veil of secrecy after a defendant has been indicted is consistent with the legislative intent expressed in Section 14–7–1770 and the Act as a whole.

Id. at 504, 611 S.E.2d at 515. The Court elaborated that just as a defendant may obtain copies of the transcripts of the testimony rendered before the state grand jury with certain provisions in place, a defendant may similarly obtain impanelment documents. Id.

In the present case, Applicant, much like Evans, seeks the petition, supporting documents, and judge's order impaneling the state grand jury that indicted him. Pursuant to Evans, this Court agrees Applicant is entitled to obtain and review a copy of the impanelment documents, including the petition, supporting documents, and judge's order impaneling the state grand jury that indicted him.

However, in light of the Protective Order issued by the Chief Judge of the State Grand Jury, which is controlling and applicable in this case and expressly prohibits Applicant from personally receiving a copy of the materials and orders that Applicant may access the protected materials by viewing a copy with counsel, this Court finds it is necessary to appoint standby counsel to assist Applicant with obtaining and reviewing a copy of these discovery materials and transcripts with Applicant. However, this Court will still allow Applicant to appear *pro se* at his

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evidentiary hearing on the underlying post-conviction relief action, as previously ordered by the Court. This will allow Applicant to obtain and review any necessary materials to prepare for and utilize at this post-conviction relief hearing while still allowing Applicant to proceed *pro se* as he wishes to do.

Therefore, this Court orders the Berkley County Clerk of Court to appoint an attorney to act as stand-by counsel to assist Applicant in obtaining and reviewing the impanelment documents and any other matters for which Applicant needs assistance in preparing his matter for an evidentiary hearing. However, this Court finds Applicant shall be allowed to proceed *pro se* at his evidentiary hearing based on the Court's prior determination and Applicant's express wishes.

This Court further orders that once counsel is appointed, the State must promptly provide all impanelment documents to Applicant's counsel, and, upon receipt of the documents, Counsel must review them with Applicant within sixty days of receipt.

This Court further finds that the remaining discovery requests Applicant seeks, including testimony from the witnesses who appeared before the State Grand Jury, subpoenas to the South Carolina Judicial Department Court Administration's former Court Reporter Manager Desiree Allen, the prosecutors, the former Clerk of Court of the State Grand Jury James R. Parks, SLED Agents Wingo and Bass, and Corporal Frederick Samuel of the Berkeley County Detention Center, are all premature until Applicant has had an opportunity to review the impanelment documents. Accordingly, this Court reserves ruling on these additional items until Applicant has had a full opportunity to review the impanelment documents, and Applicant may seek leave of court to conduct additional discovery pursuant to Section 17-27-150 after his review of the impanelment documents if he so desires.

JBM/9

CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-150, Evans, and the Protective Order issued by the Chief Judge of the State grand Jury, this Court finds Applicant, through appointed stand-by counsel, is entitled to review the petition, supporting documents, and judge's order impaneling the state grand jury that indicted him.

To facilitate with this review, this Court orders the Berkeley County Clerk of Court to appoint stand-by counsel to assist Applicant.

This Court further orders the State must promptly provide all impanelment documents to Applicant's counsel, and, upon receipt of the documents, Counsel must review them with Applicant within sixty days of receipt.

AND IT IS SO ORDERED this 9 **day of** Feb. **,** 2022

JENNIFER B. McCOY
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

JBM/10

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY Emory W. Roberts Jr., Plaintiff(s), -vs- State of South Carolina, Defendant(s).	IN THE COURT OF COMMON PLEAS 9th JUDICIAL CIRCUIT CASE NO.: 2020CP0801349 APPOINTMENT OF COUNSEL OR GAL (*Select one.*) ☒ ORDER ☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (*Check one.*)

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

It appears Emory W. Roberts Jr., who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: *(Select only one.)*

☐ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.

☒ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:

☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.

☐ court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.

☐ Other:

FILED
22 MAR -9 AM 10:12
JEAN GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

Therefore, it is ordered that Denise G. Swope hereby is appointed as (*Select one.*)

☒ counsel ☐ lead counsel (*if capital PCR case*) ☐ guardian ad litem

for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

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

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

IT IS SO ORDERED
March 8, 2022

Jean Guerry Dupree /gw

☐ Circuit Judge ☒ Clerk of Court

Plaintiff Attorney:

Denise G. Swope
1525 Sam Rittenburg Blvd, Ste 208
Charleston, SC 29407

Defendant Attorney:

Megan Harrigan Jameson
PO Box 11549
Columbia, SC 29211

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

FILED
2023 DEC -1 PM 3:28
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY
COMMON PLEAS
POST OFFICE BOX 219
MONCKS CORNER, SOUTH CAROLINA 29461-0219
(843) 719-4400 (843) 567-3136 (843) 723-3800

TO: Emory Roberts Jr.

RE: Your filing.

The enclosed document is being returned for the following reason(s):

____ This document is not signed / notarized

____ The filing fee is insufficient. The correct amount is _____

____ This document is a copy. We must have original.

____ This is not a Berkeley County case

____ The check or money order must be made payable to the **Clerk of Court**.

____ The case is ended. Date ended: _____
Reason Ended: _____

____ Your Check must be signed. _____Stale dated check

____ Inmate litigation must comply with S.C. Code of Laws, Title 24, Chapter 27

____ There is not a case listed in our system that matches this caption.

____ The required **new case** coversheet is not included.

____ The required **motion/order** coversheet is not included.

____ The required **order (Form 4)** coversheet is not included.

____ Information may be obtained from our web-site at **www.berkeleycountysc.gov**.

____ Other _____

Please make the necessary corrections and return this document for filing.
Thank you for your assistance.

Dear Sir,
You must submit all correspondence to your attorney.
Thank you

Staff Initials _____ **Date** 12/1/2023

Emory W. Roberts Jr.
Pro se
V.
State of South Carolina

Berkeley County Court of Common Pleas

Case #: 2020-CP-08-1349

Date: November 27, 2023

Re: Motion To Relieve Standby Counsel For Collusion, Fraud, and Crimes of Moral Turpitude;

: Rule 407, SCACR, Rules of Prof. Conduct, Rule 1.16 (A)(1)(3)

Clerk of Court:

Please Clock, Stamp, Copy & Return Copy To Applicant

Kelevant facts

Denise Swope was appointed as stand by counsel in violation of Rule No. 60 of the Circuit Courts" after" Judge Griffin Ford Mr. Roberts could represent himself in his PCR proceedings. Mr. Roberts has sent letters with exculpatory evidence to Ms. Swope and explicitly expresses his objection to her being assigned as she is now involved with the collusion in the trial court and the repression of Mr. Roberts constitutional rights. Ms. Swope is aiding and abetting "fraud upon the legal rights of Mr. Roberts" and "fraud upon the court" by accepting "fraudulent documents" in order that prosecutor succeed in its attempts to "manufacture jurisdiction". Mr. Roberts has sent correspondence from Court Administration, Court Reporter Manager, Ms. Desiree Allen, stating: "no court reporter was assigned to record grand jury proceedings, therefore, no transcript is available – (Emphasis). This exculpatory evidence has been sent to Ms. Swope 3 occasions without her responding. Ms. Swope engaged in misconduct by failing to adequately communicate with client by failing to respond or take any action in response to "clients" letter terminating representation. Her deliberately silence is to effectively deprive Mr. Roberts his right to Appellate review of the denial of his PCR, and to aid in the conspiracy against Mr. Roberts to effectively prevent him meaningful access to the courts and his right to be heard. Ms. Swope conduct is prejudicial to the administration of justice and collusive. Ms. Swope is being utilized as a Tool to prevent Mr. Roberts from preserving his "issues" in his Rule 59(e) and from moving the court by motion to comply with § 17-27-80; her conduct includes dishonesty, fraud, deceit, or misrepresentation. Mr. Roberts adamantly "objected" to her being appointed to accept "fraudulent impanelment documents" on his behalf.

Mr. Roberts has proceeded "prose" in all his PCR proceedings and has [never] met with Ms. Swope for any purpose – I do not give her permission to file any legal proceedings/or papers, motions or pleadings. Ms. Swope is guilty of crimes of moral turpitude as well as infringing Mr. Roberts right to Appellate review by remaining silent regarding the fact that she is not my Attorney and cannot continue to infringe my right to present my own defense or version of the fact she is a co-conspirator of the trial court and prosecutors who suppressed exculpatory evidence in this case.

Ms. Swope has failed to do her [duty] pursuant Rule 10, [illegible]
Prof. Conduct, Rule 8.3(C) in regards to Court Administrations correspondence to Mr. Roberts. Mr. Roberts has written letters to Rosalyn Frierson as well as the South Carolina Supreme Court regarding "terminating any kind of representation from or by Ms. Swope. Ms. Swope is committing "fraud upon the court" and "fraud upon the legal rights of Mr. Roberts. She has failed at her [duty] regarding Rule 8.3 (D) and is now aiding in the "obstruction of justice". Ms. Swope is complicit in the conspiracy against Mr. Roberts and fails to respond to letters terminating any so-called representation; her silence is effectively denying me access to the courts as the courts refused to hear my motions as "hybrid counsel" when Ms. Swope has never represented me, I've appeared "prose" at every single PCR proceeding; Ms. Swope has never appeared at Mr. Roberts PCR hearings, and Mr. Roberts has adamantly objected to her being appointed as "standby counsel". Ms. Swope and the PCR court are responsible for dilatory and abusive litigation tactics. Mr. Roberts was given the Faretta warnings by Judge Griffin and was found that Mr. Roberts could represent himself and waived counsel "knowingly and voluntarily" and the appointment of Ms. Swope as "standby counsel" violates Rule No. 60 of the 16th Circuit Courts and violates due process and Mr. Roberts right to present his case effectively.

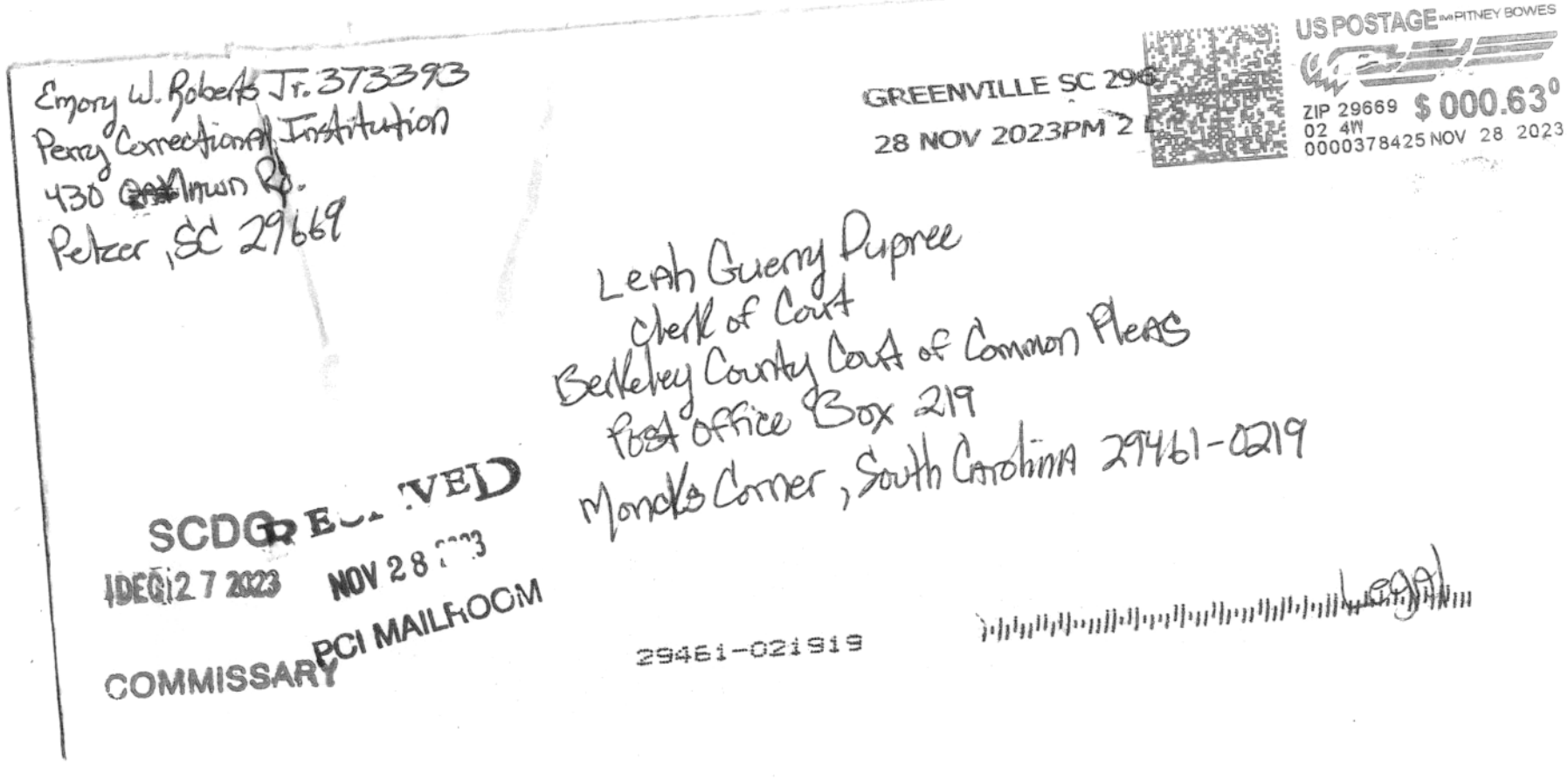
These facts are outlined in the latest correspondence to Ms. Swope dated October 18, 2023 to which I've made copies, and I also made copies of the correspondence to Rosalyn Frierson concerning the same. Ms. Swope is effectively violated Mr. Roberts right to conduct his own defense. Ms. Swope is an active participant/conspirator using dilatory abusive litigation tactics to hinder Mr. Roberts Appellate review and he [fears] she will be used to [sabotage] Mr. Roberts Rule 59(e); Mr. Roberts exercises his right to present his case and conduct his own defense/choose his own way to properly protect his liberty by submitting to the court his "prose" Rule 59(e) and gives no permission for Ms. Swope to do anything but [relieve herself] indefinitely!

Discussion: Sixth Amendment does not require a court to grant advisory counsel to a defendant who chooses to exercise his right to self-representation by proceeding pro se. U.S.C.A. Const. Amend. 6.; See.,

Carter V. Clarke, -F. Supp. 3d-, "Sixth Amendment right of a defendant to conduct his own defense is based on the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty. U.S. Const. Amend. 6.; United States V. Roof, -10 F. 4th 314 "Sixth Amend. right to counsel includes the right to waive counsel and to represent oneself. U.S. Const. Amend. 6.

Conclusion

Mr. Roberts has a right to make his own choices about the proper way to protect his own liberty. Ms. Swope does not have my permission to file, submit or plead any motions on my behalf, I relieve her/terminate her as "standby counsel" and do not permit her to make any substantive decisions in my case, she is a fraudster and complicit in conspiracy against Mr. Roberts PCR Court has not complied with § 17-27-80 and is using Ms. Swope as "counsel of record" to prevent Appellate review and from Mr. Roberts from filing or commencing actions in the court. Ms. Swope is to be [silenced] expressly and explicitly - I ask My Pro se status to be honored and to stop the abusive litigation tactics and abusive dilatory tactics from offending my due process right to Appellate procedures.



Emory W. Roberts Jr. 373393
Perry Correctional Institution
430 Garners Rd.
Pelzer, SC 29669

GREENVILLE SC 296
28 NOV 2023PM 2 L

US POSTAGE PITNEY BOWES
ZIP 29669 $ 000.63°
02 4W
0000378425 NOV 28 2023

Leah Guerry Dupree
Clerk of Court
Berkeley County Court of Common Pleas
Post Office Box 219
Moncks Corner, South Carolina 29461-0219

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DEC 27 2023
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NOV 28 2023
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29461-021919

LEGAL

FILED

2023 SEP -8 PM 4:27

LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY
COMMON PLEAS
POST OFFICE BOX 219
MONCKS CORNER, SOUTH CAROLINA 29461-0219
(843) 719-4400 (843) 567-3136 (843) 723-3800

TO: Emory W. Roberts Jr.

RE: Case # 2020-CP-08-1349

The enclosed document is being returned for the following reason(s):

- ☐ This document is not signed / notarized
- ☐ The filing fee is insufficient. The correct amount is _____
- ☐ This document is a copy. We must have original.
- ☐ This is not a Berkeley County case
- ☐ The check or money order must be made payable to the **Clerk of Court**.
- ☐ The case is ended. Date ended: _____
  Reason Ended: _____
- ☐ Your Check must be signed. _____Stale dated check
- ☐ Inmate litigation must comply with S.C. Code of Laws, Title 24, Chapter 27
- ☐ There is not a case listed in our system that matches this caption.
- ☐ The required **new case** coversheet is not included.
- ☐ The required **motion/order** coversheet is not included.
- ☐ The required **order (Form 4)** coversheet is not included.
- ☐ Information may be obtained from our web-site at www.berkeleycountysc.gov.
- ☑ Other Please contact your attorney w/ all correspondence.

Please make the necessary corrections and return this document for filing.
Thank you for your assistance.

Thank you

Staff Initials _____ **Date** 9/8/2023

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY Emory W. Roberts Jr., Plaintiff(s), -vs- State of South Carolina, Defendant(s).	IN THE COURT OF COMMON PLEAS 9th JUDICIAL CIRCUIT CASE NO.: 2020CP0801349 APPOINTMENT OF COUNSEL OR GAL (*Select one.*) ☒ ORDER ☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (*Check one.*)

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

It appears Emory W. Roberts Jr., who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (*Select only one.*)

☐ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.

☒ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:

☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.

☐ court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.

☐ Other:

FILED
22 MAR -9 AM 10:12
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

Therefore, it is ordered that Denise G. Swope hereby is appointed as (*Select one.*)

☒ counsel ☐ lead counsel (*if capital PCR case*) ☐ guardian ad litem

for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

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

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

IT IS SO ORDERED
March 8, 2022

Leah Guerry Dupree /gw

☐ Circuit Judge ☒ Clerk of Court

Plaintiff Attorney:

Denise G. Swope	
1525 Sam Rittenburg Blvd, Ste 208	
Charleston, SC 29407	

Defendant Attorney:

Megan Harrigan Jameson	
PO Box 11549	
Columbia, SC 29211	

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

Applicant, Pro se (8-29-23)
Mr. Emory W. Roberts 373393
V.
State of South Carolina

Re: 2020CP0801349
: Motion for ruling on claims requesting the PCR court to address the appropriate issues pursuant to S.C. Code Ann. § 17-27-80; S.C.R. Civ. P. 52(A), 59(e)
: Requesting record of proceedings pursuant to S.C. Code Ann. § 17-27-80
: Rule 71.1.(F)
: S.C. Code Ann. § 17-27-80
(providing the post-conviction court must make specific findings of fact and state expressly its conclusions of law relating to each issue presented)

See Inman V. State
Supreme Court of South Carolina
Feb. 15, 2023 439 S.C. 97
"On application for post-conviction relief, trial court was required to make specific findings of fact and state its conclusions of law as to each issue presented." S.C. Code Ann. § 17-27-80

Leah Guerry Dupree 8-29-23
Clerk of Court
Common Pleas

Goodmorning, I am in receipt of your correspondence to me dated 8-23-23, advising me to "Please consult with the attorney on your case status or any questions"... well this is to inform you that I AM my attorney as I was/am a "Prose" applicant in this PCR Action.

And in accordance with trial courts statutory obligation to render findings and conclusions on each issue duly raised in application for postconviction relief, I ask that this [motion] to the court requesting such be filed pursuant to Rule 71.1(F), and that it be stamped, clocked, copied and a return copy be provided to applicant, and for an order that complies with Section 17-27-80.

CC: South Carolina Supreme Court

Please Stamp, Clock, Copy
& Return Copy To Applicant
Thank You...

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Emory W. Roberts, Jr. #373393, Applicant, v. State of South Carolina, Respondent.	Case No.: 2020-CP-08-01349 **ORDER OF DISMISSAL**

FILED
2024 AUG 29 PM 12:
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Emory W. Roberts (Applicant) on July 2, 2020. Respondent made its return requesting an evidentiary hearing. On April 18, 2023, an evidentiary hearing convened before the Honorable R. Kirk Griffin. Applicant was present and proceeded pro se.[1] Assistant Deputy Attorney General Taylor Z. Smith represented Respondent. At the hearing, the Court heard testimony from trial counsel Timothy L. Griffith, Esquire; SLED Agent Justin Wingo; Appellate Defender Susan Hackett; Assistant Attorney General Joshua Underwood; and Assistant Attorney General David Fernandez. Following a thorough review of the records before this Court and the testimony presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections serving an aggregate twenty-five-year sentence. In April 2016, the South Carolina State Grand Jury indicted Applicant and five co-conspirators under a multi-count indictment stemming from an investigation into a

[1] Applicant was previously appointed counsel, but counsel was relieved at Applicant's request, and Applicant was permitted to proceed pro se.

CC: D. SWOPE, D. DIXON 08/29/2024

drug trafficking ring throughout Dorchester and Berkeley Counties (2016-GS-47-02). Applicant was indicted for trafficking heroin, twenty-eight grams or more; trafficking heroin, between four and fourteen grams; three counts of distribution of heroin; one count of possession with intent to distribute (PWID) methamphetamine, and one count of possession of a firearm during the commission of a violent crime.

On November 24-28, 2017, Applicant and codefendant Justin Hunter[2] proceeded to a jury trial before the Honorable Deadra L. Jefferson. Timothy Griffin, Esquire, represented Applicant, and Assistant Attorney Generals Joshua Underwood and David Fernandez prosecuted the case. The jury convicted Applicant as indicted, and Judge Jefferson sentenced him to concurrent terms of twenty-five years for trafficking heroin, twenty-eight grams or more; fifteen years for each distribution of heroin charge; fifteen years for trafficking in heroin, four grams to fourteen grams; fifteen years for PWID methamphetamine; and five years for the weapon charge.

Applicant filed a notice of appeal, which was perfected by Appellate Defender Susan B. Hackett. On appeal, Applicant argued the trial court violated his right to self-representation by denying his request to proceed pro se. The Court of Appeals affirmed on the merits. State v. Roberts, 2020-UP-017 (filed January 29, 2020). Applicant filed a petition for a rehearing, which was denied. Applicant also filed a petition for a writ of certiorari in the Supreme Court of South Carolina, which was denied. The remittitur was sent October 19, 2020.

CURRENT APPLICATION

On June 2, 2020, Applicant filed this PCR application alleging:[3]

[2] Hunter was tried in his absence; he was represented by Theresa Johns, Esquire.

[3] Applicant filed this application while his direct appeal was pending, and the State initially filed a return and motion to dismiss without prejudice due to the pending appeal. However, after the remittitur was sent, the State filed an amended application requesting an evidentiary hearing.

1. Denied 6th and 14th Amendment to be informed of nature and cause: Denied notice;

2. Judicial misconduct: trial court exceeded its jurisdiction to impose sentence, trial court committed 'fraud on the court';

3. Ineffective assistance of counsel: Trial counsel conspired with prosecution on unfounded offenses;

4. Prosecutorial misconduct: prosecutor impaired grand jury's independent role.

As relief, Applicant requested "For sentence to be vacated and indictment dismissed with prejudice." Applicant attached to his application a "brief" further addressing his claims.

On May 13, 2021, Applicant filed a "subsequent application," which this Court construes as an amended application. In this application, he alleged:

a. Conspiracy against public justice;

b. Corruption;

c. Prosecutorial misconduct – Brady violation;

d. Fraud upon the Court;

e. Judicial Misconduct;

f. Ineffective assistance of counsel;

g. Perjury;

h. Lack of subject matter jurisdiction to convict;

i. Due process violations;

j. Ineffective appellate counsel;

k. Trial court error;

l. Lack of indictment, etc.

Applicant attached nine "briefs" to his application in support of his claims. At the PCR hearing,

he focused primarily on his claim that the State Grand Jury did not meet to indict him and the Court thus lacked subject matter jurisdiction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the State Grand Jury Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the trial transcript, the records of Applicant's direct appeal; and the records of this PCR application. This Court has further had the opportunity to observe the witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.[4] After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Due process violation

Applicant first raises a due process violation. Specifically, he contends he was denied notice of his charges. In his initial application, he poses the following "questions," which this Court construes as allegations related to his claim of a due process violation:

> 1. Whether defendant's right to due process of law and equal protections under the law to be informed of the nature and cause of accusation [was] violated when no State Grand Jury convened to consider criminal allegations against him?
>
> 2. Whether defendant's right to due process of law was violated when he was held for trial and convicted of crimes and offenses without indictment by grand jury?
>
> 3. Whether defendant's right to due process and equal protections under the law and his right to have the indictment issued by a legally

[4] This Court will reference PCR testimony where relevant below.

constituted Grand Jury was violated?

4. Whether the State Grand jury lacked subject matter jurisdiction based on nullity indictment?

5. Whether defendant's right to due process of law and equal protections under the law was violated when no court reporter was assigned to record Grand Jury proceedings?

6. Whether defendant's right to due process of law and equal protections under the law [was] violated when defendant was denied the empanelment documents before a jury being sworn?

7. Whether defendant's right to due process of law and equal protections under the law was violated when prosecutor encouraged false testimony and defendant was accused of crimes not investigated by a Grand Jury, and AAGs allowed government agents to make false and misleading statements prejudicing defendant?

9. Whether the Court lacked subject matter jurisdiction to convict and sentence defendant for offenses for which he was not indicted?

10. Whether prosecutor's return of fraudulent indictment constitutes fraud upon the court and defendant's rights?

11. Whether a State Grand jury convened in Petitioner's case on the dates of April 12-13, 2016?

Applicant repeats many of these arguments in his Amended Application and nine "briefs" attached to this application. In addition, he raises the following arguments pertinent to due process:

12. Whether defendant's due process of law and equal protections under the law violated when he was not able to mount or prepare a defense due to prosecutor's misconduct and trial judge's prejudicial ruling?

13. Whether trial court violated defendant's due process of law and equal protections under the law when trial judge relieved prosecution's 'burden of proof' to explain why the 'impanelment documents' should not be released pursuant to Rule 5(d)?

14. Whether defendant's rights pursuant to §§ 17-7-1610 and 14-7-1630(A)(1), and defendant's due process of law, violated when he was 'infringed' his right to challenge the subject matter jurisdiction

of the State Grand Jury?

15. Whether the denial of impanelment documents constitutes a structural error?

16. Whether trial court lacked subject matter jurisdiction to "convict" and "sentence" defendant on unindicted offenses in violation of § 17-19-10, §17-25-10, and defendant's right to due process of law and equal protections under the law? (Br. 3, pg. 1)

17. Whether trial court violated State Constitution and defendant's due process of law and equal protection under the law, when defendant was denied his infringed right to challenge whether a legally constituted grand jury considered his case? (Br. 3, pg. 1)

18. Whether defendant's due process of law violated when prosecution did not meet its burden of production on every element of the offense? (Br. 5, pg. 2)

19. Whether defendant's right to due process of law violated when trial judge, trial counsel, Assistant Attorney Generals, and State Grand Jury Clerk committed conspiracy against public policy? (Br. 6, pg. 3)

20. Whether defendant was denied due process of law when he infringed his right to challenge the sufficiency of the evidence presented at the Grand Jury proceeding? (Br. 6, pg. 4)

21. Whether the State failed to prove beyond a reasonable doubt that the amount of heroin or any mixture containing heroin was 4 grams or more but less than 14 grams; 14 grams or more but less than 28 grams; and 28 grams or more? And whether this violated defendant's due process of law? (Br. 8, pg. 2)

22. Whether defendant's right to due process of law violated when all essential elements of guilt (purchase, or brought into this State) were not proven beyond a reasonable doubt? And whether the defendant suffered prejudice? (Br. 8, pg. 2)

23. Whether a rational trier of fact, viewing evidence in light most favorable to the prosecution, could have found the essential elements of the crime of trafficking heroin beyond a reasonable doubt?

This Court finds Applicant has not shown a due process violation.

Sufficiency of Indictment and meeting of State Grand Jury

This Court finds Applicant had sufficient notice of the charges and has failed to show a due process violation in this regard. Initially, this Court has reviewed the indictment in this case and finds it was sufficient to put Applicant on notice of the charges against him. See Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005) ("The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted. This required notice is a component of the due process that is accorded every criminal defendant." (internal citations omitted)).

Many of Applicant's claims center on his belief that the State Grand Jury did not meet and did not indict him. However, this Cout finds credible the PCR testimony of Assistant Attorney General Joshua Underwood, who testified he was present when the State Grand Jury met and indicted Applicant. (PCR Tr. 121, 123, 127). Applicant has not presented any credible evidence that the grand jury proceeding was irregular, and this Court finds the State Grand Jury did in fact meet and indict Applicant. Thus, allegations 1, 2, 3, 4, 9, 10, 11, 16, and 17, as set forth above, lack merit and are denied.[5]

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[5] Applicant's numerous arguments related to the trial court's lack of subject matter jurisdiction also patently lack merit. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("Circuit courts obviously have subject matter jurisdiction to try criminal matters."). Evans, 363 S.C. at 508, 611 S.E.2d at 517 ("In Gentry, then, we returned to our earlier view that an indictment is a "notice document," albeit one required by our state constitution and statutes."); id. ("The sufficiency of an indictment will no longer be considered an issue of subject matter jurisdiction.").

Likewise, the State Grand Jury had jurisdiction to issue this indictment, which involved a drug ring located in Berkeley and Dorchester Counties; thus, allegation 14 as set forth above is denied. See S.C. Code Ann.

In arguing the State Grand Jury did not convene to indict him, Applicant relies on a letter addressed to Applicant from Court Administration that stated,

> Your inquiry has been received by this office. The convening of the State Grand Jury is not dependent upon a term of General Sessions court and often does not meet at the same time as General Sessions terms. You are requesting a transcript from State Grand Jury proceedings. This is to advise that there is no court reporter assigned to record Grand Jury proceedings, and therefore, there is no transcript available.

However, at the PCR hearing, Underwood explained the State Grand Jury had a contract with Creel Reporting for transcription, which was separate from Court Administration, and the method for obtaining that transcript would be to go directly to the Court Reporter with Creel Reporting to obtain copies. (PCR 122-23). Based on Underwood's foregoing testimony, which this Court finds credible, this Court finds the letter from Court Administration is NOT proof that a transcript of this State Grand Jury proceeding did not exist. Rather, Court Administration did not have the transcript because Court Administration does not handle transcripts of State Grand Jury proceedings. Ultimately, Applicant has NOT provided clear evidence that the State Grand Jury proceeding was irregular and thus has not proven a due process violation. See Evans, 363 S.C. at 514, 611 S.E.2d at 520 ("The regularity of grand jury proceedings is presumed absent clear evidence to the contrary.").

Empanelment documents

Applicant also raises several due process claims related to the purported denial of the State Grand Jury's empanelment documents. In support, he references a portion of the trial transcript

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§ 14-7-1630(A)(1) (providing the State Grand Jury has jurisdiction over "a crime involving narcotics, dangerous drugs, or controlled substances, or a crime arising out of or in connection with a crime involving narcotics, dangerous drugs, or controlled substances . . . if the crime is of a multi-county nature or has transpired or is transpiring or has significance in more than one county of this State.").

wherein he requested Rule 5 discovery—specifically audios and tapes[6]—and a transcript of the Grand Jury proceedings. (Trial Tr. 14-23, 85). However, Applicant did not produce any evidence that he timely requested the empanelment documents. See Evans, 363 S.C. at 504, 611 S.E.2d at 515 (2005) ("[W]e conclude impanelment documents, including the State's petition, supporting materials, and the impaneling judge's order, may be released to a defendant **prior to trial upon timely request** or to an applicant in a PCR proceeding.").[7] Critically, Underwood testified he provided trial counsel information about how to obtain the State Grand Jury transcripts; he did not withhold any discovery from Applicant or his counsel; he did not conceal the State Grand Jury empanelment documents from Applicant; and the empanelment documents were available for trial counsel's review. (Tr. 122-23, 128). This Court finds Underwood's foregoing testimony credible. Likewise, trial counsel credibly testified he received the indictments and discovery, and he did not believe he needed the impanelment documents to prepare a defense. (PCR Tr. 19). In the absence of a timely request, Applicant's due process rights were not violated by the State's alleged failure to provide the empanelment documents. Thus, allegations 6, 12, 13, and 15,[8] as set forth above, are denied.

[6] At trial, trial counsel relayed he had received the Rule 5 discovery and reviewed it with Applicant. (Trial Tr. 213). Additionally, the Court provided counsel time to review discovery with Applicant the first day of trial. (Trial Tr. 14, 75-76, 80). Further, this Court finds credible Underwood's PCR testimony that he provided discovery to counsel and apprised counsel on the procedure for requesting the State Grand Jury transcripts. This Court likewise finds credible trial counsel's PCR testimony that he received and reviewed discovery with Applicant. (PCR 20).

[7] Although Applicant could have obtained the empanelment documents during the pendency of the PCR action, Applicant did not introduce any empanelment documents at the PCR hearing.

[8] Likewise, any alleged "denial" of the impanelment documents does not constitute a structural error. See Carrier v. State, 441 S.C. 547, 895 S.E.2d 679 (2023) (finding misnomer on indictment did not constitute structural error).

Sufficiency of Evidence (18, 20, 21, 22, 23)

Finally, Applicant raises several claims related to the sufficiency of the State's evidence. Initially, counsel moved for a directed verdict, and any issue regarding the sufficiency of the evidence should have been raised on appeal rather than through this PCR action. See Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("[A]n application for post-conviction relief is not a substitute for an appeal."); Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993) ("[E]rrors which can be reviewed on direct appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings."). Further, PCR is not a proper avenue to challenge the sufficiency of the evidence. See S.C. Code Ann. § 17-27-20(6) (providing the PCR Act "shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction"). Thus, allegations 18, 20, 21, 22, and 23, as set forth above, are denied and dismissed with prejudice.[9]

Trial court error

In his initial application, Applicant alleged "Judicial misconduct: trial court exceeded its jurisdiction to impose sentence, trial court committed 'fraud on the court.' In his brief attached to the initial application, he posed the following questions related to the trial judge, which this Court construes as allegations of trial court error:

> 1. Whether Petitioner's right to due process of law and equal protection under the law [was] violated when trial court convicted

[9] As to allegation seven, this Court finds credible Underwood's testimony that he did not fraudulently convey any information to the courts about Applicant and the Grand Jury. (PCR 128). Applicant did not present any credible evidence that the solicitor knowingly elicited perjured testimony and thus did not prove a due process violation in this regard.

As to allegation 19, this Court finds credible Underwood's testimony that he was not part of a conspiracy against Roberts. (PCR 128). Applicant did not present any credible evidence of conspiracy between the trial judge, trial counsel, the Assistant Attorney Generals, and the State Grand Jury Clerk, and this claim is denied.

defendant on unindicted offenses?

2. Whether Petitioner's right to due process of law and equal protection under the law [was] violated when trial judge denied Petitioner "impanelment documents," thereby denying Brady material to Petitioner? (And does this denial to prepare a defense constitute prejudice?)

3. Whether Petitioner's due process of law and equal protections under the law [was] violated when trial judge "inserted" herself into plea negotiations, in violation of Rule 11?

4. Whether Petitioner's right to due process of law and equal protections under the law [was] violated when trial judge infringed on defendant's right to obtain a copy of the transcript from State Grand Jury proceedings?

5. Whether Petitioner's due process of law and equal protections under the law [was] violated when Judge Jefferson "relieved prosecutor's burden of proof" pursuant to Rule 5(d), SCCrimP?

6. Whether trial judge failed to exercise her discretion, or abused her discretion, when Petitioner, in a criminal case, showed a 'particularized need' for access to Grand Jury transcript?

7. Whether trial judge committed "fraud on the court" and "fraud upon petitioner's legal rights? [conspired with prosecution to convict Applicant on unindicted offenses]

8. Whether trial judge conspired with prosecution to infringe on Petitioner's legal rights and liberty interest? [urged counsel to stipulate to COC, pg. 74-75]

9. Whether trial judge violated defendant's due process of law when the judge refused to allow Petitioner to present exculpatory evidence? (17, ln. 20-23; 19, ln. 8-18)

10. Whether trial judge infringed upon Petitioner's right to due process of law to have an "impartial" arbiter consider his case?

11. Whether trial judge infringed on defendant's right to present an alibi? [620]

12. Whether trial judge "initiated criminal charges" against Petitioner?

Applicant repeats many of these arguments in his Amended Application and nine "briefs" attached to this application. He raises the following additional arguments related to the trial judge:

> 13. Whether trial judge's erroneous ruling defying defendant the State Grand Jury impanelment documents before a jury being sworn an abuse of discretion or a failure to exercise discretion? And whether defendant suffers prejudice?
>
> 14. Whether trial judge committed the act of actual or constructive fraud upon the court? And whether defendant suffers prejudice?
>
> 15. Whether trial judge infringed defendant's due process of law and defendant's 6th Amendment right to confrontation when as the gatekeeper she urged a stipulation of defendant's chain of custody without colloquy?

In its amended return, Respondent moved to dismiss Applicant's claims against the trial court, asserting PCR was not the proper forum to raise claims against the trial court.

This Court agrees with Respondent and grants Respondent's motion to dismiss the claims against the trial court. See Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("[A]n application for post-conviction relief is not a substitute for an appeal."); Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993) ("[E]rrors which can be reviewed on direct appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings.").

To the extent any of these allegations raise due process claims that could not have been asserted on appeal, this Court reiterates its foregoing findings that Applicant was properly indicted, and Applicant failed to establish any due process violation. This Court further finds Applicant did not present any credible evidence that the trial court judge committed fraud; conspired with the prosecutors; tried Applicant on unindicted offenses; inserted herself into plea negotiations; infringed upon Applicant's right to obtain the Grand Jury transcript; relieved the State of its burden of proof; refused to allow Applicant to present exculpatory evidence; was not impartial; initiated

criminal charges against Applicant; or urged trial counsel to stipulate to the chain of custody. Finally, this Court reiterates its finding that the trial court had subject matter jurisdiction. See Gentry, 363 S.C. at 101, 610 S.E.2d at 499 ("Circuit courts obviously have subject matter jurisdiction to try criminal matters."). Thus, these claims are denied and dismissed with prejudice.

Ineffective Assistance of Counsel

Applicant contends counsel was ineffective for "conspiring with prosecution on unfounded offenses." In his "brief," Applicant alleged counsel was ineffective based on the following:

> 1. Counsel stipulated to the chain of custody for the evidence; (Tr. 74)
>
> 2. Counsel failed to object to and cite controlling precedent regarding impanelment documents (15, 9);
>
> 3. Counsel failed to object to codefendant's out-of-court statements and confessions (Tr. 721-22);
>
> 4. Counsel refused to present alibi on defendant's behalf;
>
> 5. Counsel refused to present exculpatory evidence to trial court; (Tr. 17)
>
> 6. Counsel acted as a second prosecutor at trial trying to convince defendant to take a plea (Tr. 235, 237).

In a PCR action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment," and an applicant must overcome this presumption to receive relief. Id.; Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove the deficiency prejudiced him 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.

Conspiring with prosecution

Applicant first contends counsel was ineffective for "conspiring with prosecution on unfounded offenses." This contention lacks merit. As noted, this Court finds credible Underwood's testimony that the State Grand Jury did in fact meet to indict Applicant. This Court further finds credible trial counsel's testimony that he was not a part of a conspiracy against Applcinat. Applcinat has not set forth any credible evidence that counsel conspired with the prosecution; thus, this claim is denied.

Stipulation to Chain of Custody

Applicant contends counsel was ineffective for stipulating to the chain of custody for the drug evidence. This Court finds Applicant did not prove counsel was ineffective in this regard.

At trial, counsel stipulated to the chain of custody for the drug evidence. (Tr. 74-75). Likewise, counsel for co-defendant stipulated to the chain of custody for the drug evidence, stating, "It looks to me like the chain of custody has been met." (Tr. 74). At the PCR hearing, counsel credibly testified the State showed him the chain of custody, he did not have any concerns with the chain, and he did not see any grounds for suppressing the evidence due to a defect in the chain. Thus, this Court finds counsel's decision to stipulate to the chain of custody was reasonable under prevailing professional norms and not deficient. This Court further finds Applicant did not set forth any deficiency in the chain of custody that would have led to the suppression of the drug evidence.

Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

Failed to object to not having impanelment documents

Applicant next contends counsel was ineffective for not objecting to and citing controlling precedent regarding the impanelment documents. This Court finds Applicant did not prove counsel was ineffective in this regard. Pertinently, at the PCR hearing, trial counsel credibly testified he had the indictment and the discovery, and he did not see the need to request the impanelment documents. This Court finds counsel's failure to request the impanelment documents was reasonable within prevailing professional norms and not deficient. Further, Applicant has not shown a reasonable probability the outcome would be different had counsel requested the impanelment documents. Specifically, this Court finds credible Underwood's testimony that the State Grand Jury did in fact meet and indict Applicant. Thus, it is not reasonably probable the charges would have been dismissed had counsel requested the impanelment documents. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Co-defendant's statement

Applicant contends counsel was ineffective for not objecting when Agent Wingo testified to statements made by co-defendant Justin Hunter, which violated the Confrontation Clause. This Court finds Applicant did not prove this ground. At the PCR hearing, trial counsel testified he did not believe the testimony was prejudicial to Applicant's case. He further testified he would have objected if he believed the testimony harmed or prejudiced Applicant's defense. This Court finds counsel's foregoing testimony credible. This Court further finds counsel articulated a valid reason for not objecting in that the testimony was not harmful to Applicant's case and Applicant thus did not prove deficiency. Further, this Court finds the testimony itself was not prejudicial to Applicant's defense. Specifically, Agent Wingo provided the following testimony about Hunter's

statement:

> Mr. Hunter confessed that he was involved in trafficking heroin. He had been involved in trafficking heroin since winter of 2015. He said that he began trafficking heroin when he met a female down here named Sonia. He was introduced to another male through Sonya named R. I believe—he briefly bought heroin from R. He then began purchasing heroin from an individual known as B.K. And that went on for about six months. Then Mr. Huter told me that he would go to New York. He would fly to New York with the money for the heroin in his pocket, and he would stay at the specific hotel. And if I'm correct, the hotel is the Gateway Inn. And he told me address is 1780 Sunrise Highway. He would meet an individual at the Holte known as Fresh. And then he would have a female transport it back down.
>
> He would go there and I think he bought—I would have to refer to my notes here. He bought 40 grams of heroin from Fresh for right around $1,600. After that, Mr. Hunter gave me a list of customers that he would sell to. There was three specifically he told me about. One was a male named Parker. He would sell him around an eight-ball.
>
> Another was a man named Chuck. Chuck was a white male, he had a girlfriend. He drove a work truck. Mr. Hunter told me he sold at least a gram.
>
> And the third was an individual named Tom who he sold heroin through throughout Dorchester and Berkeley Counties.

(Tr. 721-22). Critically, although Hunter implicated several individuals in his statement, Agent Wingo did not testify that Hunter implicated Applicant. Applicant thus cannot show prejudice from counsel's failure to object to this testimony, and this claim is denied.

Alibi

At the PCR hearing, Applicant averred counsel was ineffective for not presenting evidence that he was detained in New York during the time the confidential informant purchased drugs from Applicant. Applicant did not prove this ground. Initially, this Court finds credible trial counsel's testimony that Applicant refused to speak to him prior to trial and did not raise this issue prior to trial. This Court likewise finds credible counsel's testimony that the dates Applicant claimed to be

incarcerated were different than the dates law enforcement relied on. Thus, counsel articulated a valid reason for not presenting an alibi and was not deficient. This Court further finds Applicant did not prove prejudice. Specifically, Applicant did not present credible evidence that he was actually detained in New York on the dates the confidential informant testified he purchased drugs from Applicant. Applicant thus did not prove prejudice, and this claim is denied.

Exculpatory evidence

Applicant contends counsel was ineffective for not presenting exculpatory evidence at trial. Applicant did not prove this grounds. At the PCR hearing, trial counsel testified credibly that he reviewed the State's evidence with Applicant. As set forth above, this Court finds the letter from Court Administration did not prove the State Grand Jury did not meet; thus, this letter does not constitute exculpatory evidence. Applicant did not clearly set forth any other evidence he believed was exculpatory or introduce such evidence at the PCR hearing. Applicant thus did not meet his burden of proving deficiency or prejudice, and this claim is denied.

Plea negotiations

Applicant contends counsel was ineffective in "acting as a prosecutor" and attempting to coerce him to plead guilty. This claim lacks merit. At the PCR hearing, counsel credibly testified he spoke with Applicant during trial about whether he wanted to plead guilty, but Applicant did not wish to do so. This Court finds counsel's performance in this regard reasonable under prevailing professional norms and not deficient. Further, Applicant cannot demonstrate prejudice because he, in fact, did not enter into a plea. This claim is thus denied.

Prosecutorial Misconduct

Applicant contends the prosecutor impaired the Grand Jury's independent role. In his brief, Applicant raised the following questions related to his prosecutorial misconduct claim:

1. Whether prosecutor's misconduct was a significant infringement on grand jury's ability to exercise independent judgment, as would support dismissal of indictment?

2. Whether defendant suffered prejudice from prosecutorial misconduct?

3. Whether prosecutor's misconduct constitutes a violation of defendant's due process of law?

4. Whether defendant suffered deprivation of the right to indictment by Grand Jury pursuant to § 17-19-10, and whether this constitutes structural error?

5. Whether the accumulation of misconduct by prosecutors infringed on defendant's 'substantive' due process rights where defendant has a 'liberty' interest, when in violation of Art. V § 22?

6. Whether this defect affects substantial rights secured by the 14th Amend. Due process and equal protections under the law?

7. Whether prosecutor violated Petitioner's procedural and substantive due process of law when prosecutor had not disclosed favorable evidence (impanelment documents), governed by materiality standard? And whether this denial constitutes "prejudice" as well as a Brady violation?

8. Whether prosecutor committed "fraud on the court" and fraud against Petitioner's legal rights?

9. Whether prosecutor "conspired' to infringe upon Petitioner's liberty interest?

10. Whether prosecutor infringed Petitioner's right pursuant to section 14-7-1720(A) and (D) and Rule 5, SCRCrimP?

11. Whether Petitioner's right to due process of law and equal protections under the law [was] violated when Petitioner was denied the equal protections of the laws in constitutional and statutory provisions relating to Grand Jury? When "no court reporter had been assigned to record State Grand Jury proceedings?

This Court finds Applicant did not prove prosecutorial misconduct. Applicant's allegations in this regard center on his belief that the State Grand Jury did not meet to indict him. This Court finds

credible Underwood's testimony that the State Grand Jury did, in fact, meet to indict Applicant. This Court further finds credible Underwood's testimony that he would have provided impanelment documents had they been requested. This Court finds Applicant has not set forth a Brady violation, a due process violation, or evidence that the prosecutor committed fraud on the court, conspired against Applicant, or infringed upon the Grand Jury's ability to exercise independent judgement. This claim is thus denied.

Ineffective Assistance of Appellate Counsel

Applicant contends appellate counsel was ineffective for not raising on appeal the issues regarding the Grand Jury impanelment documents, the letter from Court Administration (which he contends constitutes exculpatory evidence), the circuit court's alleged lack of subject matter jurisdiction, or a conflict of interest with trial counsel. These allegations lack merit.

Initially, this Court finds credible appellate counsel's testimony that she briefed what she believed to be the best issue on appeal—the denial of Applicant's right to represent himself. This Court further finds credible appellate counsel's testimony that she did not raise the issue regarding impanelment documents because it was raised by Applicant while he was represented by counsel, which constituted hybrid representation and thus would not have been ripe for appeal. She further credibly testified she did not believe the letter from Court Administration constituted evidence that the State Grand Jury did not meet; she did not believe the issue regarding the court's lack of subject matter jurisdiction had merit; she did not see any evidence that trial counsel labored under a conflict of interest; she did not raise an issue related to counsel's failure to present an alibi because that was a PCR matter rather than a direct appeal matter; she believed the State presented sufficient evidence of the amounts of heroin; and she didn't see any preserved issue related to the conspiracy charge. This Court thus finds counsel articulated valid reasons for not raising these issues and

Applicant thus did not prove deficiency. Applicant likewise did not prove prejudice, as he did not set forth any issue that would have likely caused the appellate courts to reverse his conviction on appeal. Thus, this claim is denied.

Remaining allegations

This Court finds Applicant did not present credible evidence of conspiracy against public justice; corruption; fraud upon the Court; judicial misconduct; or perjury; these claims are thus denied.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 26 day of August, 2024.

R. KIRK GRIFFIN
Presiding Judge
Ninth Judicial Circuit

Sumter, South Carolina

State of South Carolina
The Circuit Court of the Third Judicial Circuit

R. Kirk Griffin
Judge

215 North Harvin Street, Suite 226
Sumter, SC 29150
Phone: (803) 436-2150
Fax: (803) 436-2403
rgriffinj@sccourts.org

August 26, 2024

Honorable Leah Guerry Dupree
Berkeley County Clerk of Court
Post Office Box 219
Moncks Corner, South Carolina 29461

RE: Emory W. Roberts, Jr., #373393 v State of South Carolina (2020-CP-08-01349)

Dear Ms. Dupree:

I am enclosing an Order of Dismissal in the above matter.

Please file the order and send certified copies to all attorneys of record.

If you have any questions, please let me know.

Yours very sincerely,

R. Kirk Griffin

RKG, djf

Enclosures

FILED
2024 AUG 29 PM 12:32
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

2020-CP-08-01349

The Supreme Court of South Carolina

Emory W. Roberts, Jr., Plaintiff,

v.

Denise Swope, Leah Guerry Dupree (Clerk of Court), Danielle Dixon, State of South Carolina, Defendents.

Appellate Case No. 2024-001679

and

Emory W. Roberts, Jr., Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2024-001521

FILED
2025 JAN 16 PM 4:25
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

ORDER

On July 2, 2020, Petitioner filed an application for post-conviction relief (PCR) in Berkeley County. After an evidentiary hearing during which Petitioner elected to represent himself, the PCR court issued an order denying and dismissing Petitioner's application. Petitioner thereafter attempted to file several pro se motions for reconsideration, which the Berkeley County Clerk of Court returned to him unfiled, advising him to contact his attorney.

In Appellate Case No. 2024-001679, Petitioner has filed a petition for a writ of mandamus requesting, in part, that this Court compel the Berkeley County Clerk of Court to accept his pro se motions for reconsideration of the PCR court's order. The Clerk filed a return stating she did not have jurisdiction to accept Petitioner's filings because he was indicted by a state grand jury.

After careful consideration, Petitioner's request is granted. Within thirty days of the date of this order, Petitioner must serve and file his motions for reconsideration with the Berkeley County Clerk of Court. The Clerk is directed to accept Petitioner's pro se motions for filing and to designate the filing date as the date the motions were first presented for filing. *See Barnes v. State*, 433 S.C. 399, 402, 859 S.E.2d 260, 261-62 (2021) (explaining clerks of court have a ministerial duty to docket filings, irrespective of potential procedural flaws, and may not perform any judicial functions unless expressly authorized by statute or the constitution). Petitioner properly filed his PCR application in the county in which he was convicted, Berkeley County; the evidentiary hearing was held in Berkeley County; and the order of dismissal was issued and filed in Berkeley County. *See* S.C. Code Ann. § 17-27-40 (2014) ("A proceeding is commenced by filing an application verified by the applicant with the clerk of the court *in which the conviction took place*." (emphasis added)). Thus, the Clerk's assertion that she lacks jurisdiction to accept Petitioner's filings is erroneous. The remaining requests contained in the petition for a writ of mandamus are denied.

In Appellate Case No. 2024-001521, Petitioner has filed a notice of appeal from the denial of his PCR. He has also filed a motion to hold this matter in abeyance while he resubmits and seeks a ruling on his aforementioned motions for reconsideration that he attempted to file with the PCR court. The motion to hold the PCR action in abeyance is also granted.

C.J.

J.

J.

J.

J.

Columbia, South Carolina
January 16, 2025

cc:

Alan McCrory Wilson
W. Jeffrey Young
Bart Jackson Stegall
Emory W. Roberts, Jr., 373393
Denise Grainger Swope
Danielle Dixon
The Honorable Leah Guerry Dupree

* Summons *

Mr. Emory W. Roberts Jr.	Berkeley County Court of Common Pleas
Plaintiff, Pro Se	/PCR Court
V.	Case #: 2020-CP-08-1349
Judge R. Kirk Griffin	Appellate Case No.: 2024-001521
PCR Court/Judge;	Date: 3-11-2025
Danielle Dixon, Esquire	Summons

You (Above Parties), Judge R. Kirk Griffin, PCR Court/Judge; and Danielle Dixon, Esquire, are hereby summoned and required to serve upon Mr. Emory W. Roberts, Plaintiff's Attorney (Pro Se), whose address is 430 Oaklawn Road, Pelzer, South Carolina 29669, an answer to Mr. Roberts Rule 59(e); Rule 60(b)(4); and Rule 60(b)(3)(6) motions clocked, dated and stamped Jan. 29, 2025 by Clerk of Berkeley County Court of Common Pleas, within 30 days, exclusive of the day of service of this Summons. If you fail to do so, judgment by default will be taken against you for the [relief] demanded in the Complaint.

I Am,
Mr. Emory W. Roberts Jr.
Mr. Emory W. Roberts Jr.

FILED
2025 MAY 14 PM 4:06
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

cc: EWR Jr

Dear Leah Guerry Dupree 3-11-2025
Clerk of Court
Court of Common Pleas

Please accept, file, clock and stamp enclosed Summons as an attachment to the filed, clocked and stamped "Rule 59(e); Rule 60(b)(4); and Rule 60(b)(3)(6)", filed on Jan. 29, 2025 by Clerk of Berkeley County (Leah Guerry Dupree) and return a filed, stamped, clocked copy of Summons to Mr. Roberts as I have enclosed an extra copy of Summons to be returned to Mr. Roberts. Thanking you in advance, please enjoy your day.

P.S. Please stamp & return copy of Summons to Mr. Roberts as I have enclosed an extra copy to be stamped & returned to Mr. Roberts

FILED
2025 MAY 14 PM 4:07
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

C.C.
Leah Guerry Dupree (Clerk)
Danielle Dixon, Esquire
Harley Kirkland

Sincerely,
Mr. Emory W. Roberts Jr.

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Emory W. Roberts, Jr. #373393, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2020-CP-08-01349 **Return Opposing Motion to Reconsider and Rule 60(b) Motions**

FILED
2025 OCT -8 AM 11:23
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Emory W. Roberts (Applicant) on July 2, 2020. Respondent made its return requesting an evidentiary hearing. On April 18, 2023, an evidentiary hearing convened before the Honorable R. Kirk Griffin. Applicant was present and proceeded pro se. Assistant Deputy Attorney General Taylor Z. Smith represented Respondent. At the hearing, the Court heard testimony from trial counsel Timothy L. Griffith, Esquire; SLED Agent Justin Wingo; Appellate Defender Susan Hackett; Assistant Attorney General Joshua Underwood; and Assistant Attorney General David Fernandez. Following the hearing and after reviewing the records, this Court issued an order denying relief. Applicant has now filed a motion to reconsider pursuant to Rule 59(e), SCRCP, and Motions to Set Aside Judgment pursuant to Rule 60(b), SCRCP. As set forth herein, Applicant has not pointed out anything that the PCR court overlooked or misapprehended; thus, the Motion to Reconsider should be denied without a hearing. Likewise, Applicant has not set forth a basis to set aside this judgment, and the Rule 60(b) motions should be denied without a hearing.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections serving an aggregate twenty-five-year sentence. In April 2016, the South Carolina State Grand Jury indicted Applicant

and five co-conspirators under a multi-count indictment stemming from drug trafficking ring in Dorchester and Berkeley Counties (2016-GS-47-02). Applicant was indicted for trafficking heroin, twenty-eight grams or more; trafficking heroin, four to fourteen grams; three counts of distribution of heroin; one count of possession with intent to distribute (PWID) methamphetamine, and one count of possession of a firearm during the commission of a violent crime.

On November 24-28, 2017, Applicant and codefendant Justin Hunter proceeded to a jury trial before the Honorable Deadra L. Jefferson. Timothy Griffin, Esquire, represented Applicant, and Assistant Attorney Generals Joshua Underwood and David Fernandez prosecuted the case. The jury convicted Applicant as indicted, and Judge Jefferson sentenced him to concurrent terms of twenty-five years for trafficking heroin, twenty-eight grams or more; fifteen years for each of the remaining drug charges; and five years for the weapon charge.

Applicant filed a notice of appeal, which was perfected by Appellate Defender Susan B. Hackett. On appeal, Applicant argued the trial court violated his right to self-representation by denying his request to proceed pro se. The Court of Appeals affirmed on the merits. State v. Roberts, 2020-UP-017 (filed Jan. 29, 2020). Applicant filed a petition for a rehearing, which was denied. Applicant also filed a petition for a writ of certiorari in the Supreme Court of South Carolina, which was denied. The remittitur was sent October 19, 2020.

CURRENT APPLICATION

On June 2, 2020, Applicant filed this PCR application alleging:

> 1. Denied 6th and 14th Amendment to be informed of nature and cause: Denied notice;
> 2. Judicial misconduct: trial court exceeded its jurisdiction to impose sentence, trial court committed 'fraud on the court';
> 3. Ineffective assistance of counsel: Trial counsel conspired with prosecution on unfounded offenses;
> 4. Prosecutorial misconduct: prosecutor impaired grand jury's

independent role.

As relief, Applicant requested "For sentence to be vacated and indictment dismissed with prejudice." Applicant attached to his application a "brief" further addressing his claims.

On May 13, 2021, Applicant filed a "subsequent application" alleging:

a. Conspiracy against public justice;
b. Corruption;
c. Prosecutorial misconduct – Brady violation;
d. Fraud upon the Court;
e. Judicial Misconduct;
f. Ineffective assistance of counsel;
g. Perjury;
h. Lack of subject matter jurisdiction to convict;
i. Due process violations;
j. Ineffective appellate counsel;
k. Trial court error;
l. Lack of indictment, etc.

Applicant attached nine briefs in support of his claims. At the PCR hearing, he focused primarily on his claim that the State Grand Jury did not meet to indict him and the general sessions court thus lacked subject matter jurisdiction over his criminal trial.

On August 29, 2024, this Court issued an order denying relief. Pertinently, this Court found Applicant did not prove a due process violation on his claims that (a) he lacked notice of his charges, (b) the indictment was insufficient and the State Grand Jury did not meet to indict him, (c) he did not receive empanelment documents, and (d) the State did not present sufficient evidence to convict him. Likewise, this Court found he did not prove counsel was ineffective for (a) conspiring with the prosecution, (b) stipulating to the chain of custody, (c) not objecting to him not having the empanelment documents, (d) not objecting when Agent Wingo testified to statements made by co-defendant Justin Hunter, (e) not presenting an alibi, (f) not presenting exculpatory evidence, and (g) "acting as a prosecutor" and attempting to coerce him to plead guilty.

The Court additionally found Applicant did not prove prosecutorial misconduct based on (a) his allegation that the State Grand Jury did not meet to indict him, (b) his allegation that the State did not provide empanelment documents, (c) an alleged Brady violation, or (d) an alleged a due process violation. The Court also found Applicant did not present evidence that the prosecutor committed fraud on the court, conspired against Applicant, or infringed upon the Grand Jury's ability to exercise independent judgement. Regarding Appellate Counsel, the Court found Applicant did not prove counsel was ineffective for not raising issues regarding the Grand Jury empanelment documents, the letter from Court Administration (which he contends constitutes exculpatory evidence), the circuit court's alleged lack of subject matter jurisdiction, or a conflict of interest with trial counsel. The Court dismissed Applicant's claims of trial court error as not cognizable PCR claims and found Applicant did not submit evidence to prove conspiracy against public justice; corruption; fraud upon the Court; judicial misconduct; or perjury.

RETURN OPPOSING MOTION TO RECONSIDER

Applicant has filed a motion to reconsider raising multiple issues he believes the PCR court overlooked. As part of his Motion, he filed multiple letters. To the extent any of these letters were not entered into evidence at the PCR hearing, they should be stricken and not considered by the Court. As set forth herein, the PCR order is detailed and complete, and Applicant has not set forth any issue, fact, or law the Court overlooked or misapprehended Thus, this motion should be denied.

Throughout, Applicant raises concerns with the State Grand Jury empanelment documents—an issue that was thoroughly addressed in the order of dismissal. Applicant first alleges counsel was ineffective for not objecting to the denial of State Grand Jury empanelment

documents (M.4 q.1; M.10).[1] This allegation was addressed in the final order. (Or. 8-9, 15).

Applicant next contends the PCR court did not address his claim that counsel was ineffective for not objecting when Agent Justin Wingo read lab reports into the record. (M.3,; M.4 q.2; M.11; M.5 q.6; M.14 q.6). More specifically, he asserts counsel should have objected based on hearsay and the Confrontation Clause. (M.11). This allegation was raised by Applicant at the PCR hearing in the context of his claim that counsel was ineffective for stipulating to the chain of custody for drug evidence.[2] (PCR Tr. 30-33). This Court addressed this issue in its final order when it (1) found credible trial counsel's testimony that he did not see any issue or basis to object to the chain of custody and (2) found Applicant did not prove any issues with the chain of custody and thus did not prove deficiency or prejudice. (Or. 14-15). At the PCR hearing, Applicant effectively argued that in order for counsel to stipulate to the chain of custody, Applicant had to waive that right on the record. (PCR Tr. 33). This contention patently lacks merit. Once counsel stipulated to the chain of custody (which the PCR court properly found reasonable based on counsel's credible testimony that he did not see a reason to object), there was no basis to object. Thus, Applicant has not set forth a valid basis to reconsider the order of dismissal.

In question three, Applicant asserts counsel failed to object to the infringement of his rights under the State constitution. (M.4, q.3). Specifically, he claims prejudice is presumed when counsel does not receive discovery before voir dire, and because the State did not disclose the

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[1] For brevity, Respondent will refer to the Motion to Reconsider as M. In his motion, Applicant raises twenty-nine "questions." Respondent will reference these as "q." followed by the question number.

[2] To the extent Applicant raises a different argument, that argument was not clearly raised in the application or at the hearing and should not be considered here. Cf. McHenry v. Renne, 84 F.3d 1172, 1179–80 (9th Cir. 1996), (noting the inherent difficulty in "prolix, confusing complaints," which cause undue burden on the judiciary and opposing parties, and affirming the dismissal of a prolix, confusing complaint), quoted *infra* at pg. 12.

empanelment documents, prejudice is presumed. As a legal matter, this lacks merit. See State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (noting a Brady violation occurs only when the evidence is material to guilt or punishment); id. at 453-54, 503 S.E.2d at 220 ("Once a Rule 5 violation is shown, reversal is required only where the defendant suffered prejudice from the violation."). Further, the PCR Court thoroughly addressed Applicant's claims related to the empanelment documents in its order of dismissal. (Or. 8-9, 15, 18-19).

In question four, Applicant asserts he suffered prejudice when counsel failed to object and cite controlling precedent regarding his right to mount or prepare a defense, his right to present a complete defense, and the prosecution's failure to comply with Brady. (M.4 q.4). In support, he again cites his efforts at trial to obtain the empanelment documents. (M.12-13). The issue regarding the empanelment documents was addressed in the PCR court's order. (Or. 8-9, 15, 18-19). Critically, the PCR court found credible Assistant Attorney General Joshua Underwood's testimony that the State Grand Jury did meet to indict Applicant, and the empanelment documents were available for counsel's review. (Or. 7, 9). The court has thoroughly considered this issue.

In question five, Applicant asserts he suffered prejudice when counsel's errors were so serious as to deprive him a fair trial. In support, he contends "Judge Jefferson infringed [his] due process right to have a judge assigned to his case in a manner free from bias or the desire to influence the outcome of the proceeding." (M.14). He then—again—complains that he did not receive the empanelment documents and asserts this shows the judge colluded with the prosecution, concealed exculpatory evidence, suppressed "the fact that the State Grand Jury empanelment documents do not 'legally exist,'" and committed fraud upon the court. (M.14). The issue of the empanelment documents and the allegations of fraud were addressed in the final order. (Or. 8-9, 12, 15, 18-20).

In question seven[3], Applicant asserts the introduction of the lab records, in violation of the Confrontation Clause, calls into question the result of his trial. (M.5 q.7; M.14 q.7). More specifically he avers the State failed to produce sufficient evidence that he "purchased, or brought into this State," trafficking amounts of heroin. The allegation regarding the sufficiency of the State's evidence was addressed in the PCR court's order of dismissal. (Or. 10).

In question eight, Applicant contends prejudice is presumed because counsel was not afforded discovery in the form of the empanelment documents. (M.5 q.8; M.15 q.8). He contends counsel was ineffective for failing to investigate and present mitigating evidence regarding Court Administration's letter to him and again asserts this letter was proof the State Grand Jury never met to indict him. This issue was thoroughly addressed in the final order. (Or. 8-9, 15, 17).

In question nine, Applicant contends he was prejudiced when counsel failed to advocate his cause regarding obtaining the empanelment documents, which he claims violated procedural due process. (M.5 q.9). He further contends counsel did not protect him from a Fourth Amendment violation when he was arrested and allegedly unlawfully detained, as evidenced by the letter from Court Administration. (M.15 q.9). The claims related to the empanelment documents, the letter, and Applicant's ongoing conspiracy theory that the State Grand Jury did not meet to indict him have been addressed. Any issue related to a Fourth Amendment violation was not clearly raised in the application or at the hearing and should not be considered by this court. Cf. McHenry, 84 F.3d at 1179–80 (noting the inherent difficulty in "prolix, confusing complaints," which cause undue burden on the judiciary and opposing parties, and affirming the dismissal of a prolix, confusing complaint). To the extent his Fourth Amendment violation is based on his ongoing contention that

[3] Question six is combined with question two, above.

he was not properly indicted, this allegation lacks merit.

In question ten, Applicant asserts he was prejudiced by the suppression of the empanelment documents, which were exculpatory. (M.5 q.10). He further alleges the prosecution violated Brady by not disclosing these documents. Again, this issue has been thoroughly addressed.

In question eleven, Applicant contends he was prejudiced when counsel "deliberately failed to introduce exculpatory records into evidence." (M.6 q.11). He again raises his conspiracy theory that the State Grand Jury did not meet to indict him, which has been thoroughly discussed. (M.15 q.11).

In question twelve, Applicant contends the PCR court failed to analyze the prejudice he suffered to his right to Due Process and the infringement of his right to an impartial judge when the judge (1) infringed his right to mount or prepare a defense; (2) infringed his procedural right; and (3) infringed his rights under the State Constitution. (M.6 q.12). More specifically, he asserts trial counsel did not communicate with him prior to trial. (M.16 q.12). The due process issues raised by Applicant were thoroughly addressed (Or. 4-10), and his allegations that the judge infringed his rights lack specificity. Applicant did not raise any issue regarding counsel's communication with him prior to trial and cannot raise that issue for the first time in this Motion.

In question thirteen, Applicant asserts the PCR court failed to analyze the prejudice he suffered when the judge denied him due process. (M.6 q.13). In support, he argues counsel abandoned any defense and imposed a guilt-based defense against his wishes. (M.17 q.13). He also contends counsel colluded with the prosecution by stipulating to the chain of custody. (M.17 q. 13). His allegation that counsel abandoned any defense lacks specificity, was not raised clearly in his application, and is refuted by the record. The Court addressed issues regarding the chain of custody (Or. 14-15) and found Applicant did not present credible evidence of collusion (Or. 14).

In question fourteen, Applicant contends he was prejudiced when Court Administration sent him a letter stating the State Grand Jury did not convene on the date he was indicted[4], and his conviction was therefore obtained by false evidence. (M.6 q. 14). He further contends counsel labored under a conflict of interest by colluding with the prosecution. (M.6 q.14). Again, Applicant's claim that the State Grand Jury did not meet to indict him has been addressed. Further, the PCR court addressed both the letter and Applicant's allegation of collusion between trial counsel and the prosecution. (Or. 8, 14).

In question fifteen, Applicant contends several officers are guilty of kidnapping him because they arrested Applicant; this argument is based, again, on Applicant's belief that the State Grand Jury did not indict him, which he believes is proven by the letter from Court Administration and the State's failure to produce the empanelment documents. (M.6 q.15; M.18). The issue related to the officers kidnapping him was not raised in the application and is not properly raised here. Further, as the issue regarding his indictment has been thoroughly considered by this Court, the allegations that he was kidnapped is patently without merit.

In question sixteen, Applicant asserts trial counsel failed to protect his Fourth Amendment Rights. (M.7 q.16). He then, again, repeats his allegations against the trial judge—i.e. he contends she colluded with the prosecution to conceal exculpatory evidence that the grand jury did not convene to indict him, she acted as both the grand jury and the judge, and she committed fraud upon the court. (M.19-20). Applicant did not clearly raise a Fourth Amendment allegation in his application or at the PCR hearing and cannot do so for the first time in this motion. The remaining allegations were addressed by the PCR court. (Or. 12-13, 20).

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[4] This assertion is not supported by the letter itself.

In question seventeen, Applicant asserts counsel labored under a conflict of interest when he colluded with the prosecution. (M.7 q.17). He further avers counsel was ineffective for not objecting to (1) an alleged Brady violation and (2) the erroneous rulings that denied his substantial right to prepare a defense. (M.7 q.17). Specifically, he claims he was denied his right to a jury trial. (M.21). He further contends the State presented false evidence—to wit, the indictment that he believes was not issued by the State Grand Jury, and he avers the letter from Court Administration constituted newly-discovered evidence. The PCR court addressed allegations related to the indictments (Or. 7-9), the alleged Brady violation (Or. 8-9, 18-19), and the letter from Court Administration (Or. 8). The allegation that he was denied a right to a jury trial is patently without merit and is refuted by the transcript of his trial—where he was convicted by a jury. Finally, although the Court did not address his allegation of a conflict of interest (because it was not clearly raised), the Court *did* address the allegations of collusion (upon which Applicant bases his claim of confliction of interest) and found them without merit. (Or. 14).

In question eighteen, Applicant reiterates his allegations that counsel was ineffective for (1) stipulating to the chain of custody, (2) not objecting to Agent Wingo's testimonial lab reports, (3) not objecting when he was denied his right to mount or prepare a defense, (4) not protecting his rights under the State constitution, and (5) not raising a Brady violation. (M.7 q. 18). These issues have been previously addressed. In addition to the foregoing, as part of question eighteen, Applicant reasserts his argument that the officers who arrested him actually kidnapped him. (M.23-24). Again, this allegation patently lacks merit.

In question nineteen, Applicant contends he was prejudiced because he did not receive notice of the nature of his charges. (M.7 q.19). This issue was addressed in the order of dismissal. (Or. 7). As part of question nineteen, Applicant again alleges his arrest violated the Fourth

Amendment. (M. 25 q. 19). This allegation is patently without merit here where the PCR court determined Applicant was properly indicted.

In question twenty, Applicant questions whether the drug quantity that triggers the mandatory minimum for a drug conspiracy is foreseeable to the defendant. (M.8 q.20). This issue was not clearly raised in his application or at the PCR hearing. Further, it is not a proper allegation for PCR. As part of question twenty, Applicant asserts the trial court lacked subject matter jurisdiction over his criminal trial. (M.26 q.20). This patently lacks merit. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("Circuit courts obviously have subject matter jurisdiction to try criminal matters."); Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 ("The sufficiency of an indictment will no longer be considered an issue of subject matter jurisdiction.").

In questions twenty-one through twenty-four, Applicant contends counsel was ineffective for not holding the State to its burden of proof. (M.8 q.21-24). The issue regarding the sufficiency of the State's evidence was addressed in the PCR court's order. (Or. 10). Although Applicant did not raise this as a claim of ineffective assistance of counsel, Respondent notes counsel did move for a directed verdict, making this an issue more suitable for direct appeal.

In questions twenty-five through twenty-seven, Applicant contends the trial judge committed extrinsic fraud and fraudulent concealment by depriving him of the opportunity to see the empanelment documents, and this fraud deprived him of his right to present his case. (M.9 q.25-27; M.27). This was addressed in the PCR court's final order and lacks merit. (Or. 12-13, 20). He also asserts the prosecution's failure to provide the empanelment documents violated Separation of Powers. This issue was not clearly raised in the application or at the PCR hearing and should not be considered. Further, this allegation lacks merit.

In question twenty-eight, Applicant asserts he was deprived of specific information to prepare a defense and prevented from asserting his constitutional protections against double jeopardy. (M.9 q.29). He does not elaborate on what specific information he was deprived of, but to the extent it refers to the empanelment documents, that has been thoroughly addressed.

Finally, in question twenty-nine, Applicant contends counsel was ineffective for not objecting to hearsay statements by Officer Migael Vasquex in violation of the Confrontation Clause. (Tr. 658-660; 675). This issue was not clearly raised in his application or at the hearing and should not be considered by this Court. Cf. McHenry v. Renne, 84 F.3d 1172, 1179–80 (9th Cir. 1996) ("Prolix, confusing complaints such as the ones plaintiffs filed in this case impose unfair burdens on litigants and judges. As a practical matter, the judge and opposing counsel . . . cannot use a complaint such as the one plaintiffs filed, and must prepare outlines . . . . Defendants are then put at risk that their outline differs from the judge's, that plaintiffs will surprise them with something new at trial which they reasonably did not understand to be in the case at all, and that res judicata effects of settlement or judgment will be different from what they reasonably expected. "[T]he rights of the defendants to be free from costly and harassing litigation must be considered." The judge wastes half a day in chambers preparing the "short and plain statement" which Rule 8 obligated plaintiffs to submit. He then must manage the litigation without knowing what claims are made against whom. This leads to discovery disputes and lengthy trials, prejudicing litigants in other case who follow the rules, as well as defendants in the case in which the prolix pleading is filed. "[T]he rights of litigants awaiting their turns to have other matters resolved must be considered . . . ." While commendable in its consideration for plaintiffs in this case, *the magistrate's thorough analysis and thirty-page report, and the judge's study of the report, took a great deal of time away from more deserving litigants waiting in line.*" (emphasis added) (internal

citations omitted)).

Based on the foregoing, Applicant has not set forth anything the PCR court overlooked or misapprehended. Thus, this motion should be denied without a hearing.

RETURN OPPOSING RULE 60(B) MOTIONS

Applicant has filed motions pursuant to Rule 60(b), SCRCP, reiterating many of the same arguments he raised in his PCR application, at the PCR hearing, and in his motion to reconsider. In his Rule 60(b)(4) motion, he again alleges the State Grand Jury did not meet to indict him, the letter from Court Administration proves the State Grand Jury did not meet to indict him, and as a result the general sessions court lacked jurisdiction over his general sessions trial. He additionally again argues the judge, the prosecutor, and his trial attorney conspired against him; and the judge colluded with the prosecution to suppress the empanelment documents, which he believes were exculpatory. He contends the denial of these documents deprived him of a fair trial. Finally, he reasserts due process violations, including that he did not have notice, that the prosecution usurped the Grand Jury's role, that the prosecution violated Brady and suppressed favorable evidence, and that his indictments were illegal. These allegations, which have already been considered by this Court, do not set forth a basis to set aside this judgment under Rule 60(b)(4). Critically, the general sessions court had jurisdiction over his criminal trial. See Gentry, 363 S.C. at 101, 610 S.E.2d at 499 ("Circuit courts obviously have subject matter jurisdiction to try criminal matters."); Evans v. State, 363 S.C. at 508, 611 S.E.2d at 517 ("The sufficiency of an indictment will no longer be considered an issue of subject matter jurisdiction."). Because the circuit court had jurisdiction over this criminal trial and the remaining claims have been considered by this Court, this motion should be denied without a hearing.

Finally, Applicant has filed a motion pursuant to Rule 60(b)(3) and 60(b)(6) alleging

extrinsic fraud. He again raises issues regarding (1) his allegation that the State suppressed exculpatory evidence (i.e. the empanelment documents), (2) the nondisclosure of empanelment documents, which he asserts constitutes fraudulent concealment, (3) whether he was able to present a fair defense without the empanelment documents, (4) extrinsic fraud that "prevented him from fully trying his case" related to the criminal trial court's lack of subject matter jurisdiction; (5) whether the trial court induced him not to present his case or deprived him of an opportunity to be heard on the issue of empanelment documents; (6) whether the judge displayed fraudulent misconduct and conscious wrongdoing in her rulings related to the empanelment documents; (7) whether the trial judge committed subornation of perjury when she told him the Grand Jury proceedings are secret; (8) whether the concealing of the empanelment documents constituted fraud upon the court; and (9) whether he "is entitled to Rule60(b)(3)(6) relief for violation of due process of law relating to the infringement of his constitutional right to 'mount or prepare a defense.'" These are the exact issues that he litigated at the PCR hearing, and a Rule 60(b) motion is not a proper mechanism for retrying these claims. To the extent he has made a prima facie showing of extrinsic fraud, these very issues have already been litigated at the PCR hearing, and Applicant is not entitled to an additional hearing to relitigate the claims he has already litigated. Cf. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ("Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit."). Thus, this motion should be denied without a hearing.

CONCLUSION

Based on the foregoing, Respondent respectfully submits Applicant has not set forth any allegation, fact, or law that the PCR court overlooked or misapprehended, and the motion to

reconsider should be denied without a hearing. Further, as set forth herein, Applicant has not set forth sufficient facts to warrant a hearing on his Rule 60(b) Motions. Specifically, he did not allege extrinsic fraud, the circuit court had jurisdiction over his criminal trial, and Applicant merely seeks to relitigate claims that have already been considered and ruled upon. Thus, the Rule 60(b) motions should also be denied without a hearing.

Respectfully Submitted,

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Attorney General

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ATTORNEYS FOR THE RESPONDENT

This 2 day of October, 2025.

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Emory W. Roberts, Jr., #373393, Applicant	)	CASE NO. 2020–CP–08–01349
v.	)	**ORDER DENYING APPLICANT'S MOTIONS PURSUANT TO RULE 59(e) AND RULE 60(b), SCRCP**
State of South Carolina, Respondent.	)	

2026 FEB 18 PM 3:12
LEAH QUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC
FILED

This matter comes before the Court by way of Emory W. Roberts, Jr.'s (Applicant) "Rule 59, New Trials; Amendment of Judgments Motion to Alter or Amend a Judgment (Rule 59(e))," "Rule 60 Relief from Judgment or Order SC R RCP Tule 60(b)(4)," and "Rule (60)(b)(3)(Extrinsic Fraud, Misconduct); Rule 60(b)(6)(Any Other Reason Justifying Relief)" filed on January 29, 2025. Respondent filed its Return Opposing Motion to Reconsider and Rule 60(b) Motions on October 6, 2025.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections serving an aggregate twenty-five-year sentence. In April 2016, the South Carolina State Grand Jury indicted Applicant and five co-conspirators under a multi-count indictment stemming from a drug trafficking ring in Dorchester and Berkeley Counties (2016-GS-47-02). Applicant was indicted for trafficking heroin, twenty-eight grams or more; trafficking heroin, four to fourteen grams; three counts of distribution of heroin; one count of possession with intent to distribute (PWID) methamphetamine, and one count of possession of a firearm during the commission of a violent crime.

On November 24-28, 2017, Applicant and codefendant Justin Hunter proceeded to a jury trial before the Honorable Deadra L. Jefferson. Timothy L. Griffth, Esquire, represented

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Applicant, and Assistant Attorney Generals Joshua Underwood and David Fernandez prosecuted the case. The jury convicted Applicant as indicted, and Judge Jefferson sentenced him to concurrent terms of twenty-five years for trafficking heroin, twenty-eight grams or more; fifteen years for each of the remaining drug charges; and five years for the weapon charge.

Applicant filed a notice of appeal, which was perfected by Appellate Defender Susan B. Hackett. On appeal, Applicant argued the trial court violated his right to self-representation by denying his request to proceed *pro se*. The Court of Appeals affirmed on the merits. State v. Roberts, 2020-UP-017 (Ct. App. filed Jan. 29, 2020). Applicant filed a petition for a rehearing, which was denied. Applicant also filed a petition for a writ of certiorari in the Supreme Court of South Carolina, which was denied. The Remittitur was returned on October 19, 2020.

CURRENT ACTION BEFORE THE COURT

On June 2, 2020, Applicant filed this action alleging he was being held in custody unlawfully for the following reasons:

1) Denied 6th and 14th Amendment to be informed of nature and cause: Denied notice;
2) Judicial misconduct: trial court exceeded its jurisdiction to impose sentence, trial court committed 'fraud on the court';
3) Ineffective assistance of counsel: Trial counsel conspired with prosecution on unfounded offenses;
4) Prosecutorial misconduct: prosecutor impaired grand jury's independent role.

As relief, Applicant requested: "For sentence to be vacated and indictment dismissed with prejudice." Applicant attached to his application a "brief" further addressing his claims.

On May 13, 2021, Applicant filed a "subsequent application" alleging:

1) Conspiracy against public justice;
2) Corruption;
3) Prosecutorial misconduct – Brady violation;
4) Fraud upon the Court;
5) Judicial Misconduct;
6) Ineffective assistance of counsel;

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7) Perjury;
8) Lack of subject matter jurisdiction to convict;
9) Due process violations;
10) Ineffective appellate counsel;
11) Trial court error;
12) Lack of indictment, etc.

Applicant attached nine briefs in support of his claims.

On April 18, 2023, an evidentiary hearing was convened before the undersigned at the Berkeley County Courthouse. At the PCR hearing, Applicant focused primarily on his claim that the State Grand Jury did not convene to indict him and that the general sessions court thus lacked subject-matter jurisdiction over his criminal trial. On August 29, 2024, this Court issued an order denying relief. Pertinently, this Court found Applicant did not prove a due process violation on his claims that (a) he lacked notice of his charges, (b) the indictment was insufficient and the State Grand Jury did not meet to indict him, (c) he did not receive empanelment documents, and (d) the State did not present sufficient evidence to convict him. Likewise, this Court found he did not prove counsel was ineffective for (a) conspiring with the prosecution, (b) stipulating to the chain of custody, (c) not objecting to him not having the empanelment documents, (d) not objecting when Agent Wingo testified to statements made by co-defendant Justin Hunter, (e) not presenting an alibi, (f) not presenting exculpatory evidence, and (g) "acting as a prosecutor" and attempting to coerce him to plead guilty.

The Court additionally found Applicant did not prove prosecutorial misconduct based on (a) his allegation that the State Grand Jury did not meet to indict him, (b) his allegation that the State did not provide empanelment documents, (c) an alleged Brady violation, or (d) an alleged due process violation. The Court also found Applicant did not present evidence that the prosecutor committed fraud on the court, conspired against Applicant, or infringed upon the Grand Jury's ability to exercise independent judgment.

Regarding Appellate Counsel, the Court found Applicant did not prove counsel was ineffective for not raising issues regarding the Grand Jury empanelment documents, the letter from Court Administration (which he contends constitutes exculpatory evidence), the circuit court's alleged lack of subject matter jurisdiction, or a conflict of interest with trial counsel. The Court dismissed Applicant's claims of trial court error as not cognizable PCR claims and found Applicant did not submit evidence to prove conspiracy against public justice, corruption, fraud upon the Court, judicial misconduct, or perjury.

APPLICANT'S RULE 59(e), SCRCP MOTION TO ALTER OR AMEND

On January 29, 2025, Applicant filed his Rule 59(e), SCRCP, motion to alter, amend, or reconsider. As an initial matter, within the filing, Applicant filed multiple letters that were not introduced at the initial evidentiary hearing. Respondent moved this Court to strike those items from the record. This Court agrees with Respondent, Applicant did not introduce these at the evidentiary hearing, and Respondent's motion to strike is GRANTED.

Turning to the substance of Applicant's Rule 59(e), SCRCP, motion, this Court has carefully reviewed the submission of Applicant and has reviewed the record again in this matter. After careful consideration, this Court declines to alter or amend the prior ruling of the Court. Thus, Applicant's Rule 59(e), SCRCP, motion is DENIED.

Throughout, Applicant raises concerns with the State Grand Jury empanelment documents—an issue that was thoroughly addressed in the order of dismissal. Applicant first alleges counsel was ineffective for not objecting to the denial of State Grand Jury empanelment documents. (M.4 q.1; M.10).[1] This allegation was addressed in the final order. (Or. 8-9, 15).

[1] For brevity, the Motion to Reconsider is referred to as M. In his motion, Applicant raises twenty-nine "questions." These are referenced as "q." followed by the question number.

Applicant next contends the PCR court did not address his claim that counsel was ineffective for not objecting when Agent Justin Wingo read lab reports into the record. (M.3; M.4; q.2; M.11; M.5; q.6; M.14; q.6). More specifically, he asserts counsel should have objected based on hearsay and the Confrontation Clause. (M.11). This allegation was raised by Applicant at the PCR hearing in the context of his claim that counsel was ineffective for stipulating to the chain of custody for drug evidence.[2] (PCR Tr. 30-33). This Court addressed this issue in its final order when it (1) found credible trial counsel's testimony that he did not see any issue or basis to object to the chain of custody and (2) found Applicant did not prove any issues with the chain of custody and thus did not prove deficiency or prejudice. (Or. 14-15). At the PCR hearing, Applicant effectively argued that in order for counsel to stipulate to the chain of custody, Applicant had to waive that right on the record. (PCR Tr. 33). This contention patently lacks merit. Once counsel stipulated to the chain of custody (which this Court properly found reasonable based on counsel's credible testimony that he did not see a reason to object), there was no basis to object. Thus, Applicant has not set forth a valid basis to reconsider the order of dismissal.

In question three, Applicant asserts counsel failed to object to the infringement of his rights under the State constitution. (M.4, q.3). Specifically, he claims prejudice is presumed when counsel does not receive discovery before voir dire, and because the State did not disclose the empanelment documents, prejudice is presumed. As a legal matter, this lacks merit. See State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (noting a Brady violation occurs only when the evidence is material to guilt or punishment); id. at 453-54, 503 S.E.2d at 220 ("Once

[2] To the extent Applicant raises a different argument, that argument was not clearly raised in the application or at the hearing and should not be considered here. Cf. McHenry v. Renne, 84 F.3d 1172, 1179–80 (9th Cir. 1996), (noting the inherent difficulty in "prolix, confusing complaints," which cause undue burden on the judiciary and opposing parties, and affirming the dismissal of a prolix, confusing complaint), quoted *infra* at pg. 12.

a Rule 5 violation is shown, reversal is required only where the defendant suffered prejudice from the violation."). Further, this Court thoroughly addressed Applicant's claims related to the empanelment documents in its order of dismissal. (Or. 8-9, 15, 18-19).

In question four, Applicant asserts he suffered prejudice when counsel failed to object and cite controlling precedent regarding his right to mount or prepare a defense, his right to present a complete defense, and the prosecution's failure to comply with Brady. (M.4 q.4). In support, he again cites his efforts at trial to obtain the empanelment documents. (M.12-13). The issue regarding the empanelment documents was addressed in this Court's order. (Or. 8-9, 15, 18-19). Critically, this Court found credible Assistant Attorney General Joshua Underwood's testimony that the State Grand Jury met to indict Applicant and that the empanelment documents were available for counsel's review. (Or. 7, 9). This Court has thoroughly considered this issue.

In question five, Applicant asserts he suffered prejudice when counsel's errors were so serious as to deprive him of a fair trial. In support, he contends "Judge Jefferson infringed [his] due process right to have a judge assigned to his case in a manner free from bias or the desire to influence the outcome of the proceeding." (M.14). He then—again—complains that he did not receive the empanelment documents and asserts this shows the judge colluded with the prosecution, concealed exculpatory evidence, suppressed "the fact that the State Grand Jury empanelment documents do not 'legally exist,'" and committed fraud upon the court. (M.14). The issue of the empanelment documents and the allegations of fraud were addressed in the final order. (Or. 8-9, 12, 15, 18-20).

In question seven[3], Applicant asserts that the introduction of the lab records, in violation of the Confrontation Clause, calls into question the result of his trial. (M.5 q.7; M.14 q.7). More

[3] Question six is combined with question two, above.

specifically, he avers the State failed to produce sufficient evidence that he "purchased, or brought into this State," trafficking amounts of heroin. The allegation regarding the sufficiency of the State's evidence was addressed in this Court's order of dismissal. (Or. 10).

In question eight, Applicant contends prejudice is presumed because counsel was not afforded discovery in the form of the empanelment documents. (M.5 q.8; M.15 q.8). He contends counsel was ineffective for failing to investigate and present mitigating evidence regarding the Court Administration's letter to him and again asserts this letter was proof the State Grand Jury never met to indict him. This issue was thoroughly addressed in the final order. (Or. 8-9, 15, 17).

In question nine, Applicant contends that he was prejudiced when counsel failed to advocate for him in obtaining the empanelment documents, which he claims violated procedural due process. (M.5 q.9). He further contends counsel did not protect him from a Fourth Amendment violation when he was arrested and allegedly unlawfully detained, as evidenced by the letter from Court Administration. (M.15 q.9). The claims related to the empanelment documents, the letter, and Applicant's ongoing conspiracy theory that the State Grand Jury did not meet to indict him have been addressed. Any issue related to a Fourth Amendment violation was not clearly raised in the application or at the hearing and should not be considered by this court. Cf. McHenry, 84 F.3d at 1179–80 (noting the inherent difficulty in "prolix, confusing complaints," which cause undue burden on the judiciary and opposing parties, and affirming the dismissal of a prolix, confusing complaint). To the extent his Fourth Amendment violation is based on his ongoing contention that he was not properly indicted, this allegation lacks merit.

In question ten, Applicant asserts he was prejudiced by the suppression of the empanelment documents, which were exculpatory. (M.5 q.10). He further alleges the prosecution violated Brady by not disclosing these documents. Again, this issue has been thoroughly addressed. In

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question eleven, Applicant contends he was prejudiced when counsel "deliberately failed to introduce exculpatory records into evidence." (M.6 q.11). He again raises his conspiracy theory that the State Grand Jury did not meet to indict him, which has been thoroughly discussed. (M.15 q.11).

In question twelve, Applicant contends the PCR court failed to analyze the prejudice he suffered to his right to Due Process and the infringement of his right to an impartial judge when the judge (1) infringed his right to mount or prepare a defense; (2) infringed his procedural right; and (3) infringed his rights under the State Constitution. (M.6 q.12). More specifically, he asserts that trial counsel did not communicate with him prior to trial. (M.16 q.12). The due process issues raised by Applicant were thoroughly addressed (Or. 4-10), and his allegations that the judge infringed his rights lack specificity. Applicant did not raise any issue regarding counsel's communication with him prior to trial, and cannot raise that issue for the first time in this Motion.

In question thirteen, Applicant asserts the PCR court failed to analyze the prejudice he suffered when the judge denied him due process. (M.6 q.13). In support, he argues counsel abandoned any defense and imposed a guilt-based defense against his wishes. (M.17 q.13). He also contends counsel colluded with the prosecution by stipulating to the chain of custody. (M.17 q. 13). His allegation that counsel abandoned any defense lacks specificity, was not raised clearly in his application, and is refuted by the record. The Court addressed the chain of custody (Or. 14-15) and found that Applicant did not present credible evidence of collusion (Or. 14).

In question fourteen, Applicant contends he was prejudiced when Court Administration sent him a letter stating that the State Grand Jury did not convene on the date of his indictment and that his conviction was therefore obtained through false evidence. (M.6 q. 14). He further contends counsel labored under a conflict of interest by colluding with the prosecution. (M.6

q.14). Again, Applicant's claim that the State Grand Jury did not meet to indict him has been addressed. Further, this Court addressed both the letter and Applicant's allegation of collusion between trial counsel and the prosecution. (Or. 8, 14).

In question fifteen, Applicant contends several officers are guilty of kidnapping him because they arrested Applicant; this argument is based, again, on Applicant's belief that the State Grand Jury did not indict him, which he believes is proven by the letter from Court Administration and the State's failure to produce the empanelment documents. (M.6 q.15; M.18). The issue related to the officers' kidnapping him was not raised in the application and is not properly raised here. Further, as the issue regarding his indictment has been thoroughly considered by this Court, the allegations that he was kidnapped are patently without merit.

In question sixteen, Applicant asserts that trial counsel failed to protect his Fourth Amendment Rights. (M.7 q.16). He then, again, repeats his allegations against the trial judge—i.e., he contends she colluded with the prosecution to conceal exculpatory evidence that the grand jury did not convene to indict him, she acted as both the grand jury and the judge, and she committed fraud upon the court. (M.19-20). Applicant did not clearly raise a Fourth Amendment allegation in his application or at the PCR hearing, and cannot do so for the first time in this motion. The remaining allegations were addressed by this Court. (Or. 12-13, 20).

In question seventeen, Applicant asserts counsel labored under a conflict of interest when he colluded with the prosecution. (M.7 q.17). He further avers counsel was ineffective for not objecting to (1) an alleged Brady violation and (2) the erroneous rulings that denied his substantial right to prepare a defense. (M.7 q.17). Specifically, he claims he was denied his right to a jury trial. (M.21). He further contends the State presented false evidence—to wit, the indictment that he believes was not issued by the State Grand Jury, and he avers the letter from Court

Administration constituted newly-discovered evidence. This Court addressed allegations related to the indictments (Or. 7-9), the alleged Brady violation (Or. 8-9, 18-19), and the letter from Court Administration (Or. 8). The allegation that he was denied a right to a jury trial is patently without merit and is refuted by the transcript of his trial—where he was convicted by a jury. Finally, although the Court did not address his allegation of a conflict of interest (because it was not clearly raised), the Court *did* address the allegations of collusion (on which Applicant bases his claim of conflict of interest) and found them without merit. (Or. 14).

In question eighteen, Applicant reiterates his allegations that counsel was ineffective for (1) stipulating to the chain of custody, (2) not objecting to Agent Wingo's testimonial lab reports, (3) not objecting when he was denied his right to mount or prepare a defense, (4) not protecting his rights under the State constitution, and (5) not raising a Brady violation. (M.7 q. 18). These issues have been previously addressed. In addition to the foregoing, as part of question eighteen, Applicant reasserts his argument that the officers who arrested him actually kidnapped him. (M.23-24). Again, this allegation patently lacks merit.

In question nineteen, Applicant contends he was prejudiced because he did not receive notice of the nature of his charges. (M.7 q.19). This issue was addressed in the order of dismissal. (Or. 7). As part of question nineteen, Applicant again alleges his arrest violated the Fourth Amendment. (M. 25 q. 19). This allegation is patently without merit here, where this Court determined Applicant was properly indicted.

In question twenty, Applicant asks whether the quantity of the drug that triggers the mandatory minimum for a drug conspiracy is foreseeable to the defendant. (M.8 q.20). This issue was not clearly raised in his application or at the PCR hearing. Further, it is not a proper allegation for PCR. As part of question twenty, Applicant asserts the trial court lacked subject matter

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jurisdiction over his criminal trial. (M.26 q.20). This patently lacks merit. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("Circuit courts obviously have subject matter jurisdiction to try criminal matters."); Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 ("The sufficiency of an indictment will no longer be considered an issue of subject matter jurisdiction.").

In questions twenty-one through twenty-four, Applicant contends counsel was ineffective for not holding the State to its burden of proof. (M.8 q.21-24). The issue regarding the sufficiency of the State's evidence was addressed in the PCR court's order. (Or. 10). Although Applicant did not raise this as a claim of ineffective assistance of counsel, Respondent notes counsel did move for a directed verdict, making this an issue more suitable for direct appeal.

In questions twenty-five through twenty-seven, Applicant contends the trial judge committed extrinsic fraud and fraudulent concealment by depriving him of the opportunity to see the empanelment documents, and this fraud deprived him of his right to present his case. (M.9 q.25-27; M.27). This was addressed in the Court's final order and lacks merit. (Or. 12-13, 20). He also asserts the prosecution's failure to provide the empanelment documents violated the Separation of Powers. This issue was not clearly raised in the application or at the PCR hearing and shall not be considered. Further, this allegation lacks merit.

In question twenty-eight, Applicant asserts he was deprived of specific information to prepare a defense and prevented from asserting his constitutional protections against double jeopardy. (M.9 q.29). He does not elaborate on what specific information he was deprived of, but to the extent it refers to the empanelment documents, that has been thoroughly addressed.

Finally, in question twenty-nine, Applicant contends that counsel was ineffective for failing to object to Officer Migael Vasquex's hearsay statements, in violation of the Confrontation Clause. (Tr. 658-660; 675). This issue was not clearly raised in his application or at the hearing and shall

not be considered by this Court. Cf. McHenry v. Renne, 84 F.3d 1172, 1179–80 (9th Cir. 1996) ("Prolix, confusing complaints such as the ones plaintiffs filed in this case impose unfair burdens on litigants and judges. As a practical matter, the judge and opposing counsel . . . cannot use a complaint such as the one plaintiffs filed, and must prepare outlines . . . . Defendants are then put at risk that their outline differs from the judge's, that plaintiffs will surprise them with something new at trial which they reasonably did not understand to be in the case at all, and that res judicata effects of settlement or judgment will be different from what they reasonably expected. "[T]he rights of the defendants to be free from costly and harassing litigation must be considered." The judge wastes half a day in chambers preparing the "short and plain statement" which Rule 8 obligated plaintiffs to submit. He then must manage the litigation without knowing what claims are made against whom. This leads to discovery disputes and lengthy trials, prejudicing litigants in other case who follow the rules, as well as defendants in the case in which the prolix pleading is filed. "[T]he rights of litigants awaiting their turns to have other matters resolved must be considered . . . ." While commendable in its consideration for plaintiffs in this case, *the magistrate's thorough analysis and thirty-page report, and the judge's study of the report, took a great deal of time away from more deserving litigants waiting in line.*" (emphasis added) (internal citations omitted)).

Based on the foregoing, Applicant has not set forth anything this Court overlooked or misapprehended. Thus, this motion is DENIED without a hearing.

APPLICANT'S RULE 60(b), SCRCP MOTIONS

Applicant has filed motions pursuant to Rule 60(b), SCRCP, reiterating many of the same arguments he raised in his PCR application, at the PCR hearing, and in his motion to reconsider.

In his Rule 60(b)(4) motion, he again alleges the State Grand Jury did not meet to indict

him, the letter from Court Administration proves the State Grand Jury did not meet to indict him, and as a result, the general sessions court lacked jurisdiction over his general sessions trial. He additionally argues that the judge, the prosecutor, and his trial attorney conspired against him, and the judge colluded with the prosecution to suppress the empanelment documents, which he believes were exculpatory. He contends the denial of these documents deprived him of a fair trial. Finally, he reasserts violations of due process, including that he did not receive notice, that the prosecution usurped the Grand Jury's role, that the prosecution violated Brady and suppressed favorable evidence, and that his indictments were illegal. These allegations, which have already been considered by this Court, do not set forth a basis to set aside this judgment under Rule 60(b)(4), SCRCP. Critically, the General Sessions Court had jurisdiction over his criminal trial. See Gentry, 363 S.C. at 101, 610 S.E.2d at 499 ("Circuit courts obviously have subject matter jurisdiction to try criminal matters."); Evans v. State, 363 S.C. at 508, 611 S.E.2d at 517 ("The sufficiency of an indictment will no longer be considered an issue of subject matter jurisdiction."). Because the circuit court had jurisdiction over this criminal trial and the remaining claims have been considered by this Court, this motion is DENIED without a hearing.

Finally, Applicant has filed a motion pursuant to Rules 60(b)(3) and 60(b)(6), SCRCP, alleging extrinsic fraud. He again raises issues regarding (1) his allegation that the State suppressed exculpatory evidence (i.e., the empanelment documents), (2) the nondisclosure of empanelment documents, which he asserts constitute fraudulent concealment, (3) whether he was able to present a fair defense without the empanelment documents, (4) extrinsic fraud that "prevented him from fully trying his case" related to the criminal trial court's lack of subject matter jurisdiction; (5) whether the trial court induced him not to present his case or deprived him of an opportunity to be heard on the issue of empanelment documents; (6) whether the judge displayed

fraudulent misconduct and conscious wrongdoing in her rulings related to the empanelment documents; (7) whether the trial judge committed subornation of perjury when she told him the Grand Jury proceedings are secret; (8) whether the concealing of the empanelment documents constituted fraud upon the court; and (9) whether he "is entitled to Rule60(b)(3)(6) relief for violation of due process of law relating to the infringement of his constitutional right to 'mount or prepare a defense.'"

These are the exact issues that Applicant litigated at the PCR hearing, and a Rule 60(b) motion is not a proper mechanism for retrying these claims. To the extent he has made a *prima facie* showing of extrinsic fraud, these very issues have already been litigated at the PCR hearing, and Applicant is not entitled to an additional hearing to relitigate them. Cf. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ("Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit."). Thus, this motion is DENIED without a hearing.

CONCLUSION

Based on the foregoing, after careful consideration of the arguments of Applicant and Respondent, and review of the record, this Court finds Applicant has not set forth any allegation, fact, or law that this Court overlooked or misapprehended, and the motion to reconsider is **DENIED**. Further, as set forth herein, Applicant has not set forth sufficient facts to warrant a hearing on his Rule 60(b) Motions. Specifically, he did not allege extrinsic fraud, the circuit court had jurisdiction over his criminal trial, and Applicant merely seeks to relitigate claims that have already been considered and ruled upon. Thus, the Rule 60(b) motions are **DENIED.**

IT IS THEREFORE ORDERED that Applicant's motions are hereby **DENIED AND DISMISSED.**

AND IT IS SO ORDERED this 10 day of February, 2026.

R. KIRK GRIFFIN
Presiding Judge
Ninth Judicial Circuit

Sumter, South Carolina

State of South Carolina
The Circuit Court of the Third Judicial Circuit

R. Kirk Griffin
Judge

215 North Harvin Street, Suite 226
Sumter, SC 29150
Phone: (803) 436-2150
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February 10, 2026

Honorable Leah Guerry Dupree
Berkeley County Clerk of Court
Post Office Box 219
Moncks Corner, South Carolina 29461

RE: Emory W, Roberts, Jr., #373393 vs State of SC (2020-CP-08--1349)

Dear Ms. Dupree:

I am enclosing an Order Denying Applicant's Motions Pursuant to Rule 59(e) and Rule 60(b), SCRCP the above matter.

Please file the order and send certified copies to all parties of record.

If you have any questions, please let me know.

Yours very sincerely,

R. Kirk Griffin

RKG, djf

Enclosures

STATE OF SOUTH CAROLINA	) COMMON PLEAS COURT
	)
COUNTY OF BERKELEY	) NINTH JUDICIAL CIRCUIT
EMORY ROBERTS	) NO. 2020-CP-08-01349
	)
VS.	) TRANSCRIPT OF RECORD
	)
THE STATE OF SOUTH CAROLINA	) PCR hearing

RECEIVED
JUL 02 2026
S.C. SUPREME COURT

B E F O R E:

The Honorable R. Kirk Griffin, Judge

Moncks Corner, South Carolina

DATE: Tuesday, April 18, 2023

1:47 p.m.

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

Emory Roberts, Defendant, Pro Se

#373393
Lieber Correctional Institute
136 Wilborn Avenue
Ridgeville, South Carolina 29472

Taylor Z. Smith, Esquire

South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

Attorney for the State

Reported by: Cathy J. Provost, RMR, Official Court Reporter

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COURT REPORTER LEGEND:

dash -- intentional/purposeful interruption; change in thought
ellipses ... trailing off
[ph] phonetically written
[sic] written as said
[indiscernible] unable to be understood due to low volume or quality of audio

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

(Court called to order.)

THE COURT: All right, folks. What do we have for this afternoon?

ATTORNEY SMITH: Good afternoon, Your Honor. I'd like to just cover a few housekeeping things. The first I'll say is that Mr. Roberts is pro se. That issue's been dealt with extensively in the past. He's had verbal warnings, and he was appointed standby counsel but she was released at the last hearing in, maybe, October.

MR. ROBERTS: November 2nd.

ATTORNEY SMITH: Okay. And she's relieved but subject to being reappointed if Mr. Roberts were to choose to have her here. As far as I know I haven't heard from him wanting her, so I don't think I even notified her of today's hearing.

THE COURT: Okay.

ATTORNEY SMITH: And I think that that was consistent with Judge Goodstein's instructions. She also instructed me to bring the State Grand Jury documents subject to previous discovery order that's been issued in this case. I have them here, and the State Grand Jury transcripts which were not part of that order but were a part of Judge Goodstein's instructions so if Mr. Roberts were to choose to want to review them, they are here today. It would still be subject to the protection put in effect but we have them here if he would like to review them.

We also have the witnesses here that we were instructed to have by Judge Goodstein, with the exception of one, Megan Jameson. She has also been counsel of record in this case. She is my supervisor at the Attorney General's Office. And she's not here today. And Mr. Roberts did tell us at the last hearing on November 2nd that he had claims to bring against her. And she's not here for different reasons but I would also tell Your Honor that it's our position that he can't raise PCR claims against opposing counsel, so anything that he raised against her, I think, would be subject to dismissal as a matter of law. But if that is an issue I could contact her. But that's the State's position.

Otherwise we're ready to move forward. At that hearing on November 2nd Mr. Roberts did lay out on the record a lot of allegations that he wanted to bring, and I made note of those in a proposed order that I submitted to Judge Goodstein. I had not thought that she had signed it but I looked at the public index last night and it looks like maybe it was filed in January, but I have not received a copy of that from either Judge Goodstein's chambers or the clerk's office, so if there were any changes made by Judge Goodstein I'm not aware of them, but I just wanted to put that on the record, Your Honor.

THE COURT: All right. One issue that needs to be brought up before we go any further, in preparing for today over the evening last night, we don't have -- we weren't sent a packet for

this hearing. Is that something that you can address for me?

ATTORNEY SMITH: Yes, Your Honor. I have it here in hard copy and I can note for the record, if that's necessary, the documents that are included. It would be the appellate documents, the trial transcripts, the record on appeal, the application, and the filings in this post-conviction relief case. I printed a copy.

I also have a second copy if Mr. Roberts would like one, but he should already have a copy of everything that's in this. There's nothing under seal included.

THE COURT: Okay. You can hand a copy up to me, at least, of the application.

MR. ROBERTS: Excuse me, Judge. Is the appellant counsel here, present, because I exercise my Sixth Amendment compulsory rights to obtain witnesses in my favor and a subpoena duces tecum was supposed to be issued to her because she prejudiced my adjudication on the merits.

ATTORNEY SMITH: Your Honor, Ms. Susan Hackett is in the courtroom. She represented Mr. Roberts on direct appeal.

THE COURT: Okay.

ATTORNEY SMITH: May I approach, Your Honor?

THE COURT: Yes, sir.

(The Court reviews submissions.)

THE COURT: Mr. Roberts --

MR. ROBERTS: Yes.

THE COURT: -- do you understand that you were appointed standby counsel to assist you if you needed assistance in the prosecution of this post-conviction relief matter?

MR. ROBERTS: Yes, but we've been through this, and I object.

THE COURT: Okay. So that's what I'm getting at. You understand that you get one shot at PCR, and if you choose to go forward without a lawyer you have a very high burden to overcome to say, Well, I want another shot because I didn't have representation. Do you understand that?

MR. ROBERTS: I understand that.

THE COURT: Okay.

MR. ROBERTS: Judge, I wanted to bring up the issue of subject-matter jurisdiction. Pursuant to Supreme Court precedent, United States Court of Appeals for the Fourth Circuit held in *Brickwood Contractors, Incorporated v. Datanet Engineering*, "subject-matter jurisdiction cannot be conferred by the parties, nor can a defect in subject-matter jurisdiction" --

THE COURT REPORTER: Sir.

MR. ROBERTS: -- "be waived by the parties."

THE COURT REPORTER: Sir. Can I ask you to slow down a little bit when you're reading.

MR. ROBERTS: Oh, I'm sorry. I'm sorry.

THE COURT REPORTER: Thank you.

MR. ROBERTS: "Accordingly, questions of subject-matter

jurisdiction may be raised at any point during the proceedings," and I wish to raise them now.

And as the applicant, I have the burden of proving the lack of subject-matter jurisdiction, and I would like to proceed with that before we go to any other issue.

THE COURT: All right. What are your grounds for asserting that this Court doesn't have subject-matter jurisdiction over this PCR hearing?

MR. ROBERTS: I'm not invoking that they don't have subject-matter jurisdiction of the PCR hearing. I'm talking about in regards of the indictment.

THE COURT: Well, you understand that at a PCR hearing all I can do is make determinations whether you received ineffective assistance of counsel, and the only -- if I were to find that you received ineffective assistance of counsel, either at the trial level or at the appellate level, that all I can do in this proceeding is order that you receive a new trial.

MR. ROBERTS: So subject-matter jurisdiction cannot -- has no bearing on the PCR proceeding?

THE COURT: Well, a PCR proceeding is a civil proceeding, and this is to determine whether your lawyers, who represented you at your trial and on your appeal, were ineffective.

MR. ROBERTS: Okay.

THE COURT: Subject-matter jurisdiction challenge would have had to have been made during your -- during your underlying

trial, the reason we're here. We're here to determine whether you received ineffective assistance of counsel.

MR. ROBERTS: All right. We can get into that.

THE COURT: Okay. You can call your first witness, Mr. Roberts.

MR. ROBERTS: Mr. Griffith.

THE COURT: You want to call Mr. Griffith?

MR. ROBERTS: Yeah.

THE COURT: All right. Mr. Griffith, please come forward.

TIMOTHY L. GRIFFITH,

having first been duly sworn, is examined and testifies as follows:

CLERK OF COURT: Please be seated. State your full name for the record, and please spell your last name.

THE WITNESS: Timothy L. Griffith, G-r-i-f-f-i-t-h.

DIRECT EXAMINATION

BY MR. ROBERTS:

Q Okay. At trial I exercised my right to view the impanelment documents.

A I'm sorry. Exercised your right to do what?

Q To view the impanelment documents.

THE COURT: The impanelment documents impaneling the State Grand Jury?

MR. ROBERTS: Yes, the minutes, which I'm entitled to, *Evans v. State*. I asked for impanelment documents. The judge

erroneously ruled and denied me. There was no objection from Griffith, and --

THE COURT: Okay. You need to ask Mr. Griffith questions. Ask him --

MR. ROBERTS: All right.

THE COURT: Ask him why. You need to ask him questions regarding his performance. Hold on, let me finish. I'm going to give you the opportunity to ask questions but we can't talk at the same time.

MR. ROBERTS: Okay.

THE COURT: All right. So you need to ask him questions about these issues, not make statements.

MR. ROBERTS: Okay.

THE COURT: Ask him questions regarding the issue that you want to discuss.

Q Mr. Griffith, did you prejudice my Fourteenth Amendment right to prepare a defense when you failed to object to the erroneous ruling by the trial judge denying me the impanelment documents?

A Just to set the stage so I know where you're at, was this before or after --

Q Page 15, lines 5 and 6?

A -- the first day? In other words, was I acting as your counsel then or were you representing yourself at that time?

Q My right to represent myself was denied by the trial judge,

so you was acting as counsel.
A I did not make a -- I did not ask the judge for that particular item.
Q According to Article I, Section 14, I have a right to be heard in my own defense.
A That's true.
Q All right. So when I requested the impanelment documents and she erroneously ruled and said that I was not entitled to it, why did not you object?
A That wasn't part of the procedure we were in. That was a pretrial thing I would have done but at the time that wasn't an issue that we were there for.
Q Pretrial. This was before the jury was sworn. All right. And pursuant to Article I, Section 11, I have a right to challenge whether the grand jury was legally constituted, so this was a pretrial matter and you failed to object not just once, but particularly page 15, lines 5 through 9. Did it prejudice my right to prepare a defense?
A Actually, I didn't represent you until the second day of trial. Do you recall that?
Q The second day of trial. July 24 you was representing me.
A You said you were representing yourself at that time.
Q She did not let me represent myself. At the time when I asked for these impanelment documents, she had already ruled that you was my counsel.

A At some point during that time, yeah, I was -- she said -- she told you that you could not represent yourself any further and that I was supposed to represent you --
Q Okay.
A -- on that day.
Q So page 15, lines 5 through 9, when I was erroneously denied my right to prepare a defense did you ineffectively prejudice my Fourteenth Amendment right to prepare a defense?
A No.
Q How not?
A No, I didn't.
Q All right. Page 19, when trial judge asked me what was it that I thought -- page 19, lines 8 through 16 -- what did I think that I would be able to use from the State Grand Jury record, and I replied that, "Well, I'm actually going to show that no State Grand Jury even occurred," why hadn't you objected to me being denied these impanelment documents once more?
A It wasn't relevant for me to object at that time, so --
Q So that didn't show prejudice to my preparation to mount a defense?
A If you recall, you were actually representing yourself at that time.
Q Article I, Section 14, I have a right to be heard in my own defense by counsel or both, myself or counsel or both. You were my attorney.

A It wasn't relevant at the time.
Q *Evans v. State* says that a defendant is entitled to impanelment documents to challenge jurisdiction of the State Grand Jury, and you failed to object constantly. How about page 85, lines 5 through 7?
A I don't have a copy of that transcript, by the way.
Q Were you ineffective assistance of counsel when you failed to cite directly controlling precedent regarding impanelment documents and the erroneous ruling from the trial judge denying me?
A No, I was not.
Q You was not ineffective?
A No.
ATTORNEY SMITH: Your Honor, may I hand up a copy of the trial transcript for Mr. Griffith?
THE COURT: Yes, you may.
Q Mr. Griffith, was I afforded the impanelment documents before the jury being sworn?
A What's your question?
Q Was I afforded discovery before jury being sworn, informed of them impanelment documents?
A I showed you discovery on multiple occasions. I will be happy to tell you about it.
Q That's not what I asked.
A On 317 --

Q That's not what I asked.
A -- I visited you in the jail, informed you as to bond, showing you --
Q Mr. Griffith, can you restrain your answer to yes or no?
THE COURT: Hold on one second.
A Are you going to ask me a question?
THE COURT: Hold on one second. All right.
A Did you ask me if I showed you discovery?
THE COURT: Mr. Griffith. Mr. Griffith, hold on. First things first, he's asking about the impanelment documents and you're responding with discovery. Were the impanelment documents included with the discovery that you went over with Mr. Roberts?
THE WITNESS: No. I misunderstood his question. I thought he asked me if I showed him his discovery before trial.
Q Why I said discovery, because impeachment evidence is considered exculpatory for *Brady* purposes. All right. So before the jury being sworn, pursuant to *Hunt v. Mitchell*, prejudice will be presumed when counsel was not afforded discovery before voir dire.
A I was given discovery on the criminal case, and I --
Q Informed of the impanelment documents, exculpatory evidence that the State Grand Jury had not convened.
A No. I wasn't given the grand jury impanelment documents. No.
Q Before jury was being sworn, you wasn't?

A No, I wasn't. No.
Q So pursuant to Supreme Court precedent, *Hunt v. Mitchell*, would prejudice be presumed?
A That's for the Judge to decide.
Q I'm asking you.
A I wasn't given those documents.
Q So would you say that prejudiced my defense?
A No.
Q No?
A Absolutely did not.
Q How about page 73 of trial transcript when I attempted to exercise my right to Article I, Section 11, to challenge whether the grand jury was legally constituted and you were physically and mentally absent? You said absolutely nothing. Every time it came to the impanelment documents you never objected?
A Okay. So what line are you talking about on page 73?
Q Let me back up before we get there. On page 19, lines 8 through 10, when the trial judge asked me -- I quote -- "I guess I'm trying to figure out what it is that you think you will be able to use from the State Grand Jury record?" I responded, "Well, I'm actually going to show that no State Grand Jury occurred." The trial judge then states, "Oh, it happened, because I have the indictments." All right.

Now, would it be prejudice on your part that you didn't object and cite controlling precedent *Evans v. State* that I'm

entitled to those impanelment documents?
A No.
Q You don't think that was prejudice to my defense?
A If you look on page 74 of that transcript, it said --
Q I'm not talking about that, Mr. Griffith. I said let me back up. I'm talking about page 19, lines 8 through 16.
A If you look on page 74 of that transcript, you'll see where you were talking about that, and I said -- at that time Mr. Underwood handed me that document, and I said -- I have no objection.
Q On page 74 you stipulated to the chain of custody which was tantamount to a guilty plea?
A No, but whatever you'd to like say.
Q That's what I would like to say. I said it. But I'm talking about, on page 19 why didn't you object? I told the judge, "I'm actually going to show that no State Grand Jury even occurred." She said, "Oh, it happened because I have the indictments." I stated "I have the indictment paper but that doesn't say it happened."

Why didn't you object and state Supreme Court precedent *pursuant to Evans v. State* that I'm entitled to the impanelment documents?
A The State Grand Jury had been convened, and you had been indicted. I was, in fact, provided with those indictments, and I shared them with you.

Q So you received impanelment documents from the State Grand Jury?
A No. I received the indictments.
Q I'm talking about the impanelment. Did you receive the impanelment documents from the State Grand Jury?
A No, I didn't. No.
Q No. Did you receive them from the Attorney General?
A I don't believe he gave me that. He did provide me with the --
Q You don't believe, or --
A -- information that the -- well, I'm saying in here it says, on page 74, that he gave me, he showed me some documents, and I said I had no objection.
Q I'm not saying some documents. I'm specifically talking about the impanelment documents from the State Grand Jury.
A I have no idea.
Q Were you provided the State Grand Jury impanelment documents?
A I don't think so.
Q Yes or no?
A I don't know. I don't remember --
Q You don't know?
A -- but I don't think so.
Q Pursuant to *Hunt v. Mitchell* would prejudice be presumed if you wasn't provided discovery before voir dire?

A I'll say no.
Q Are you aware that the State Grand Jury didn't convene on April 12th and 13th, 2016?
ATTORNEY SMITH: Objection. Lack of personal knowledge. Speculation.
THE COURT: Sustained.
MR. ROBERTS: I have direct evidence that shows that the State Grand Jury didn't convene. No court reporter was assigned, Judge. I'll also like to show that the conspiracy between the state judiciary and the state officials, every time there was erroneous ruling regarding impanelment documents there was a failed obligation under *Brady* on the part of prosecution and there was no objection from counsel.
Q So let me ask you this, Mr. Griffith. Did you label [ph] under a conflict of interest?
A Oh, absolutely not.
Q Absolutely not. Would it be prejudice when you failed to cite controlling precedent concerning the impanelment documents?
A No, I wasn't.
Q No. How about when I exercised my right, page 14, to be informed that an agent caused an accusation against me?
A Well, you were informed, so ...
Q How so? No court reporter was assigned. The indictment is a charge of the State by --
(Simultaneous talking.)

Q -- which I'm informed of the facts.
A I went over your indictments and your discovery with you.
Q I'm not talking about indictments. We're talking about the impanelment documents. Them indictments is manufactured; jurisdiction, manufactured; all those pages, manufactured.
A I can't speculate as to what the grand jury --

ATTORNEY SMITH: Objection, Your Honor, to the extent that the questions are meant to support a claim that the Court lacked subject-matter jurisdiction; that, under *Gentry* and *Evans*, the indictment does not implicate subject-matter jurisdiction as a notice document, so that would be my objection to that. As a matter of law, those questions are irrelevant and would not support relief.

THE COURT: Somebody tell me when the request for these impanelment documents were made. Obviously I can't digest all of this during this hearing, so if someone could clue me in onto the timing of all this, because there was some precedent which discusses requesting the impanelment documents, that a judge has to order release of those if I'm reading this *Evans v. State* correctly. And I haven't had a chance to read it in full, but I'm just kind of lost in the timing of all this.

So, Mr. Griffith, in your recollection, when were these impanelment documents requested? I think that might get us past this issue.

THE WITNESS: I believe Mr. Roberts requested those after we

had convened for trial, Your Honor.

MR. ROBERTS: That's incorrect.

THE COURT: When is your contention that you asked?

MR. ROBERTS: Before voir dire, page 15, lines 5 and 6. Also, Judge, page 19, lines 8 to 16, counsel failed to cite controlling precedent regarding impanelment documents. Pursuant to *Hunt v. Mitchell*, prejudice was assumed when I wasn't afforded discovery before voir dire. He never objected to anything.

Q Mr. Griffith, would it be prejudice when counsel ineffectively fails to object to structural error regarding preparation of a defense?

A I didn't need those documents. I had the indictments and the discovery.

Q But your client is entitled to them and I was requesting them and you failed to object and cite controlling precedent. Would you say that you were ineffective and prejudice to my defense?

A No, I would not.

Q Of course you wouldn't. Mr. Griffith, would it be ineffective assistance of counsel when defendant was deprived of the substantive or procedural right to which the law entitles him to impanelment documents and you failed to object?

A I was not ineffective at any point.

Q I have a substantive right to prepare a defense and a procedural right for discovery. Would it be prejudice when you

failed to object to prosecution's failed objections under *Brady*?
A Explain what you're asking me.
Q The prosecution has a constitutional duty to disclose impeachment and exculpatory evidence. Every time I requested these impanelment documents he failed to disclose. There was no objection from you. Would you consider that prejudice to my defense?
A I was provided with --
Q Yes or no?
A -- discovery in your case as far as the indictments --
MR. ROBERTS: Judge, can you --
A -- and as far as the --
(Simultaneous talking.)
MR. ROBERTS: -- restrain him to a yes or no, please.
THE COURT: He can answer the question yes or no, and then he can explains his answer. Go ahead, Mr. Griffith.
Q Yes or no?
A I was provided with the indictments --
MR. ROBERTS: He never answered.
A -- as well as all the discovery as to the evidence against you that the State provided to me. On several occasions I tried to go over that with you. Yes.
Q The question was, the prosecution failed, under its obligations under *Brady*, constitutional rule that they have to disclose impeachment or exculpatory evidence. You didn't object.

Did that prejudice my defense?

ATTORNEY SMITH: Objection, Your Honor. The question assumes that the prosecution did not turn over exculpatory evidence.

MR. ROBERTS: Prosecution conceded that I -- I'm entitled to those documents. On page 15 the prosecution conceded and said that I'm entitled to them, but they don't give me a copy, I have to get them from the court reporter. When I tried to present --

THE COURT: What documents are you talking about, Mr. Roberts?

MR. ROBERTS: Impanelment documents. It's fraud upon the Court, and I can show that.

THE COURT: Well, the documents which would go along with the State Grand Jury process of coming up with an indictment, I struggle to see how documents which indicts you for a crime could be considered exculpatory and, therefore, discoverable under *Brady*. They seem to be inculpatory documents --

MR. ROBERTS: Impeachment evidence --

THE COURT: -- in a general sense. The grand jurors wouldn't have testified at your trial. You can't impeach a grand juror, and I'm struggling to see where that could be used for impeachment.

MR. ROBERTS: That's not what I'm trying to say. What I'm saying is -- stop me if I'm incorrect -- impeachment material is considered exculpatory for *Brady* purposes. Right or wrong?

THE COURT: They could be under certain circumstances if --

MR. ROBERTS: I have a procedural right to these impanelment documents pursuant to Section 14-7-1720(A) and (B) and Rule 5 --

THE COURT: You said stop me if you're wrong, so I'm going to stop you.

MR. ROBERTS: All right.

THE COURT: Impeachment documents are documents, say, for example, you had a witness who had given one statement at one time and then made a different statement at another time, and you could use the inconsistent statements to impeach the witness when they testify on the stand. That would be impeachment.

But, see, none of these grand jurors are going to testify in a trial. The witnesses who participate in this investigation or any eyewitnesses would be people that testify. The grand jury, you couldn't impeach a grand juror.

MR. ROBERTS: I'm not trying to impeach a grand juror. Agent Wingo testified at my trial. Now, if I'm entitled -- I'm entitled -- I'm entitled to prepare a defense. By having these -- I'm entitled to these documents in order to prepare a defense. Wingo testified. I can't -- I didn't have these documents to see whether his prior testimony at the grand jury or here was inconsistent because, one, they don't exist; two, he didn't object to prosecution's failed disclosures under *Brady*.

THE COURT: Well, you can ask him questions about it, particularly witness's testimony and why he failed to impeach

that witness. Those are relevant to PCR. So if you have some claim that he failed to impeach a witness by whatever means were available, you can ask him questions about that, but he wasn't there when the officers testified before the grand jury.

MR. ROBERTS: But he was there at trial when their constitutional duties under *Brady* were not met, and he never testified. It prevented me from presenting a complete defense, which is extrinsic fraud. It doesn't matter if it's actual or constructive fraud. He's --

THE COURT: Who are you saying -- you said somebody didn't testify at your trial?

MR. ROBERTS: That's not what I'm saying. I'm saying when I request these impanelment documents to which I'm entitled to by law it is a substantial, or procedural, right, right, when counsel ineffectively fails to object, ineffective assistance of counsel to which the law entitles him. All right.

THE COURT: He's conceded that he didn't have the impanelment documents and didn't request them. He's conceded that point on the record. He says he didn't do it. He says he didn't believe it was necessary. It's up to this Court to determine whether that was ineffective assistance of counsel.

MR. ROBERTS: All right.

THE COURT: So you've made that point. So that would be the issue you make with regard to the impanelment documents. As I said, he's conceded that.

MR. ROBERTS: All right.

Q Would preparation of a defense be a fundamental right? Do you see it as being a fundamental right that I receive these impanelment documents to which I'm entitled to by law in order to prepare a defense?

ATTORNEY SMITH: Your Honor, he's asking for a legal conclusion to support his argument, and Mr. Griffith is testifying as a fact witness.

THE COURT: Again, Mr. Roberts, Mr. Griffith has conceded that he didn't have these documents at the time of your trial. He's already testified he doesn't believe that it was ineffective, and whether he was ineffective or not is a decision that I'll make.

MR. ROBERTS: I understand that.

THE COURT: Let's see if we can move the ball forward.

MR. ROBERTS: I hear you, Your Honor. This is what I was trying to say.

Q Did it prejudice my defense by him not objecting to the failed obligations under *Brady*? Not that he didn't see these documents or he didn't feel it was necessary, did it prejudice my defense in his failed objections to prosecution's failed obligations under *Brady*? Would you consider that prejudicing my defense when you failed to object to their constitutional obligations under *Brady*?

ATTORNEY SMITH: Same obligation. Calls for a legal

conclusion.

MR. ROBERTS: That's a different question.

THE COURT: He can answer it, whether he --

MR. ROBERTS: Yes or no.

THE COURT: -- believes it or not.

A No.

Q Pursuant to *Hunt v. Mitchell*, would it be prejudice presumed that I didn't receive these documents which I'm entitled to before voir dire? Yes or no?

ATTORNEY SMITH: Same objection.

THE COURT: He can answer. Overruled.

A I was not provided those documents. I've testified to that. I was provided, however, with the indictments --

MR. ROBERTS: Judge, can you constrain his answer to a yes or no, please?

A -- and with all of the evidence against you.

(Simultaneous talking.)

THE COURT: Well, he said --

MR. ROBERTS: He's explaining. He's giving an excuse.

THE COURT: Witnesses have a right to explain their answer. This is direct examination.

MR. ROBERTS: Okay.

THE COURT: You're not allowed to lead the witness on direct, but he can answer and explain his answers. So he said he didn't have them.

MR. ROBERTS: He said an explanation. I didn't get an answer.

A No.

THE COURT: Ask your question again, Mr. Roberts.

Q Would you deem it prejudice to the defense by failing to afford your client discovery before voir dire pursuant to *Hunt v. Mitchell?*

A In this case, no.

Q Yes or no.

THE COURT: Hold on. He said "In this case, no." Now explain your answer, Mr. Griffith.

THE WITNESS: I'm sorry?

THE COURT: You can explain your answer if you want to.

A Oh. In this case, no, because I did the indictments and I had all the evidence that the State was presenting against you, and those, were not -- even though not provided to me, at that time had not -- I had everything I needed to proceed with trial, and I showed it to you.

Q Are indictments impanelment documents? Because you keep going back to indictments. I'm talking about impanelment documents. Are those one and the same?

A I didn't have the impanelment documents. I had the indictments. They are not the same but they were not relevant to what I was trying to your defense in this case.

Q Even though I'm entitled to it by law, right?

A That's correct.
Q And you don't see it prejudice that you failed to cite directly controlling precedent pursuant to *Evans v. State,* right?
A As I have answered several times on the same question that you continue to ask, no.
Q What about page 73, lines 3 to 6, in an attempt to exercise my right under the state constitution, pursuant to Article I, Section 11, to challenge the legality of the State Grand Jury, you failed to object; you failed to advocate my cause in that manner?

Under Strickland, you have a duty to advocate the defendant -- an overall duty to advocate the defendant's cause. Did you fail to do this?
A If you look on page 74, you'll see that Mr. --

(Simultaneous talking.)
A -- had conversations with both attorneys present, and we stipulated to the fact of the chain of custody for all the evidence that had been established.
Q I have a right under the state constitution to challenge whether the State Grand Jury was legally constituted. You have an overopen [ph] duty under *Strickland* to advocate my cause. Was it prejudice when you failed to advocate my cause on that issue?

ATTORNEY SMITH: Asked and answered.

THE COURT: Sustained. Mr. Roberts, again, the Court will make the determination as to prejudice. Number one, the Court

will make a determination as to whether he was effective or not and, number two, if he was ineffective whether that prejudiced you. So you can ask him about what he did, but whether what he did was prejudicial or not is a matter for the Court.

MR. ROBERTS: All right.

Q Mr. Griffith, did you provide me with Rule 5?

A I absolutely did.

Q And what was that?

A Well, it was all the evidence that the State had accumulated against you that I had been provided on several occasions, actually.

Q What type of evidence?

A Would you like me to go over those?

Q Yes.

A Well, on 3/17 I came to the jail to visit you to inform you as to bond and to go over discovery; also talk to you about an impending evaluation. Then I tried visiting several other times and finally did give you the discovery. And then on the second day of the trial --

Q What was the discovery? What was the --

A -- I spent the morning on the --

THE COURT: Hold on. You all are talking over each other.

A -- on July 25th.

Q I get the date. I said, What was the discovery?

A I spent the morning showing you the discovery. Also, the

Court --

(Simultaneous talking.)

Q What did the discovery consist of, is what I'm trying to get at?

A Pardon me?

Q What did discovery consist of?

A All of the items I was provided by the State.

Q What items?

A Well, we couldn't go through all of them now.

Q Not all of them. Pick one?

A Took us a week to go through them the last time.

Q Pick one, because I absolutely seen no evidence. I mean, I was there at trial. There was absolutely no evidence.

A The State, of course, had witnesses against you, and I went over those witnesses' statements, and I went over what they alleged that you had done.

Q And that's all that you showed me as far as discovery, witness statements?

A No. I went over everything that they gave me, and it's this thick, it's three inches of discovery here that you and I talked about.

Q Did a conflict of interest exist when you made no effort to present a defense?

A That sounds like two questions. I did present a defense and, no, there was no conflict.

Q Would you say that prejudice may be presumed when this same effort persisted throughout the course of the trial?

ATTORNEY SMITH: Objection. Calls for a legal conclusion.

THE COURT: Again, Mr. Roberts, you need to ask him about specific things that he did or didn't do. The issue of prejudice, again, is one for the Court. So if you've got some assertions that he didn't present evidence that you wanted him to present, ask him about that. I need specific questions and specific instances that you believe made his representation of you ineffective. The general Was I prejudiced? is not specific enough.

MR. ROBERTS: Okay.

Q Mr. Griffith, did you infringe my Sixth Amendment right to confront witnesses against me by stipulating to the chain of custody?

A We did confront the witnesses against you. Yes.

Q That's not what I asked you. I asked you Did you infringe my Sixth Amendment right to confront witnesses against me by stipulating to the chain of custody?

A No.

Q Mr. Wingo read the lab reports from lab technicians that wasn't present in court and, pursuant to the Sixth Amendment, evidence offered that is against the defendant to prove the truth of the matter asserted is categorically barred by the Sixth Amendment.

A No, I did not.
Q Why hadn't you objected to the reading of these lab reports from unavailable witnesses?
A Some lab reports were read.
Q By Agent Wingo, not by -- what I'm saying is, the lab reports are considered testimonial. They're unavailable. They're the result of either a prior proceeding, right? Or let's take -- let's take -- let's take, uhm, the codefendant's confession. Why didn't you object to that, that it was the result of police interrogation which is also testimony, and you failed to object? Yes or no.
A You're asking about four questions, but we stipulated to the --
Q I'm going back to discovery.
(Simultaneous talking.)
THE COURT: Okay, hold on. We can only talk one at a time. One at a time.
A We stipulated to --
Q You, not we.
A -- to the fact that the chain of custody was followed.
Q Was there colloquy before the stipulation?
A We discussed with the State their processes, they showed us the chain of command, and we stipulated to that chain of custody.
Q Before this stipulation was there colloquy?
A Explain what you're talking about. Do you mean did we talk

about it?

Q Was there a colloquy by the trial judge to say, Do you understand that you're giving up your confrontational right by stipulating to the chain of custody? Supreme Court says it has to be in a colloquy --

MR. ROBERTS: If I'm giving up a statutory or constitutional right, Your Honor, there has to be a colloquy. I'm asking him was there colloquy prior to the stipulation.

A It's on page 74. That's where Mr. -- we stipulated to --

Q I'm not talking about the stipulation. Was there a colloquy before this stipulation?

A That would have been the preceding colloquy on those pages.

Q Where? Can you point me in the direction? Page 74. What?

A Page 73 - 74.

Q Where's the colloquy? I'm asking you.

MR. ROBERTS: There wasn't one, Judge.

THE COURT: Let me ask a question. I think the Rules allow the Court to ask a question.

Mr. Griffith, did you have any concerns after reviewing the chain of custody that was provided in this case about whether there were any defects in the chain?

THE WITNESS: I had no concerns, Your Honor.

THE COURT: All right. Did you feel a motion or any -- did you feel like there were any grounds to move to suppress any of the evidence due to a default in the chain?

THE WITNESS: There were no grounds that we could seek, Your Honor.

THE COURT: All right. And obviously just to summarize this, Mr. Roberts disagreed with that decision. I think that boils down the issue on chain of custody; is that correct?

MR. ROBERTS: What I'm saying is, pursuant to State v. Ohr [ph], there's supposed to be a colloquy before a statutory or constitutional right can be waived, right? I was asking him, Did this occur?

THE COURT: He says yes.

MR. ROBERTS: But we have the record right here.

THE COURT: And I'm going to read the record when I make a decision.

MR. ROBERTS: All right.

THE COURT: You raised that issue. I've made a note of it. So let's move on to the next issue.

MR. ROBERTS: All right. All right. I had a constitutional right to demand that the grand jury was properly constituted and established under the law. He had a duty to advocate my cause under the Sixth Amendment. He didn't.

Q Would you say that prejudiced my defense? Yes or no.

A Are you asking me?

Q Yes.

ATTORNEY SMITH: It calls for a legal conclusion --

A No.

ATTORNEY SMITH: -- and asked and answered.

THE COURT: Mr. Roberts, I promise you I understand your argument as far as impaneling the grand jury. We've been down that road.

MR. ROBERTS: I'm talking about advocating my cause under *Strickland*.

A No.

THE COURT: Okay. Ask the question again, Mr. Roberts.

Q Had you failed to advocate the defendant's cause regarding his challenge?

A I did not fail to do that.

THE COURT: And again, Mr. Roberts, if you've got -- if you've got specific things that you believe Mr. Griffith failed to do, like, for example, I wanted him to call a witness who could have provided testimony that would have been beneficial for me and he refused -- and I don't know whether that existed or not -- and he refused to do it, those are the things that I'm looking for.

MR. ROBERTS: Okay.

THE COURT: There have to be -- in the PCR laws, there have to be specific allegation of ineffective assistance, not just generally, You didn't advocate my cause. There's got to be He didn't do these things and, therefore, I don't believe he was effective. That's what I'm getting at.

MR. ROBERTS: Yes. He imposed a guilt-based defense.

THE COURT: Okay. Ask him questions about the defense that was presented.

Q Did your failure to object to the admission of codefendant's out-of-court statements, did it violent my due process of law and cause a prejudice to my Sixth Amendment right to confront witnesses?

ATTORNEY SMITH: Objection. Calls for a legal conclusion.

THE COURT: Okay. Let's back up. Mr. Griffith, did codefendants testify in this case?

THE WITNESS: Did --

THE COURT: Codefendants.

THE WITNESS: The codefendant was not present, Your Honor.

MR. ROBERTS: No.

THE WITNESS: Some of the witnesses were codefendants, yes, who did testify.

THE COURT: Some of the witnesses were codefendants?

THE WITNESS: I believe that they were. Yes.

THE COURT: All right. Did any --

MR. ROBERTS: No codefendants testified, Your Honor.

THE COURT: Well, ask questions regarding these -- so you're saying that these witnesses' out-of-court statements were admitted?

MR. ROBERTS: Yes, and --

THE COURT: Ask him about -- ask him which witnesses -- you need to ask him about the witness who put these -- how these

statements came in. You need to lay the foundation for it. Because, like I said, I haven't read the transcript. I just got it about 15 minutes or 30 minutes ago. So we need to talk about the witnesses that you allege these out-of-court statements came in through.

MR. ROBERTS: They came in through --

THE COURT: No. You've got to ask questions of Mr. Griffith. I can't take your testimony when you're questioning a witness. You've got to say something along the lines of, Now, Mr. Griffith, when Officer Jones testified and --

MR. ROBERTS: All right.

THE COURT: You see what I'm getting at?

MR. ROBERTS: Right. I get you.

THE COURT: All right.

Q Mr. Griffith, when Justin Wingo testified --

A When who?

Q Justin Wingo is his name.

A Okay. Yeah. He's one of the investigators, right?

Q Who?

A He's one of the investigators?

Q He's supposed to be the case agent, I believe.

A All right. Okay.

Q All right. So when he testified, and through his testimony the statement of Justin [ph] Hunter came in, why had you failed to object --

A Well, I just got the transcript, too.
Q -- knowing that his testimony -- testimonial because it's an unavailable witness that hadn't prior testified.
A I'm really having a hard time understanding your question.
THE COURT: Let me see if I ... Apparently the statement of a Justin Hunter came in through the testimony -- according to Mr. Roberts, the statement of Justin Hunter came in through this Investigator Wingo. So what was said, and how was that prejudicial to the defendant?
A So what page is that in the transcript?
MR. ROBERTS: I believe it prejudiced my confrontational right.
THE COURT: I understand. I promise you I understand the legal issue. I want to know what was said, who said it, and what the substance of the statement was.
MR. ROBERTS: I believe the statement was used -- it was offered to prove the truth of the matter as far as the element regarding trafficking. He was questioned regarding about trafficking heroin from the state of New York to South Carolina, the codefendant. That came in through Justin Wingo.
And I feel that it prejudiced me because, one, it's testimonial and it's in violation of *Crawford*, and by counsel failing to object, it was used to prove -- it was offered against me to prove the truth of the matter.
THE COURT: All right. Mr. Griffith, so he's alleged that

the officer testified to matters which violated the confrontation clause. What is your recollection of that issue through Investigator Wingo's testimony?

THE WITNESS: I do not recall at any place where that was prejudicial against Mr. Roberts.

Q You don't feel that it was offered to prove the truth of the matter and it prejudiced my confrontational right pursuant to the Sixth Amendment?

A I do not believe that there was any statements allowed in that were prejudicial that we did not object to.

Q In *Crawford v. Washington* the Supreme Court held that the admission of testimonial hearsay statements --

THE COURT: Mr. Roberts, I promise you I'm not trying to limit your presentation but I'm familiar with *Crawford v. Washington*. I understand the issue that you raised. He said he didn't feel like it was prejudicial.

MR. ROBERTS: All right. I'll move on, Judge.

THE COURT: I'm going to go back and review it, but in situations like where, *you know, Crawford* is a big case, I'm familiar with it. And again, I'm not trying to limit you in any way but usually in these PCR hearings case law is quoted during a direct examination of a witness, so --

MR. ROBERTS: All right.

THE COURT: -- let's keep it moving.

MR. ROBERTS: I mean, this is my first time doing this.

THE COURT: I understand.

(Simultaneous speaking.)

MR. ROBERTS: I'm not a lawyer, you know. I just can't trust any lawyers. I wouldn't be here --

THE COURT: That's why I wanted to make sure you wanted to go forward without one, because --

MR. ROBERTS: Yeah, but I would be in the worst position if I had one.

THE COURT: I'd be a bad -- I'd be a bad brain surgeon because I'm not a doctor, so I understand where you're coming from. I'm trying to -- I'm not trying to assist you in the presentation of your case, but I'm trying to make sure that we move along and don't keep -- and we keep from covering the same ground over and over.

MR. ROBERTS: All right. If I can have a copy -- he said he has a copy of the trial transcript, right? No, no, no. I don't know his name. What is it Smith?

ATTORNEY SMITH: That's right.

MR. ROBERTS: July 24th to 28th, the trial transcript. I just need it real quick, and you can have it back.

Q This is regarding an alibi. The State had a witness that claimed that I was making these transactions when I was actually locked up in New York, and I tried to -- I tried to -- as a matter of fact, I think I -- I tried to offer my record to Griffith to show that I was locked up during those times and he

refused to present the alibi on my behalf.

THE COURT: Okay. Well, ask him questions about --

MR. ROBERTS: Yeah. I'm just trying to get to it. I'm going to move on.

Q Mr. Griffith, do you think --

A Yes.

Q -- do you feel that you prejudiced my defense --

A No.

Q -- pursuant to the Sixth Amendment of effective assistance of counsel?

A No.

Q Yes?

A No.

Q When Mr. Griffith was acting as a second prosecutor, when you imposed a guilt-based defense and having plea bargains in violation of Rule 11(c), I believe, with the judge and the prosecutor, and -- did this -- was it inadequate assistance of counsel?

ATTORNEY SMITH: Objection. Calls for a legal conclusion.

A You'll have to make an actual question, because you made a statement.

THE COURT: All right.

MR. ROBERTS: Okay.

THE COURT: All right, Mr. Roberts. You asked him about plea offers. Ask him something specific, or plea bargaining. Is

there any specific allegation about his conduct in conducting plea negotiations --

MR. ROBERTS: Yes.

THE COURT: -- that you feel was ineffective. Okay.

MR. ROBERTS: Yes.

THE COURT: Ask him questions specifically about the whole plea offer, plea-bargaining process.

MR. ROBERTS: All right.

Q I maintained my innocence and my right to have a trial. Why did you consistently try to impose a guilt-based defense by attempting to plead?

A Why did I try to seek, perhaps, an offer for you? Is that what you're asking?

Q In the middle of trial when I exercised my right to a trial, why would you, as my attorney, act as a second prosecutor in trying to get me to plead when I'm exercising my right to have a trial?

A Well, I didn't act as a second prosecutor.

Q I feel you was.

THE COURT: All right. We don't need -- that's argumentative. Mr. Griffith, at some point talk about did you go to the prosecution looking for an offer or did they come to you? Talk about what actually happened, not theoretical things. Mr. Griffith, tell me about what transpired with any sort of plea negotiations.

THE WITNESS: During the trial, of course, as we proceeded along, if I -- with any client -- perceive that there's a good possibility that this client could be found guilty and receive a substantial sentence I will discuss with the client as to whether or not he may be willing to accept a plea offer from the State that would prevent him from receiving as long a sentence. So that's part of trying to help my client.

Q After I exercised my right to have a trial? If I'm standing on my right to have a trial, right, once I say I'm exercising my right to have a trial you a duty to protect my rights; vigorous cross-examination, whatever. You stopped and you imposed a guilt-based defense.

You said, Your Honor, just to help him understand if he pleads today he can still appeal, would you consider that prejudice?

ATTORNEY SMITH: Your Honor, I'm going to object because even if Mr. Griffith sought a plea offer in opposition of Mr. Roberts' wishes, I'm not sure that could ever result in a grant of post-conviction relief.

THE COURT: Unless it was done --

(Simultaneous talking.)

THE COURT: -- in front of the jury. Hold on, Mr. Roberts. Mr. Griffith, tell me specifically what happened with -- he's saying he didn't want to plead this out; he wanted a trial. So tell me specifically -- I can't emphasize this enough. I need to

hear what happened during this trial, not what normally happens, what I always do. Did you seek an offer from the State?

THE WITNESS: Your Honor, not in front of the jury.

THE COURT: Okay.

THE WITNESS: We talked to Mr. Roberts about whether it may be to his advantage to seek a recommendation from the State or an offer. That's pretty much the extent of it.

THE COURT: Did the State ever make an offer?

THE WITNESS: I don't recall whether they did or not.

MR. ROBERTS: Yes. This went on for about 100-and-something pages.

THE WITNESS: I just got the transcript, too.

THE COURT: Mr. Griffith, obviously this was done outside the presence of the jury?

THE WITNESS: Yes, Your Honor.

THE COURT: Were plea negotiations ever discussed on the record in front of the jury?

THE WITNESS: Oh, never.

THE COURT: All right.

Q Mr. Griffith, as an attorney, as an assistant, you're obligated to respect the client's autonomy to make fundamental decisions about his case. I exercised my right to have a trial and you consistently, consistently attempted to coerce me to give up my rights and to take a plea.

Did that prejudice my Sixth Amendment right to effective

assistance of counsel? Was you inadequate?
A If it occurred, no.
Q Were you obliged at a minimum to hold the prosecution to the burden of proving guilt beyond a reasonable doubt?
A Yes.
Q Did you?
A Yes.
Q All right. At trial -- this is on page 616, lines 10 to 14, I offered -- I asked you to present my record, to present an alibi, because the State witness was alleging that I was making transactions when I was actually incarcerated out of state at this time and you refused to offer my record, so effectively you refused to present an alibi for me. Did this prejudice my defense?
A What's your question?
Q Did you prejudice my defense by failing to present an alibi?
A No.
Q Failing to present my alibi, would it constitute deficient performance because such conduct cannot be justified as strategic decisions?
ATTORNEY SMITH: Objection. Calls for a legal conclusion.
A If you look on page 616 --
THE COURT: That objection is overruled. Again, Mr. Griffith, did y'all discuss the presentation of an alibi defense?

THE WITNESS: Yes, we did, Your Honor. On page 616 he discussed it with the Court --

THE COURT: Okay.

THE WITNESS: -- out of the presence of the jury.

THE COURT: All right. And what was the reason, if any, an alibi defense wasn't presented?

THE WITNESS: The dates that he -- in the transcript, it appears the dates he claimed was incarcerated didn't match up with the dates. In other words, they were different dates.

MR. ROBERTS: He never presented my record. He refused to, so how could you say that? You never presented my record. I was incarcerated twice that year, and during the times that they testified that I was down here selling drugs I was never even down here at that point. You refused to present it.

THE WITNESS: The Court discussed it on page 616, 617, 618, et cetera.

THE COURT: So, Mr. Griffith, if, in your review of the documents, the dates didn't match, what would have been a reason why you wouldn't have presented an alibi defense that contained documents that showed that he's being charged with another crime?

THE WITNESS: There was no evidence of alibi, Your Honor.

Q My record was the evidence that you didn't present. That was the evidence.

A There was no evidence that held water, Your Honor.

Q How would you know? You didn't present it. You didn't have

the record. You didn't have the record, period.

THE COURT: Mr. Roberts, he says, that in his review of the records, the dates that the criminal offenses were alleged to have occurred that made up the substance of this trial didn't match with when you were detained in another jurisdiction. That's the answer that he's given. That's the reason he's given why he didn't present an alibi.

Q All right. So in order for him to not present an alibi based on that, you would have to have the records to know when I was actually incarcerated, right? This was my point at trial.

THE WITNESS: May I answer, Your Honor?

THE COURT: Yes, sir.

A Mr. Roberts, you may recall that prior to the trial I attempted to speak with you many times and you refused to speak with me.

Q Because you were agent working for the prosecution. I know I haven't been indicted. I know that the Attorney General was manufacturing jurisdiction, and you --

(Simultaneous talking.)

ATTORNEY SMITH: Objection, Your Honor. He didn't let Mr. Griffith finish his answer.

MR. ROBERTS: Why would I?

THE COURT: Let him finish his answer, Mr. Roberts.

A And so, of course, I was totally unaware of any claim for alibi prior to when you presented it at the trial. And you and I

discussed it, and I didn't see any data to support your claim.
Q Because you didn't try to obtain the record, right? Did you try to obtain my record to see if I was incarcerated for these dates? Yes or no.
A I don't recall that.
Q I bet. On page 17, lines 20 to 25, I attempted -- I asked you to introduce exculpatory records into evidence and you refused. Then I spoke to you about offering it, and I actually asked the judge, and she refused to accept the exculpatory evidence.
A What's your question?
Q My question would be, Pursuant to *Hart v. Gomez*, did you fail to introduce exculpatory records into evidence, and did this make you ineffective assistance because it was objectively unreasonable?
A No.
Q Did you conduct any reasonable investigation as far as my record or the convening of the State Grand Jury?
A Yes.
Q Yes to what, my record or the --
A I was provided your record by the State, I believe.
Q All right. Did you conduct any investigation into the State Grand Jury?
A Any investigation into what?
Q The State Grand Jury as far as --

MR. ROBERTS: I understand, Judge. With the impanelment documents, I'm going with he failed in his duty to undertake a reasonable investigation. He didn't get my record and he didn't investigate to show that the State Grand Jury hadn't convened. He didn't --

THE COURT: You can answer it as to those two points.

A I did not investigate the assembling of the State Grand Jury. However, I certainly investigated the indictments presented from the State Grand Jury and the evidence supporting those indictments.

Q And yet when I attempted to get these documents which I'm entitled to and I was erroneously denied, you didn't object. So now you're telling me that you investigated -- you investigated so you're saying that they exist? You're telling me that you know, you saw, personal knowledge, that State Grand Jury convened and you seen these paperworks, these impanelment documents?

A The State Grand Jury produced indictments.

Q You're still talking about the indictments. All right. Did you fail to protect my constitutional right to demand that a grand jury was properly established and constituted under the law to consider the criminal allegations against me?

A No.

Q By failing to object to the indictments which I'm entitled to, by failing to object every time I asked for them -- what about my Sixth Amendment right to be informed? You absolutely

said nothing. When the judge asked me -- I asked the judge what did the discovery consist of, she said evidence against you, so she said talk to Mr. Griffith. I said I didn't get those. I didn't get anything. I asked you to show me.

A Actually, I did go over your discovery with you and, in fact, you refused to look at it for quite some time, and then after the judge said, Okay, he's your attorney --

Q So you went over with over it with me or --

THE COURT: No, no, no. No. You asked the question. Wait until he finishes his answer before you ask another one.

MR. ROBERTS: I was just trying to get some discernment because he said two things at once that canceled each other out.

THE COURT: Let him finish. And if you need to make any follow-up questions based upon his answer you can do that, but the court reporter cannot take down --

MR. ROBERTS: Oh, I'm sorry.

THE COURT: -- two -- she can not take down two people speaking at once. If we're going to have an accurate record, only one person can speak at a time. All right. Mr. Griffith, finish your answer.

A Now, I brought you your discovery to the jail, gave you a copy of it, attempted to go over it more than one time. Then finally on the second day of the trial we went into a separate room and went over your discovery carefully, as the judge had determined that I was definitely going to represent you during

the trial. So, yes, you did. We did go over your discovery, and I showed it all to you.

Q What did you show me?

A Everything the State had given us.

Q What was that?

A We don't -- it took two weeks -- or, a week to present it --

Q Let me ask you, do you recall in that room where you had a stack of CDs or DVDs and you said that these was supposed to be alleged drug deals that I made, and I said, Well, put it in and let me see. You said, Oh, no, they're all dark, you can't see anything. That didn't happen?

A I don't recall that happening. No.

Q All right. Did your evidence contaminate the trial and manifest a breakdown in adversarial process, rendering the defendant's trial fundamentally unfair when trial counsel, after voir dire, did not object to State's Exhibits 1 through 42? This is on page 79, lines 16 through 23.

ATTORNEY SMITH: Objection. Calls for a legal conclusion that's up to the Court.

THE COURT: All right. What -- what are 1 through 42? What are those? What items are those? I mean, just in general, Mr. Griffith, what's he talking about?

THE WITNESS: I have no idea, Your Honor.

THE COURT: All right. Mr. Roberts, specifically --

MR. ROBERTS: They was samples. They were drug samples.

BEST kits, test kits, or whatever they were. This was after the swearing of the jury. The prosecutor attempted to, about 40 exhibits after. I didn't have a chance to prepare a defense. You know what I'm saying? It was after the jury being sworn.

THE COURT: Mr. Roberts, the prosecution can't offer any exhibits before the jury is sworn. So if there's something specific, that any of these items of evidence that you feel should have been objected to, that's what we're here to determine.

The timing of it sounds like it was proper in terms of the case can't begin until the jury is sworn, so if there's anything specific with regard to any item of evidence that you feel was admitted and should have been objected to, that's what we need to hear. Again, we just can't speak in general terms. There has to be specific instances of ineffective assistance.

MR. ROBERTS: I would say everything. You know why I say that, Judge? They haven't shown me not one drug sell. They offered all this evidence, they hauling in all this evidence -- I'll take 100 years right now if you can show me I sold drugs to anybody.

THE COURT: I can't --

MR. ROBERTS: I understand that you can't. I'm just --

THE COURT: I couldn't give you a deviation or an increase in your sentence. I'm just here to hear the evidence of why you allege that Mr. Griffith was ineffective. So if you have

questions about these videos, you can ask him those. You can ask him about whether those videos that you claim that you haven't seen were shown to the jury, or --

MR. ROBERTS: I'm -- I'm sorry.

THE COURT: I need to -- again, I'm not trying to make this harder on you than it is but we've got to deal with specifics. And if there's something that you feel was admitted into evidence and that he should have objected to, I need you to ask him about specific items. And if it's all 42, we'll go through one by one if you've got a good-faith reason to believe that he should have objected, but it's got to be specific. All right.

MR. ROBERTS: I was really -- all right. Look, this is the point that I was trying to get at, right.

THE COURT: I'll give you an opportunity to make argument, sir, but you've got to ask questions. And that's just how this procedure goes.

MR. ROBERTS: Yeah. That's what I'm --

THE COURT: Okay. So what I'm saying is you've got to ask him specific questions about if -- for example, you mentioned the BEST kit. If the contents of a BEST kit were admitted and you had some good-faith reason to believe that it shouldn't have been admitted, those are the type of things you need to ask him about, not Why didn't you object to the evidence being admitted? I mean, it's got to be more --

MR. ROBERTS: I'm asking --

THE COURT: -- narrow and focused.

MR. ROBERTS: I'm asking that on the basis of I could not prepare a defense. How would I have time to prepare a defense? It don't matter what the evidence is that's being offered against me. If this is -- if where, this is after the jury's sworn and he's saying, You know, Exhibits 1 through 42, we'd like to admit without objection, I don't have time to prepare a defense based on that. We're in the middle of trial and they're offering 42 exhibits that I haven't seen. I don't get that. How could I?

You're saying specifically, but I'm saying evidence, period, 42 exhibits. I don't know what it was. How could I have time? I didn't have time to prepare a defense. I mean, I'm only going off of Supreme Court precedent. I'm not making this up.

A Are you going to ask me a question?

THE COURT: Mr. Roberts, ask him -- the question would be --

MR. ROBERTS: I didn't go to law school, Judge. I'm sorry.

THE COURT: I understand that. Somebody explain it to me, were these -- Mr. Griffith, were these items 1 through 42, were they admitted at once or was this done over the course of the trial?

THE WITNESS: Your Honor, we were given opportunity view each item before it was accepted into evidence, and to object or not, and we found no cause to object to the items presented. I'm not sure where they --

MR. ROBERTS: That's not true. It was all at once. I have

it right here.

THE COURT: I understand what you're saying, Mr. Griffith. So, Mr. Roberts, is there anything specific with regard to those items which were admitted without objection that you feel an argument should have been made as to their admissibility?

MR. ROBERTS: Yes, that I didn't have time to prepare a defense. The prosecution said after 42 exhibits, he said I actually just premarked a few more. So it was more than 42. So if he can sit up here and say that prosecution said Okay, here's 42 exhibits and, oh, I got -- I got some more that's premarked, here, that's enough time right there in the middle of trial for me to prepare a defense?

I don't understand what's going on if I can't get past that.

THE COURT: Mr. Griffith, had you seen the items that were provided? Provided in discovery.

THE WITNESS: Your Honor, the record does not reflect the amount of time that we spent actually looking at the items before --

Q You said I wouldn't even talk to you.

THE COURT: Hold on. Hold on.

THE WITNESS: -- before they were admitted into evidence. We had opportunity to see each item, we had opportunity to object to each item, and we found no cause to object to most of these items.

Q Mr. Griffith, didn't you just say that you attempted to go over discovery with me? Didn't you just say that? Didn't you say, didn't you just say that you came down to the jail and I wasn't cooperative with you? And I told you who you were. I said you were an agent working for the prosecution. So even the judge -- the judge said the same thing.

So how did you sit and go through each exhibit with me, over 42 exhibits, if I wouldn't talk to you? How?

A When the Attorney General's Office brought in these items that you're talking about -- now, I did go over all of your evidence that they had provided to us beforehand but, like when they brought in exactly a quantity of --

Q I'm talking about the 42 exhibits after voir dire --

THE COURT: One at a time.

Q -- and the few more he asked to be admitted at that present moment.

THE COURT: Go ahead and finish your answer, Mr. Griffith.

A But when they brought in, for instance, an exact quantity and an actual package containing the drug that they were talking about, I had opportunity to look over that drug, to look over that, and to decide whether I would object to or not. It had already been presented and shown to you as the items that they had listed, that they were going -- that they had as evidence against you, but when they actually brought these physical items in and I had opportunity to look at them I didn't see any reason

or any cause to object to most of them.

Q All right. Aren't I -- aren't I supposed to be able to view these before trial? I mean, you are an assistant to the client. You say you went over them. I didn't see these things.

ATTORNEY SMITH: Your, Honor I'm going to object to the line of questioning. I don't believe that Mr. Roberts is getting in any actual objectionable basis. His not having enough time to look over things because allegedly too many were premarked at once is not a basis for excluding evidence at trial.

THE COURT: Well, I will sustain the objection just based on the fact that this is -- this is cumulative. Mr. Roberts, I understand your argument that -- no, don't shake your head at me now. I'm being very patient with you.

So I understand you say that he shouldn't have just rolled over and admitted all these things at one time. I understand that's the argument you're making. That's your allegation. He says he didn't find any reasonable basis to object.

So is there anything else on this particular issue that you have because we're not going to keep asking the same questions over and over. I understand --

MR. ROBERTS: I'm not. I'm just trying to say -- I'm just saying pursuant to the Supreme Court precedent it says -- it says -- *Hunt v. Mitchell*, was not afforded discovery before voir dire. It doesn't say specifically -- discovery evidence against me is evidence against me. That's just how I'm seeing it.

THE COURT: Okay. He said that he went to the jail numerous times; that you didn't want to meet with him; and that when Judge Jefferson made it clear that he was going to represent you in this trial, that he went into a separate room and went over the discovery with you.

So is there anything, any specific discovery, that you assert you didn't have either before or during your trial?

MR. ROBERTS: Every single exhibit that was offered, I hadn't had opportunity to go over it. Me and him had a miscommunication. I chose to represent myself, which is structural error, because the rights were respectfully denied and he was forced on me.

THE COURT: I understand your issue with him representing you but I'm talking about the discovery. I understand that you feel like he shouldn't have just --

MR. ROBERTS: I haven't seen it, Your Honor. That's what I'm trying to say. If I hadn't seen it, how can I specifically say -- if I'm telling you that I haven't seen it -- all I know is the prosecutor said, Here's 42 exhibits and, oh, Judge, here, I actually premarked a few more.

So for him to show me that in this room before trial but he's saying he premarked a few more, you see how that don't make sense? Because, oh, here's 42. Oh, surprise. I got some more. There's no way I had time to prepare a defense.

THE COURT: Okay. Mr. Griffith, explain -- with regard to

these items that were either admitted or premarked, just talk about your familiarity with those items before they were offered.

THE WITNESS: Well, Your Honor, as it happens, of course the State provided us with a list of items that they were going to present, and I did go over that list of items.

Now, I've been doing this a little while and I never had the State bring me a vial of cocaine to take to my client to show him.

THE COURT: Right. Those things -- those things stay locked up in evidence.

THE WITNESS: And so I didn't show him the physical, actual item that they were going to present, but I gave him the list of items and the weights, et cetera, that they were going to present in trial. I couldn't show him the physical evidence pretrial because it was not in my possession.

Q What is it, 14-7-16-10, I have a right to view the evidence that was -- that they used -- that they use to obtain the indictment, right? I have a right to see this evidence, right?

THE WITNESS: May I offer one more, Your Honor?

THE COURT: Answer the question he asked, and then you can explain it.

A Yeah, you have a right. As it happens, in this trial all the items were spread out and they were visible in the courtroom and, you know, you were sitting there and you could see them.

Q In trial. I'm talking about pretrial. I mean, how can I prepare a defense in trial? I'm in the middle of trial and you just have things just laying across the table. I don't know what that is. It's in a plastic bag away. It's away from me, and you're stipulating without colloquy. You're doing all type of things that -- you're not objecting to me being denied preparation of a defense and impanelment documents. You understand what I'm saying? I know you don't understand what I'm saying but I know who you're playing for.

MR. ROBERTS: All right. I'm done with him. Can I get Agent Wingo on, please?

THE COURT: Hold on a second. The State has a right to question him, and then I'll allow you to call your next witness. So, Mr. Smith, cross-examination.

CROSS-EXAMINATION

BY ATTORNEY SMITH:

Q Mr. Griffith, when were you admitted to practice law?

A November of 2008.

Q Can you give me a summary of your legal experience?

A I have been practicing -- well, first I clerked for Judge Cottingham for a year. It was a very good experience. Then I worked for Ken Young when it was Young, Kiefer & Donald for a year, and they helped me to acclimate with the Sumter area, on course. But since then I've been practicing pretty much on my own. And I now primarily, hopefully, only do criminal defense.

Q How did you come to be involved in Mr. Roberts' case?
A Well, his prior attorney was relieved, and I was asked if I would take the case. I'm not from this county; I'm from a little further northwest. And I said, sure, I would take the case.

And so after I was appointed by the Commission on Indigent Defense, I came -- or, I'm sorry, probably the grand jury, I came -- down and began to work with him on that.
Q And tell me about -- you've alluded to it already, but -- how your role in his defense changed in the beginning of trial?
A Prior to trial I was successful in getting to see him maybe three times where I first came down, I handed him evidence and talked to him about his rights, et cetera, and introduced myself.

And told me at that time that his family was going to hire an attorney. And I said, Okay, that's fine, but I left the documents with him. And then after that, when it turned out his family was not going to hire an attorney, I attempted to come back several times. Several times he refused to see me.

At one time I just -- I just wanted to give him the discovery, and so I was allowed to come to see him even against his -- just to hand him the discovery so I could at least let him have the opportunity to see it.

Then after that of course we started in trial. I had not been relieved and so, of course, I showed up, but Mr. Roberts wanted to represent himself. And after the judge said, Okay, you can represent yourself -- but after just a little bit of time of

him representing himself she said, No, you can't represent yourself; Mr. Griffith's going to represent you.

He and I then talked, had the opportunity to talk some more, and we then had begun the trial. And after our first argument in the trial -- not he and I, that is argument before the Court -- where we made some end rows [ph] and success, he told me that I was glad I was representing him because he wasn't going to be able to do it.

MR. ROBERTS: I object. He's lying in my face.

THE COURT: Overruled.

A But in the meantime, then he did cooperate with me after that and I was able to offer his -- to protect his rights, and we went through the entire trial.

Q Okay. So at that point when he told you he was glad you were representing him did he, after that point, tell you that he wanted to represent himself again?

A No.

Q What are the facts of the case as you remember them?

MR. ROBERTS: I object, Your Honor. I was threatened by the judge to be thrown out of the courtroom and have my own trial -- to view my trial on a monitor, so I couldn't say. I did tell the judge that he was fighting against me with regard to presenting alibi evidence. She threatened to kick me out of the courtroom. I couldn't say it.

THE COURT: I'm not here to judge whether the judge was

right or wrong in her pretrial or rulings during trial so I'm going to overrule that objection.

I do need to hear his recitation of what the facts were in this case. So I understand that you have issues with Judge Jefferson's decision, but this isn't the forum for that. This is just -- we're talking about what Mr. Griffith did. Mr. Smith, go ahead.

A The case was not just in one particular county, across many counties, and so the Attorney General's Office became involved, and after that I was appointed. It involved the trafficking and distribution of drugs by not only Mr. Roberts but by a group of people, an organized group, and so our challenge was to force the State to prove that Mr. Roberts was a principal and involved in that.

Q Okay. Do you remember what evidence they had of his involvement?

A They did have confidential informants that had participated in buys and in transferring drugs that were going testify against him.

Q Okay. Was there information about that evidence in the discovery?

A Was there information about the confidential informants?

Q Let me rephrase. Is that something that would have been apparent, as evidence the State had, by reviewing the discovery?

A Yes.

Q And that was in the discovery you gave to Mr. Roberts and tried to discuss with him?
A Yes.
Q Did you represent anyone with interests that competed with Mr. Roberts' interests?
A No.
Q Did you represent anyone in such a way that you had divided loyalties?
A No.
Q Did you feel there was any reason to challenge the procedure used during the State Grand Jury's meetings?
A No.
Q Is that something you typically consider in a criminal case?
A No.
Q What sort of thing would have been a red flag to you in that regard?
A If it was an indictment that had no basis, that they could not show with any kind of evidence, or to back it up, or something like that --
MR. ROBERTS: Objection.
A -- then I'd be --
THE COURT: What's the nature of your objection?
MR. ROBERTS: I provided him with the procedural irregularity that no court reporter was assigned to record State Grand Jury proceedings. I have it right here.

THE COURT: Okay. Well, he's saying the reason that -- he was asked what type of reasons he would challenge the grand jury. I understand that you allege that there were defects in the grand jury process, but he's asking for his opinion, not whether this was done properly. So I'm going to overrule the objection.

MR. ROBERTS: I understand.

THE COURT: Mr. Smith, go ahead.

Q Mr. Griffith, did you read the indictment?

A I did.

Q Did you see anything on its face that seemed like a legal insufficiency?

A No, I did not.

Q Did you feel that it gave you adequate notice of the charges being leveled against Mr. Roberts?

A Yes, and I explained the charges to him.

Q Did he tell you he did not understand?

A No, he did not.

MR. ROBERTS: Objection. He's saying that he didn't have my cooperation but he keeps saying he explained and showed me all this evidence in the same breath he's saying that he just came down here enough to just hand me a paper. How did you explain anything to me? I'd just object on that basis. I mean, he's saying -- he's ambiguous at best.

THE COURT: I understand you disagree with his testimony and his recollection of the contact the two of you had, but when you

object you need to give a legal basis for the objection like, for example, This is hearsay, or something of that nature, or, This isn't relevant. But disagreeing with a witness's testimony is not grounds for an objection.

MR. ROBERTS: Understand.

THE COURT: I understand that you disagree with many things that Mr. Griffith has said --

MR. ROBERTS: It's been seven years --

THE COURT: -- and done so --

MR. ROBERTS: -- that I've been unlawfully in prison. I'm sorry. That's just a little bit of -- a lot of pressure --

THE COURT: -- if you have an objection, it needs to have a legal -- there needs to be a legal basis.

MR. ROBERTS: Understood.

THE COURT: All right. Go ahead.

Q Mr. Griffith, did you finish your answer or do you have more to say in response to my question?

A I was able to go over that with him once it had been determined that I was his attorney. And we were put into a separate room. The judge sent us to a room to talk together, and we did, and at that time is when we went over the discovery.

Q Before trial began did Mr. Roberts give you any leads he wanted you to follow up on?

A Not that I recall. Nothing that was relevant. I mean, he did, of course, continue to say that -- things like he was a

sovereign citizen and that his constitutional rights, because they didn't have jurisdiction, things like that, and, of course, knowing what I did about the fact that he had been indicted --

MR. ROBERTS: Objection, hearsay.

THE WITNESS: -- that the court did have --

THE COURT: Overruled.

THE WITNESS: -- jurisdiction.

Q So the things he told you were things that you deemed legally irrelevant?

A Yes.

Q Did he give you anything that you felt you could have followed up on?

A No.

MR. ROBERTS: Objection.

THE COURT: What's the grounds for your objection, sir?

MR. ROBERTS: That I did. I can prove it. Right now I can prove that I gave him something, grounds to prove that it is procedure irregularity. That can't be like -- I can't see how we can ignore this.

THE COURT: You're going to have a chance to do a redirect on this witness.

MR. ROBERTS: All right. I apologize.

THE COURT: No, that's okay. I'm not mad at all. I just -- if you feel like he's testifying to something that you can contradict, redirect is the time to ask him that.

MR. ROBERTS: Oh, I'm sorry, Judge.
THE COURT: The objection is just for legal grounds, not that I disagree --
MR. ROBERTS: I apologize. I'm a man. It burns me up to have somebody sit in front of me a liar. You know what I'm saying?
THE COURT: I understand you --
MR. ROBERTS: All right.
THE COURT: -- feel like he's not being truthful, but I'm just trying to -- I'm trying to keep this case moving and also afford you every right you're entitled to, so we're going to keep going.
Q Mr. Griffith, when Mr. Roberts complained to you about the State Grand Jury did he tell you why he thought there was a problem with the State Grand Jury's process in this case?
A Prior to trial, prior to us getting to the trial, I was trying to get across to him what his discovery was, what his rights were, and he was pointing in directions often that were not relevant to his defense, I did not feel relevant to his defense, that I could not -- that I didn't see a way that they would protect his rights for trial or give me any kind of ammunition, anything like that. I couldn't -- he didn't provide me with anything that I could use toward getting prepared for trial until after we really got into trial.
Q I know Mr. Roberts asked you on direct about his criminal

record. Is that something he brought up to you in terms of using it as evidence of alibi before trial?

A No.

Q If he had is that something that you would have looked into?

A If he had said he had an alibi I would have put in a notice of alibi.

Q So what sorts of things did you do to prepare for trial?

A I went over all the discovery. I actually had the opportunity to speak with the Attorney General to see if, you know, if I could give him some kind of information that would help him to make the decisions that he may want to make. And so I was prepared for the trial. We prepared a notebook, you know, a trial notebook, so we were prepared for trial because I had continued to assume that I would be trying the case.

And I continued to try to connect with him and talk to him. All these are activities that we record as far as we record everything we do, and you can see that this is lots and lots of pages. I mean -- and then I have -- this is not including the trial. This is just trying to talk to him, looking into the evidence, and trying to go over it.

Q So that's a multipage activity log? Is that what you're saying?

A Yeah. I would say -- I can count them, but it's probably about 10 pages.

Q Okay.

A Eight pages.
Q Eight pages, okay. Did you discuss potential defenses with Mr. Roberts?
A He wouldn't talk to me.
Q Would you have done that if you had been able to?
A Yes.
Q The chain of custody issue, what's your normal practice for chain of custody issues at trial?
A If, before the trial, they have offered as, to me as, discovery, a chain of evidence and it looks normal, then we might be willing to stipulate to the chain of custody, depending on -- sometimes if it's going to just take a long, long time but it's clear in their documentation that the chain was not broken and none of his rights are being violated, then we will sometimes stipulate to that.
Q What was your defense at trial? What was the defense?
A That he didn't do it.
Q Were you denying that there were drug transactions from some of these people?
A We were denying his knowledge of it.
Q Do you always object to every single exhibit?
A No.
MR. ROBERTS: Excuse me, Judge. I didn't want to -- I didn't want to -- I wanted to object but I didn't, but I wanted to note something. The court deputy [ph] took my pen, and I just

wanted to get that so I can -- on redirect, I have it. I just didn't want to lose it. No, I mean mine. I mean, I'll use it but if I had mine it would have been better.

Q Did you try to coerce Mr. Roberts to plead guilty?

A No.

Q Did you advise him that you thought he should plead guilty?

A Once we were into the trial I asked him if he -- what he thought was going on, you know, how he thought it was going -- that's usually how I start that conversation -- and if he wanted me to talk to them about a plea or if he would be willing to accept one.

MR. ROBERTS: Objection, hearsay.

A I was talking to him about how many years he may get.

THE COURT: Hold on a second. He objected, Mr. Griffith.

THE WITNESS: I'm sorry.

MR. ROBERTS: Just so -- let me clarify, right.

THE COURT: Okay.

MR. ROBERTS: The judge suggested the plea. She initiated the plea. He didn't talk to me and -- you know what I'm saying?

THE COURT: Again, Mr. Roberts --

MR. ROBERTS: All right.

THE COURT: -- you know, if you want to -- if you feel like that's a point that needs to be made, you can use that on redirect.

MR. ROBERTS: All right.

THE COURT: But just for the record -- and these are statements by a party. You're a party to this case. Rule 801(d)(2), those statements are not hearsay, so that objection was made prior and I did want to put that on the record, under South Carolina Rules of Evidence, 801(d)(2), the statement of a party opponent not considered hearsay under the evidence rule. So again, if you want to ask him about this whole plea situation, do it on redirect.

MR. ROBERTS: All right. I'm sorry.

Q Please continue.

A I do believe at one point, as I recall now, the judge did ask us about a plea, you know, if a plea offer was made. We batted it back and forth. But then during the trial I would ask my client if they would consider taking a plea. But he didn't want one.

Q You testified earlier about reviewing the discovery with Mr. Roberts during trial and he asked you about recordings. Did you remember playing any recordings for him?

A I don't remember but I would have had my computer with me and, you know, any ones that we had, I would have tried to go over what I could in the amount of time we had.

Q Is that also something you would have done if he would have allowed you to review the discovery with him before trial?

A Absolutely. I would have already gone through them myself, which I did. And I was able to tell him what was on them, but

...

Q You testified earlier that you did not object when Agent Wingo testified about Justin Hunter's confession about going to New York, and I believe your testimony was that you didn't think it was harmful to Mr. Roberts' defense. Can you tell me why you thought that?

A At the time I was listening to it it didn't sound like it was harmful as far as some kind of prejudice against him. I don't recall the exact situation, I just really don't. As you know, I just got this transcript. But I would have objected if I thought anything was problematic as far as prejudicial or not properly presented.

Q Do you recall that Justin Hunter was one of Mr. Roberts' codefendants?

A Yes.

Q In reviewing the discovery were you aware that he had given that statement?

A Yes. And he was present to testify, actually, and so objecting would have been --

MR. ROBERTS: Objection. He wasn't -- I mean, I'm wrong for that? Justin Hunter was not present.

THE COURT: Again, this is something that needs to be -- needs to be covered on redirect. If you disagree with the statement and you feel like you can refute it, it will be on redirect.

A I don't remember that he was there but I do remember that we had discussed it prior, prior to that, that they could have brought him.

Q Have you ever been part of a conspiracy against Mr. Roberts?

A No.

Q Do you have any knowledge that would implicate Susan Hackett, Joshua Underwood, David Fernandez, or the Court of Appeals of any conspiracy against Mr. Roberts?

A No.

ATTORNEY SMITH: Just one moment, please. No more questions. Thank you.

THE COURT: All right. Mr. Roberts, now you have the opportunity to redirect Mr. Griffith. The scope of your redirect needs to be limited to the things he testified to on cross-examination, so if there's anything that he said during Mr. Smith's questioning of him that you want to refute, now is the time.

MR. ROBERTS: All right. Thank you.

REDIRECT EXAMINATION

BY MR. ROBERTS:

Q You said that your representation, you based that on that he didn't do it, he had no knowledge of this, right? That's what you said, right?

A As far as I can remember, that's what we got.

Q But you tried to coerce me to give up my rights and take a

plea?
A I tried to represent your interests to the best of my ability.
Q All right. Justin Hunter was on the run at this time. He was not there, so his statement was testimonial, right?
A You'll have to give me specific --
Q I mean, he's not available for me to cross-examine him. He didn't testify at the State Grand Jury because that didn't happen. I mean, he wasn't there.
A What's your question?
Q It's testimonial, right? So what I'm asking you is, you just said that he was there, right?
A No.
Q Or he might have been there, you said?
A I said he could have been there.
Q But we know that he wasn't there. I mean, they will concede that he wasn't there, right?
A Okay.
Q He was out on a bond, right?
A I guess. I don't know. You tell me.
MR. ROBERTS: That's it, Judge.
THE COURT: All right, folks. We've been in here quite a while. We're going to take a brief recess and allow everybody to get up and stretch their legs. So we're going to -- that clock's fast. It's 3:55. We're going resume at -- it's 3:56. We're

going to resume at 4:06. Mr. Roberts, who is your next witness going to be, sir?

MR. ROBERTS: Justin Wingo.

THE COURT: All right. We'll resume this case in 10 minutes.

(Court recessed at 3:56 p.m. and reconvened at 4:14 p.m.)

THE COURT: Mr. Roberts, call your next witness, please.

MR. ROBERTS: I had a question for Griffith. Can I -- just one question.

THE COURT: All right. Mr. Griffith, you're still under oath.

(Timothy Griffith resumes the witness stand.)

REDIRECT EXAMINATION

(cont.)

BY MR. ROBERTS:

Q I just want to know, how did you become aware of -- who solicited your representation for me? How did you know that I had a so-called case?

A I get appointments -- I was appointed as your attorney. I get appointments from -- I don't remember if this one was from the Commission on Indigent Defense or from the grand jury. The clerk of court just -- see, there's a list that she has of people that kind of take their turn to get appointed. I was in turn to be your appointed after you got rid of your previous attorney.

Q Last question. I promise. If you wanted to access that

information on your own through public index, would you be able to do it?

A Access which information?

Q That I actually had a case.

A Yeah. Your case was on the public index, certainly. Why?

Q Okay.

A That's it?

THE COURT: All right. You can step down.

THE WITNESS: Your Honor, may I be excused from court -- if there's going to be another callback?

MR. ROBERTS: Oh, I'm sorry. The reason why I asked, is because I have an attorney that tried to access my case through public index, Brady Vannoy, and he said, "I am enclosing a copy of what the jail says they are holding you on" --

ATTORNEY SMITH: Objection, hearsay.

MR. ROBERTS: "However" -- I have it right here.

THE COURT: Well, I don't know how that's relevant to --

MR. ROBERTS: Because he's --

THE COURT: -- Mr. Griffith's representation.

MR. ROBERTS: Because he said he can access it on public index. Here's an attorney who says that they couldn't; they only could give me a copy of what the jail said they was holding me on, and they actually showed me, no bond set, the jail itself, into the charge. There was never any --

THE COURT: All right. Mr. Griffith doesn't have

anything -- any knowledge of what Mr. Vannoy may have done or may have known.

MR. ROBERTS: All right.

THE COURT: So, Mr. Griffith, you can step down.

THE WITNESS: Your Honor, may I be excused, or?

THE COURT: Yes, you may be excused.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. Mr. Wingo, please come forward to the witness stand.

MR. WINGO: Your Honor, is it okay if I bring this transcript with me, sir?

THE COURT: Yes, sir. All right, folks. Before Mr. Wingo is sworn and before his questioning begins I want to remind everyone that issues before the Court are whether Mr. Griffith was ineffective in his representation. I don't know what the questions are going to be or what Mr. Wingo's answers are going to be but they need to be tailored towards the issues which are before the Court. All right.

MR. ROBERTS: I have a question then.

THE COURT: Yes, sir.

MR. ROBERTS: In the application for the PCR, right, I stated my grounds that I wished to pursue. So I can only -- I can only assess claims based on ineffective assistance and ineffective appellate?

THE COURT: That's what PCR is for, Mr. Roberts. I've got

to make determinations as to whether your counsel was effective, and if they weren't effective whether their ineffective assistance of counsel prejudiced you in any way.

Now, I don't know what questions you may have for Mr. Wingo. I just want you to know that we're not going to retry the case.

MR. ROBERTS: I get it. I understand. I'm glad how you just said it. It give me a little bit more -- I get it.

THE COURT: I'm trying to help you preface your questions.

MR. ROBERTS: Yeah, I appreciate it.

THE COURT: I'm trying to help you. Like I said, I don't know what this witness is going to testify to but they've got to be relevant to the -- the questions have to be relevant to the issues that are before the Court. And I'm not trying to hurry you in any way but I want to make sure that we are covering the proper ground in this case. So --

MR. ROBERTS: I get you now.

THE COURT: If any objections are made during the course of your direct examination, if Mr. Smith objects, everybody needs to stop. He's going to give me the grounds for the objection, and I'll give you an opportunity to say something, and then I'm going to rule. So, like I said, I'm not trying to rush you, but --

MR. ROBERTS: No, I understand.

THE COURT: -- we don't need to replow the same ground. All right. You can swear the witness in, please.

JUSTIN WINGO,

having first been duly sworn, is examined and testifies as follows:

CLERK OF COURT: Please be seated. State your full name for the record, and please spell your last name.

THE WITNESS: My name is Justin Wingo. That's W-i-n-g-o.

DIRECT EXAMINATION

BY MR. ROBERTS:

Q All right. I'm asking this question based on counsel's failure to protect my Fourth Amendment right from unreasonable seizure and arrest.

THE COURT: Okay. Ask the question.

MR. ROBERTS: No. I just wanted to -- you say to lay some foundation, right, so this goes to my claim of ineffective assistance of counsel.

THE COURT: Okay.

MR. ROBERTS: All right.

Q On June 9th, 2016, did you supply a letter in place of a warrant for Wymann [ph]?

A I would have to see that letter, sir. I do not recall.

MR. ROBERTS: Can I show him the letter?

THE COURT: Hand it to the officer.

ATTORNEY SMITH: May I see it, too, Your Honor?

THE COURT: Hand it to Mr. Wingo after you've had the opportunity to review it.

A Will it be okay if I review it real quick, sir?
Q Go ahead.
A This letter came from an administrative assistant, Christina Bass to the Berkeley County Hil Finklea Detention Center to a Corporal Frederick Samuel, and it is a memorandum request for prisoners to be accepted. It says "Please accept this memorandum as a request for you to accept the following prisoners this afternoon, June 9, 2016, by SLED Agent Justin Wingo. These prisoners will be housed at your facility until further notice. These prisoners were previously housed in Columbia at Alvin S. Glenn Detention Center: Justin Hunter, Emory [ph] Roberts, Rosemary Crazado [ph], and Lusaine [ph] Dixon [ph] Johnson. These subjects are being prosecuted by the South Carolina Attorney General's Office. Thank you for your attention and assistance with this matter. If you have any questions, please do not hesitate to contact me at 803" -- I think that's 7-something "0056, or SLED Agent Justin Wingo at 803-609-7000."

This is a memorandum advising the detention center that you and your codefendants were being moved from Alvin S. Glenn to Berkeley County.

Q All right. Now, that's at your direction, right, that letter? It was -- you brought us there?
A Yes, I transferred you. She has no -- she couldn't transport you. We -- myself and other SLED agents transported you. Yes, sir.

Q All right. What I'm asking is, by what authority of law did you do this? Because Section 14-7-1750 say if an indictment is returned by a State Grand Jury the presiding judge must transfer, by order, once he finds the indictment to be within the provisions of Article XV. And that's not an order from the presiding judge; that's a letter in place of the warrant requirement from you.

So if -- not if -- I'm being -- I was -- we were held on a letter at the direction of you, I want to know by what authority of law because an unreasonable arrest suggests that counsel was ineffective for protecting my Fourth Amendment right?

A Sir, do you remember what date you were arrested?

Q I'm not asking you what I remember. I'm asking you by what authority of law did you bring me to Hil Finklea Detention Center?

A Under the indictment. You were arrested on indictments that were brought before the State.

Q By what authority of law --

A Sir, I'm not familiar with --

Q -- could you tell me how I was arrested?

ATTORNEY SMITH: Your Honor, he's not letting the witness finish his answer.

THE COURT: And, number two, what does this have to do with -- what does this have to do with whether Mr. Griffith was effective or not?

ATTORNEY SMITH: And I'll say one more thing on that, Your Honor.

MR. ROBERTS: He just asked me a question.

THE COURT: Hold on.

ATTORNEY SMITH: This is tied into that. I apologize for jumping in. I'm not sure the point of this and this is not something I had notice of, so I was not able to ask Mr. Griffith about whatever this new allegation is. So if it's something new, I'm now left without the chance to ask him to explain his actions.

THE COURT: Well, it seems like Mr. Roberts is questioning whether the State Grand Jury, number one, was impaneled; and, number two, if they were impaneled, the validity of the indictment. I don't know that this witness can testify as to how those two issues may have rendered Mr. Griffith's representation ineffective.

And this is what I'm talking about, Mr. Roberts. I understand you may have some issues with asserting jurisdiction but, again, we've got to focus on whether your counsel was effective and whether -- if they were ineffective, whether that ineffectiveness prejudiced you --

MR. ROBERTS: But that's exactly what I'm getting at because --

THE COURT: Okay. Well, let's get there, because I --

MR. ROBERTS: That's what I'm trying to ask.

THE COURT: Ask your next question.

MR. ROBERTS: I'm trying to say, as an attorney, if he has a duty to protect my Fourth Amendment rights but yet I was held on a letter in place of the warrant requirement, that goes straight to him being ineffective. I don't see how it ain't. I hadn't had notice. Even Mary P. Brown, the clerk, a month afterwards said that, SLED has jurisdiction over you. So if he's my attorney, he's supposed to protect my Fourth Amendment rights, but he doesn't know that this is going to on, how effective could have been?

THE COURT: Okay.

MR. ROBERTS: I was held on a letter.

THE COURT: The indictment confers jurisdiction of the Court. So are you saying that Mr. Griffith should have challenged the sufficiency of the indictment?

MR. ROBERTS: I'm saying that if an indictment was the issue it would have been a warrant for indicted offenses presented to Hil Finklea Detention Center, not a personal letter at his direction. It would have been -- here you go, these warrants on these indicted offenses. Remember, Section 14-7-1750 says it has to be returned once the presiding judge find it in accordance with provisions of Article 15. It has to be returned to the county for prosecution by a order. That's not an order from the judge; that's a letter.

ATTORNEY SMITH: May I say one thing, Your Honor?

THE COURT: Yes, sir.

ATTORNEY SMITH: I would also add in an objection to relevance. He's asking the question about whether an arrest was illegal by citing a letter discussing a post-arrest transfer from one detention facility to another, and that doesn't address, in any way --

THE COURT: I understand the point he's trying to make, that he's made, through questioning him about this letter but, again, this has to be brought back to what Mr. Griffith did or didn't do.

MR. ROBERTS: He failed to investigate and acquire mitigating evidence. That's mitigating evidence. On February 8th I was arrested, Judge, right, February 8th, 2016.

THE COURT: Again, you've made that allegation but, you know, where you were held is not relevant to --

MR. ROBERTS: I'm not saying where. How. How. How I was held.

THE COURT: Well, how is that mitigating as to whether you were proven --

MR. ROBERTS: Had -- had --

THE COURT: Oh, no. Let me finish now. How is that relevant to the underlying charges for which you were tried, because --

MR. ROBERTS: Because that -- oh, I thought you was finished. I'm sorry.

THE COURT: -- where were you held ordinarily wouldn't be presented to a jury. I see the point you're making. I'm trying to narrow our focus because if we continue at this pace we're going to be here till 9:00 tonight.

And this has got to focus what Mr. Griffith did or didn't do. And so if you have questions for this witness that pertain to Mr. Griffith's representation, those are certainly relevant.

I understand you felt like you were held unlawfully. I've made notes of that.

MR. ROBERTS: I don't mean to cut you off.

THE COURT: I know, but I'm trying --

MR. ROBERTS: No. You said lay some foundation.

THE COURT: No, but I'm telling you, I don't know how --

MR. ROBERTS: I'm getting there.

THE COURT: Okay.

MR. ROBERTS: Just give me a shot, please. Just give me a shot. It's been seven years I've been unlawfully -- please give me a shot.

THE COURT: Let's get there.

MR. ROBERTS: All right.

THE COURT: All right.

Q So can I have that back?

A Sure.

MR. ROBERTS: I'm going to get there. I'm going to tie it into the ineffective. I'm sorry, Judge.

THE COURT: That's all right.

MR. ROBERTS: Thank you.

Q On February 8th, 2016, we were arrested, right, and we were taken directly Alvin S. Glenn. We were arrested in Berkeley County, Summerville, right, and we were taken by you to Alvin S. Glenn, right?

MR. ROBERTS: Now, what I'm trying to say, Your Honor, is Section 14-7-1730, jurisdiction of presiding judge, right, it says "The presiding judge has jurisdiction to hear all matters arising from the proceedings of a State Grand Jury including, but not limited to, matters relating to the impanelment or removal of State Grand Jurors, to quash subpoenas, punishment for contempt, and a matter of bail for persons indicted by a State Grand Jury." So if the jurisdiction of the presiding judge is based on persons indicted by a State Grand Jury, I'm asking him -- I'm just laying a foundation. I'm going to get to it.

Q When we were taken directly to the fifth district, arrested to the ninth district and taken directly to the fifth district, was this a direct indictment? Was it the result of a direct indictment? Because otherwise the presiding judge would lack jurisdiction if it wasn't a direct indictment.

A This matter was heard before the State Grand Jury. You were taken to Alvin S. Glenn because that's where -- the judge who had issued bond is in Columbia -- it would be -- I'm assuming it would be the administrative judge.

Q So on February 8th, 2016, you're saying we were indicted?
A I don't know the date you were indicted. I don't have the paper in front of me, the dates of indictments in front of me.
Q All right. If the jurisdiction of the presiding judge is based on persons indicted by a State Grand Jury already, I mean, you would have to have to know that to have taken us there.
A I'll be honest. I'm not familiar with what you're quoting here, I'm not familiar with the law, or what case you're quoting.
Q I'm not asking you that. I'm asking you by what authority of law were we taken to the fifth district on February 8th, 2016?

It's going to tie in with the ineffective assistance of counsel because he cannot possibly be effective if we were whisked all around without any warrants.

A Was he your counsel at that time?
Q No.

THE COURT: Hold on. Somebody -- for my edification, somebody tell me when the indictments were --

MR. ROBERTS: April 12th and 13th, 2016. I was arrested February 8, 2016. That's 57 days afterwards. How? Indictments was April 12th, April 13th, 2016, Judge.

ATTORNEY SMITH: Your Honor, I'm looking at the indictment. The face indicates it was filed on April 13th, 2016. It does have some dates initialed throughout the document, and the date is April 12th, 2016. I don't necessarily see something on it indicating the date on which it was true-billed except for the

handwritten date of April 12th and the stamped date of April 13th.

THE COURT: All right.

Q By what authority of law were we taken out of the ninth district to the fifth district on February 8th, 2016?

A This might be a better -- a question better suited for your lawyer.

Q No, no, no. That's the question I asked. I don't need a better question. I need to know about what authority of law --

THE COURT: He can only answer questions that he has personal knowledge of, and he is not an attorney. Mr. Smith?

ATTORNEY SMITH: Yes, sir. My objection would be to the questions, that he's saying it calls for a legal opinion about the law, I guess he can ask what was Agent Wingo's understanding of the source of his authority to ask for this transfer, but as far as asking him did he have legal authority to make the arrest based on some statute that Agent Wingo is not familiar with, that doesn't get us anywhere.

MR. ROBERTS: I'm talking about a warrant.

Q If February 8th, 2016, we were taken to the fifth district and it's in front of the presiding judge, pursuant to Section 14-7-1730, they would have had to have already been an indictment, so that would mean there would have had to have been warrants issued on those indictments. There wasn't, because the date of the indictments is dated April 12th, April 13th, 2016.

So when I say by what authority of law, it goes directly to counsel being ineffective in not protecting my Fourth Amendment right from unreasonable seizure and arrest. That's not hard. I'm asking him by what authority of law --

THE COURT: He doesn't know what Mr. Griffith did and why Mr. Griffith didn't make any challenges to any of these.

MR. ROBERTS: No. I'm saying his -- his -- all right, I understand what you're saying, Judge, but what I'm saying is Mr. Griffith -- all right.

Q Did you have a warrant on February 8th, 2016, on indicted offenses to take us to Columbia?

A I would have to look and see if there was a warrant on the indictment.

Q I'll wait.

A Actually, it might be better if I conferred with the prosecutor.

Q I'll wait. I've been waiting all seven years.

A But again, I'm --

THE COURT: I think the appropriate answer to this question is you don't know, correct?

THE WITNESS: Correct. I don't know.

THE COURT: I can't let you supplement your answer by conferring with another witness.

THE WITNESS: Yes, sir. I don't know.

Q So you took us into custody not knowing because there definitely isn't no warrant. So you took us into custody without knowing and just took us out there and just didn't know? I mean, you are a law enforcement officer; is that right? You have a duty, right, to procure an arrest warrant, right?

ATTORNEY SMITH: Your Honor, these are questions that Mr. Roberts should have asked --

MR. ROBERTS: I mean, he should know that.

ATTORNEY SMITH: -- Mr. Griffith. I feel like these are questions he should have asked Mr. Griffith, why didn't Mr. Griffith do this or that. And, again, I'm left without ability to ask Mr. Griffith for explanation.

THE COURT: Mr. Roberts, I see what you're saying, but this witness can't shed any light on why Mr. Griffith did or didn't do certain things.

MR. ROBERTS: That's not what I'm asking, Your Honor. I'm asking this: So you can see, right? Now, I mean, you can see better than me. You went to law school. So if he -- he has a duty. He can't just go and get people and say, Well, I don't know, I just took you here.

THE COURT: Mr. Roberts --

MR. ROBERTS: That goes --

THE COURT: -- that issue is not -- no. His duty doesn't have anything to do with whether Mr. Griffith was effective or ineffective. Now, if you feel like he should have challenged the

Court's jurisdiction, you made that clear through your questions to Mr. Griffith.

MR. ROBERTS: I'm talking about this --

THE COURT: This witness doesn't know what Mr. Griffith did.

MR. ROBERTS: I'm not -- all right. That's not what I'm saying. I'm saying, right, if he just testified to his part, as a law-enforcement officer you just don't go and get people and whisk them away and take them anywhere without a warrant, so I'm trying to establish if he did not have a warrant for indicted offenses on February 8th, that means you can infer that Mr. Griffith was ineffective because he did not protect my Fourth Amendment rights.

THE COURT: I understand that.

MR. ROBERTS: So I'm not asking him to answer for Griffith. I'm asking him his own personal knowledge, Did you have warrants for indicted offenses?

THE COURT: He said he didn't know. He answered that question.

MR. ROBERTS: That's sufficient in a court of law? He don't know?

THE COURT: It's his answer. If he doesn't remember or doesn't know --

MR. ROBERTS: All right. I'm going to move on.

THE COURT: I mean, that's -- he can't -- you'd rather him say that than make something up? I mean, he can't --

MR. ROBERTS: No. He can tell the truth and say, No, I didn't have no warrants.

THE COURT: If he doesn't know, then he doesn't know.

MR. ROBERTS: Can I compel the Court to produce the warrants for the dates? No, I can't do that? A compulsory process --

THE COURT: The Court doesn't have the warrants. I'm here to determine whether Mr. Griffith and your appellate counsel were ineffective. You've made the claim that you feel like Mr. Griffith didn't challenge jurisdiction in this case.

MR. ROBERTS: You keep saying that but that's not -- that's not purely what I'm saying. Yes, you're right, but that's not just what I'm saying.

I'm saying Mr. Griffith did not protect my Fourth Amendment rights from unreasonable seizures and unreasonable arrest. By him answering the question on whether there was warrants to bring me in front of the presiding judge shows, one, that he didn't protect my Fourth Amendment right; two, that he didn't even know that the presiding judge didn't have jurisdiction to even set a bond on us for that day because it wasn't the result of a direct indictment.

I mean, if I know that, y'all got to know that.

THE COURT: I wasn't there. How do I know anything? All I know is what these witnesses can tell me.

MR. ROBERTS: All right, but I showed you. Even the clerk said SLED has jurisdiction over you. We in the clerk's office,

have no info. Now, pursuant to Rule 3, disposition of warrants, it's transmittal to the clerk within 15 days.

THE COURT: We're not here to talk about whether these clerks followed the rules. We're here to talk about what your lawyer did.

MR. ROBERTS: Yeah. I'm just showing that if he had -- if you had all of these things, right, all these irregularities, right, and it implicates my Fourth Amendment right against unreasonable arrest, right, Mr. Griffith could not have been effective. I ask because he shows up and says, Oh, you know -- I got an attorney who says that he looked at public index and he even made a copy and showed me, Look, this is what the jail say they holding you on.

And I also have the letter that shows that he didn't procure a warrant. He had a personal letter written, typed up, and held me. I mean, if I'm supposed to have a lawyer --

THE COURT: Well, we're not here to determine whether what he did was proper.

MR. ROBERTS: I understand that.

THE COURT: Again, you've got to ask questions about what Mr. Griffith did, and he has no idea.

MR. ROBERTS: I understand what you're saying, Judge, but that's not what I'm doing. I'm trying to show, right, if he didn't have a warrant for these indicted offense, right -- I'm not talking about jurisdiction or nothing, right.

THE COURT: You don't always have to have a warrant for a court to have jurisdiction. There are indictments which are directly presented to the Court.

MR. ROBERTS: But I'm night talking about jurisdiction, Your Honor. I just said I'm talking about my Fourth -- I'm only talking about my Fourth -- right now I ain't talking about no jurisdiction. I'm talking about my Fourth Amendment right against unreasonable seizures and arrests.

THE COURT: Okay.

MR. ROBERTS: I'm trying. You said lay some foundation. If he cannot answer, he don't know, I mean, he drove three hours down here and he don't know, but they have all these resources, all this paper, but don't you know whether you had a warrant for our arrest? That goes directly to Griffith being ineffective because he couldn't protect my Fourth Amendment rights and he had no idea what was going on.

ATTORNEY SMITH: Your Honor, I'd like to make a point and then a suggestion, if I may. The point would be that at the hearing in November Mr. Roberts did not explain that this would be a topic he'd cover today --

MR. ROBERTS: Yes, I did. I said that's conspiracy --

ATTORNEY SMITH: -- and so when we're not able to cover this --

(Simultaneous talking.)

MR. ROBERTS: I'm trying to show that.

ATTORNEY SMITH: -- we were not able to cover this with Agent Wingo ahead of time, so --

MR. ROBERTS: I had no notice of the charges, but I'm here.

ATTORNEY SMITH: So the suggestion would be if we can have the examination of the witnesses and save argument and testimony from Mr. Roberts until after the witnesses have testified, cause it's -- it seems like half of what he's saying is testimony --

MR. ROBERTS: I don't even no problem with that.

(Simultaneous talking.)

ATTORNEY SMITH: -- and it's kind of drawn out --

MR. ROBERTS: I just want an answer from him.

(Simultaneous talking.)

ATTORNEY SMITH: -- for all the witnesses who are here in the room.

THE COURT: He said he didn't know. That's his answer.

MR. ROBERTS: All right. He didn't know. All right. I'm going to move on.

Q On June 9th by what authority of law did you show up to Alvin S. Glenn and pick us up? Are you a transferring officer? Do you do transfers for the county jail or do you just take that upon yourself and do it yourself?

A I'm not familiar with what --

Q By what authority of law on June 9th, 2016, when we were released to your custody, by what authority of law, who sent you? Who told you, Go get them and bring them to Hil Finklea? By the

way, Christina Bass, I need that letter.
A I do not recall.
Q You do not recall?
A That's correct. I do not recall.
MR. ROBERTS: Okay. Yeah, we can go with other appellate lawyer. I ain't --
THE COURT: Hold on one second.
MR. ROBERTS: Oh, I'm sorry.
THE COURT: Mr. Smith's got an opportunity to cross-examine this witness, so we're going to afford him that right. Do you have anything, Mr. Smith?
ATTORNEY SMITH: No questions. May Mr. Wingo be excused, Your Honor?
THE COURT: Yes. All right. Mr. Roberts, who is your next witness?
MR. ROBERTS: Hackett.
THE COURT: All right. Ms. Hackett, if you'd come forward, please.

SUSAN B. HACKETT,

having first been duly sworn, is examined and testifies as follows:
CLERK OF COURT: State your full name for the record, and please spell your last name.
THE WITNESS: My name is Susan Hackett. My last name is spelled H-a-c-k-e-t-t.

Susan Hackett - Direct by Mr. Roberts

DIRECT EXAMINATION

BY MR. ROBERTS:

Q All right, Ms. Hackett. On December 10th, 2017, I wrote you a letter in regards to jurisdiction and my claims of not being indicted, and I sent you the enclosure and asked you to stamp it, file it, whatever, and send it back to you, which you did. All right. I exercised my right pursuant to Article I, Section 14, to be heard in my defense, and I requested impanelment documents.

And you rendered ineffective assistance of appellate counsel by failing to raise significant and obvious issues? No?

A I did not raise an issue related to the judge not ordering you to receive the impanelment documents. I did not raise that issue on appeal.

Q Understand that. Did you prejudice my adjudications on the merits of my claim when you did not raise the issue of the impanelment documents?

ATTORNEY SMITH: Objection. Calls for a legal opinion.

THE COURT: She can answer. You can answer.

THE WITNESS: No, sir. I read your transcript and did the job of an appellate lawyer. I raised the best issue on appeal that I could find, which I believe was the judge's denial of your right to represent yourself.

Q All right. Why had you not raised the issue of counsel laboring under a conflict of about?

A There was no issue in the record that I saw that objected to

Susan Hackett - Direct by Mr. Roberts

counsel having a conflict of interest or any evidence put forward that trial counsel had a conflict of interest, and without such objection or evidence in the record I could not raise it on appeal.

Q All right. Jurisdiction can be raised at any time and the Court of Appeals has a duty sua sponte to raise the issue of the subject-matter jurisdiction, correct?

A Subject-matter jurisdiction absolutely can be raised at any time.

Q All right. Now, I asked you numerous times -- I'm pretty sure you recall because I know I was getting on your nerves. I wrote you a letter lot of letters.

A You did write me a lot of letters.

Q I have every single one. All right. Each time I asked to you raise subject-matter jurisdiction I provided you the enclosure to show that jurisdiction was lacking. Why didn't you raise it?

A I disagreed with your assessment. As I told you in response to your letters, I just had a different legal opinion as to whether jurisdiction existed in your case or not.

Q All right. You, in a letter dated August 12, 2019 -- this was your correspondence to me -- you said "I did not raise the issue related to your case not going in front of the grand jury because there was no evidence to support such a claim." I don't see how. "I did not raise the court-reporter issue because the

Susan Hackett - Direct by Mr. Roberts

State Supreme Court does not assign court reporters to State Grand Jury cases for the indictment procedures."

All right. If I wanted to assess what court reporter took the transcript for those proceedings who would I write to?

A You would need to contact the Clerk of Court for the statewide grand jury, not court administration.

Q Would court administration have direct knowledge of that being it is pursuant to Section 14-7-1700, the rate at which a court reporter may charge for a transcript has to be in conformity with court administration?

A I don't know what court administration knows.

Q Are you familiar with Section 14-7-1700?

A No, sir.

Q No?

A No, sir, not off the top of my head. I generally have to look up statutes and cases.

Q All right. I'm going to help you out real quick. All right. Section 14-7-1700 reads "Record of testimony and other proceedings of grand jury; furnishing of copy to defendant; transcripts, reporter's notes, and all other documents to remain in custody and control of the Attorney General. A court reporter shall record, either stenographically or by use" -- I'm sorry. I'm reading too fast. I'm sorry. -- "a court reporter shall record, either stenographically or by use of an electronic recording device, all proceedings except when a State Grand Jury

Susan Hackett - Direct by Mr. Roberts

is deliberating or voting. Subject to the limitations of Section 14-7-1720(A) and (D) and Rule 5, South Carolina Rules of Criminal Procedure, a defendant has a right to review and to reproduce stenographically or electronically recorded materials."

You didn't raise that issue when I requested this from the judge. It's significant and obvious because I'm sending you correspondence saying that they lacked jurisdiction based on an indictment that I hadn't been indicted -- and I'm going to go on.

"Transcripts of the recorded testimony or proceedings must be made when requested by the Attorney General or his designee. Subject to the limitations of Section 14-7-1720(A) and (D) and Rule 5, South Carolina Criminal Rules of Procedure, a copy of the transcript of the recorded testimony or proceedings requested by the Attorney General shall be provided to the defendant by a court reporter, upon request, at the transcript rate established by the Office of Court Administration." "Upon request, at the transcript rate established by the Office of Court Administration."

So would you say that court administration -- if I wrote the court reporter manager, the State Supreme Court, I wrote to the court reporter manager and I asked to obtain a transcript, right, and she says --

ATTORNEY SMITH: Objection, hearsay.

MR. ROBERTS: It's not hearsay. It's the statute, right. I mean, this is actual, that's not hearsay.

Susan Hackett - Direct by Mr. Roberts

THE COURT: The issue is obviously the --

MR. ROBERTS: Jurisdiction. She --

THE COURT: Hold on. Let me talk. My understanding is that court administration sets the rate that the court reporter who transcribes the grand jury proceedings would be paid at but court administration does not assign court reporters so --

MR. ROBERTS: I understand --

THE COURT: You've got to ask her a question.

MR. ROBERTS: All right.

Q I'm not trying to play word semantics. I'm not saying they assign court reporters. What I'm saying is would they have direct knowledge, would they be able to assess who took that transcript?

A I don't know, but I don't think so.

Q I just read it to you.

A What you read did not indicate that they actually assign --

Q All right. Let me give you something --

THE COURT: No. Let her answer.

MR. ROBERTS: I'm sorry.

Q I'm gonna give you something better, all right. This is from court administration. "I am writing you in response to your letter dated October 16th, 2017, requesting" --

ATTORNEY SMITH: Objection, hearsay.

MR. ROBERTS: -- "the copy of the transcript" -- can I finish before he objects?

Susan Hackett - Direct by Mr. Roberts

THE COURT: I don't know what he's offering it for. I don't know if he's offering it for the truth of the matter asserted. So just read what you want to read and then ask your question, and then I'll rule on the objection.

MR. ROBERTS: All right.

Q "I am writing in response to your letter dated October 16, 2017, requesting a copy of the transcript from the State Grand Jury proceedings that may have occurred on the dates of April 12th - April 13th in Richland County. In order for me to assist you in obtaining the transcript of record from your proceedings, please provide the following information: Presiding judge, exact date with year of hearing. This information is required in order for us to assist you. When this information is received, we will forward the request to the court reporter who will then contact you to make arrangements for payment and delivery of the transcript. Please be advised that court reporters have 60 days to prepare a transcript after satisfactory payment arrangements have been made. Please contact this office at your earliest convenience with this required information."

Knowing that, and me providing you with the same, would you consider that direct knowledge in being able to assess what court reporter, if any, took that transcript on those dates?

A No, sir.

Q No?

A No, sir.

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Q So that wouldn't be indicative of that the Supreme Court -- this is the Supreme Court saying, right then, with this required information. I mean, I can't write -- the Judge said the same thing. I'm just saying I'm asking you this because if I send you exculpatory evidence, in my view exculpatory evidence, and I'm literally begging you to raise jurisdiction, and then in the trial transcript I actually -- when the judge asked me "What it is that you think you'll be able to learn from the State Grand Jury record?" I answered "Well, I'm actually going to show that no State Grand Jury even occurred." Those are my exact words. That's page 19, lines 8 to 16.

A Yes, sir. I agree with everything that you've said, that you asked me to do those things. You had, as I recall, two subject-matter jurisdiction issues. One dealt with whether it was proper for it to be a statewide grand jury case because the Berkeley County charges were the ones that you said were being adjudicated versus multicounty charges. I wrote to you and said that there were, indeed, multicounty charges that were presented as the evidence covering multiple counties.

The second part of your subject-matter jurisdiction question dealt with whether, in fact, a statewide grand jury had convened and whether they had, in fact, indicted you. And yes, you did ask the judge for those documents.

During that period of time that you asked the judge for those documents, it's what I would have considered at that moment

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hybrid representation because your lawyer had not been formally relieved. So that appeared to me to not be an issue ripe for appeal because you aren't allowed to represent yourself simultaneously with having a lawyer. So that was one of the reasons that I declined to raise that issue.

It also looked to me like there wasn't evidence to support a claim that the grand jury did not meet. I understand the letter that you had from court administration but in my opinion that did not support that the grand jury did not meet.

Q All right. You said there's no right to hybrid representation?

A Yes, sir.

Q Hybrid representation is the filing of substantial documents. I was not filing substantial documents. When I asked for those impanelment documents I was exercising my rights through Article I, Section 14, to be heard in my own defense. There's a difference.

A I disagree with you, sir. I disagree that hybrid representation applies to only filing documents. Hybrid representation applies to both verbally representing yourself in court, as well as filing documents. And I understand that you were certainly attempting to exercise your right not only under the State Constitution that you've referenced, but also the United States Constitution to represent yourself.

The question was at that moment were you really representing

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yourself or had you still counsel appointed to represent you, and it appeared to me in that moment you still had counsel appointed to represent you.

Q Okay. So in that same moment when you say I was attempting to exercise my rights pursuant to Article I, Section 14, and the United States Constitution, and you read the transcript and counsel did not object, and he certainly -- he surely didn't request these documents or say, Hold up; objection, Your Honor; he has a right pursuant to *Evans v. State* to review this, why wouldn't that be an issue of ineffective assistance of counsel based on those? I mean, I've requested it many times in the trial transcript --

ATTORNEY SMITH: Objection. The question calls for an opinion that's left to the Court.

MR. ROBERTS: No. I'm asking her.

THE COURT: Hold on one second. I sustain that objection. The issue of prejudice is for the Court.

Q All right. So each time that I requested these documents and you saw that counsel was obviously laboring under a conflict of interest -- I'm not gonna say you saw -- I'm saying that's how I feel, right -- but we both know that there was never any objection from him, why wouldn't you raise the issue of ineffective assistance counsel or a conflict of interest?

A So ineffective assistance of counsel cannot be raised on direct appeal in South Carolina. That is strictly a collateral

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matter, such as this proceeding for today.

Concerning the conflict-of-interest issue, I did not see any evidence in the record of trial counsel laboring under a conflict of interest.

Q So when there's erroneous ruling, failed obligations under *Brady*, and a denial of a defendant to prepare a defense, that you don't see a conflict of interest there?

ATTORNEY SMITH: Objection. Question assumes conclusions that have not been proven.

MR. ROBERTS: I'm asking. I'm not assuming.

THE COURT: She's answered she didn't. She didn't see a conflict of interest. So she's answered that question.

Q All right. What would it take for you to see a conflict of interest, because, I mean -- because the transcript, I mean, plenty of times, I mean, you've seen -- you know.

A Sure. So I represented an individual on appeal where it came out in a post-conviction relief proceeding that trial counsel had a conflict of interest, and in that case the conflict was that trial counsel represented two individuals who were involved in this very large drug conspiracy. One was the head of the organization and one was like a foot soldier in the organization. Trial counsel did nothing to try to negotiate to get a lesser sentence for the foot soldier, and we were able to show that primarily dealt with his obligations to the head of the organization, who was also paying his bills.

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So that is a conflict of interest that I'm willing to raise and have raised on appeal. That's what I'm looking for.

Q All right. So what about the issue of counsel refusing to, one, present an alibi, and impose a guilt-based defense?

ATTORNEY SMITH: Objection, Your Honor. That's asking for an opinion that's left to the Court.

THE COURT: Hold on. She can answer it.

MR. ROBERTS: I didn't go to law school. Please forgive me.

THE COURT: Hold on. If you'll be quiet, I'm about to rule in your favor.

MR. ROBERTS: I'm sorry.

THE COURT: She can answer why she didn't raise the issues of alibi or some -- any other defense. That's not a conclusion. That's fair game.

A So regarding the alibi, as I understand it, there was a discussion in the record that you had actually been in a jail in New York at the time that some of the alleged drug buys were to have occurred, and there was a discussion of whether that evidence would be presented. The trial counsel decided not to present the evidence of alibi.

It was not a situation where a judge had denied you the ability to present alibi evidence; it was a situation where trial counsel decided not to present it.

On direct appeal I raise issues of errors by trial judges, not errors of trial counsel. That's a matter for post-conviction

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relief. So because trial counsel decided not to present an alibi evidence and it wasn't a situation where the judge had denied it, I did not think that it was an issue that could be brought on direct appeal.

Q All right. Thank you. What about the issue of insufficiency of evidence regarding the actual amounts of heroin?

A So you and I discussed, at length, through letters about the *Johnson* case which is a case that discussed -- I believe it's a methamphetamine case vers. a mixture and how a court determines the weight of a drug that is mixed with other things.

And in your situation I relied on the *Johnson* case to determine that the evidence that had been put forward by the State was sufficient to establish the weight even though it was a mixture weight.

Q I disagree with that because in dealing with the *Johnson* case and the methamphetamine --

THE COURT: No. This is testimony, Mr. Roberts.

MR. ROBERTS: Yeah. Yeah. I'm just --

THE COURT: Ask her -- if you've got a direct question about --

MR. ROBERTS: All right.

Q When they failed to produce sufficients amounts -- of the sufficient amounts of alleged heroin, why wasn't this issue raised?

A Again, it was my belief and my opinion based on my review of

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the *Johnson* case that the evidence presented by the State was sufficient to establish the weights. I know that it was mixture weight but, based on the *Johnson* case, that, to me, was sufficient.

Q All right. This is my last question, I think. Count 1 in the indictment is a specific-conduct count. I was prejudiced my right to an impartial and unbiased jury because of the conspiracy on top of trafficking 28 grams or more. It prejudiced me an unbiased and impartial jury as far as those amounts, you think?

A The fact that you were charged with conspiracy and the State was able to introduce the evidence of not just your drug buys but all the other drug buys, that certainly had a lot of damage to your case. I can't say that it was unfair prejudice, but the conspiracy charge is what allowed the State to get into the evidence of other people involved in the conspiracy, which was a lot. So that definitely was prejudicial to the jury determining your guilt, but I can't say it was unfairly prejudicial.

Q It just sounds so dramatic when you say it and when you see it on paper. Like I said, I'd take 100 years right now if they can show me doing anything illegal. The judge even said that all she seen is a car and some steering wheels. It just sounds to me like -- I'm human, you understand what I'm saying? So sitting here and hearing it and, you know, all this manufactured paperwork making it look like, you know -- so, I mean, contesting -- I mean, it's corrupt anyway, ain't gonna make no

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difference -- not this hearing won't make no difference.

What I'm trying to say is if it's a specific-conduct count, how could the jury not be prejudiced by what amounts of traffic attainable by me? Why wasn't this issue raised? All right. Maybe I can say it in a better way. I'm not a lawyer. Maybe I can say it in a better way.

A I think I can answer your question.

Q All right.

A And if I don't, you can ask me again.

Q All right.

A I did not raise an issue related to whether the State had proven that you personally trafficked those quantities of drugs because there was no objection made during a directed verdict or requested charge for such an issue to have been raised. So that's number one.

But, number two, you can be charged with some other acts when you're involved in that conspiracy. Just because you didn't do that hand-to-hand transaction doesn't mean you can't be charged with it if you were involved and directed that transaction.

So there are certainly times when the State can produce evidence against you that maybe doesn't have you having the hand-to-hand transaction but it's still evidence against you being involved in that conspiracy.

But my number-one reason would be because it was not raised

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at the trial.

Q But doesn't the reasonable doubt rule based on insufficiency of the evidence, couldn't that be raised at the appellate level?

A I think you're conflating things. So reasonable doubt and sufficiency of the evidence are not the same thing. So reasonable doubt is more of a concept that we deal with a jury and jury instruction.

Q I'm -- I'm -- I'm --

A Let me answer. Sufficiency of the evidence is generally something you think about at the directed verdict stage, a renewal of the directed verdict, or a motion for a new trial.

That is at a point when an attorney would stand up and say, Your Honor, we move for a directed verdict because the State has failed to prove some element of the offense. That would be the time for your attorney to have stood up and said, Your Honor, they have failed to prove that Mr. Roberts specifically trafficked these quantities of heroin.

And to my recollection, that did not happen. I remember a directed verdict as to the firearms. That's what my recollection is as I sit here. But that would have been the time for that.

But again, my second reason is I do believe that the State could present evidence that would satisfy the directed verdict in your case related to transactions that other people did that were part of the conspiracy.

Q So the lawyer asked for a directed verdict based on all the

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elements of the offense, right? When I said the reasonable doubt rule, meaning the issue -- couldn't the issue have been raised that you cannot sustain a conviction if it's not beyond a reasonable doubt going to the amounts being insufficient?

A No, sir. So the directed verdict -- the renewal of the directed verdict and the motion for new trial standard is any direct or substantial circumstantial evidence. It doesn't mean that the State has to prove their case to a judge beyond a reasonable doubt. That's why I said it was conflating ideas. That deals with the jury. It's the jury who has to find beyond a reasonable doubt. The judge just has to find if there's any direct or substantial circumstantial evidence of the charges in order to submit them to a jury.

Q All right, the judge, but you -- would you find it that I was prejudiced an impartial jury by not producing sufficient evidence towards the elements purchased -- or brought to the State of the actual amounts of heroin? Would that be a significant obvious issue to raise on appeal?

A One, I don't believe that issue existed in your case. I don't believe there was an objection to that. But, two, again, on the substantive matter of it, I believe the State was entitled to present the evidence of others involved in the conspiracy. When that conspiracy was part of what you were engaged in, that could contribute to your quantity.

MR. ROBERTS: I just got to say this. I haven't sold drugs

since I was 15 years old, so this is just out of -- this is crazy.

THE COURT: Mr. Roberts.

MR. ROBERTS: I'm done, man. I'm done, man.

THE COURT: You're not calling anymore witnesses?

MR. ROBERTS: No, man. I see where this is going. You know. No.

THE COURT: Mr. Smith, do you have any possible ...

ATTORNEY SMITH: Your Honor, I'd like to note, Mr. Roberts says he's done. Does that mean that he's decided not to proceed with the case further, or he's --

THE COURT: I'm going to give you the opportunity to cross-examine Ms. Hackett if you want, and then I'll deal with that issue.

ATTORNEY SMITH: Okay.

CROSS-EXAMINATION

BY ATTORNEY SMITH:

Q Ms. Hackett, when were you admitted to practice law?

A November 17th, 2003.

Q Can you give me a summary of your legal experience?

A Certainly. After I graduated from law school I was a judicial law clerk to a Circuit Court judge for a year. I then worked for a firm in Columbia doing criminal defense for about a year and a half. I worked for nonprofit doing death-penalty defense for a year and a half. I worked for the Office of

Disciplinary Counsel for almost three years. I worked at the Office of Appellate Defense for over 11 years. And I've been at the Court of Appeals for one month.

Q How did you come to be involved in Mr. Roberts' direct appeal?

A Mr. Roberts' case was assigned to me from the Office of Appellate Defense on September 19th, 2017.

Q How do you go about preparing an appellate brief in a direct appeal?

A I read the transcript. I looked for -- I look for errors that are preserved for review, meaning typically an objection or a motion has been made. I then research all the preserved errors, determine which ones are viable, which ones look good. If necessary, coil those down to the best issues that are available. And then I prepare a brief.

Q Did you follow that practice in Mr. Roberts' case?

A I did.

Q You said earlier that you did not believe that the subject-matter jurisdiction issue had merit. Can you tell me why you came to that conclusion?

A Right. Well, I understood, in my discussions with Mr. Roberts, that there were two parts to his subject-matter jurisdiction question. One was whether it was a proper statewide grand jury case because he contended that only the Berkeley County charges were the ones being prosecuted.

But when you review the transcript, you will see that there are drug transactions that happened in multiple counties, Dorchester County being one that comes to mind right away, so I determined that that lacked validity because there was evidence of multi counties being involved which would put this in statewide grand jury jurisdiction.

The other subject-matter jurisdiction question that I understood him to have dealt with, whether, in fact, a statewide grand jury convened on the date that's on his indictment, whether they reviewed the evidence, whether that actually took place.

There was no evidence available to me in the transcript that that had not, in fact, occurred, because the only evidence in the record about that was his request to see the impanelment documents at a time when it appeared that that was hybrid representation, coupled with him telling the judge that he had written to court administration asking for the transcript and court administration telling him that they didn't have a court reporter who went there.

And, of course, court administration doesn't provide the transcript. Excuse me. Court administration doesn't provide court reporters for statewide grand jury, so that did not appear to me to be good evidence to support a claim that the statewide grand jury had not, in fact, met that day.

Q Did you consider raising an issue on appeal about whether Mr. Roberts' *Brady* rights had been violated?

A I did not consider raising an issue about that. I remember there was some discussion, because a lot of these buys were on video, as I understood it from what I reviewed, and there was a question of whether Mr. Roberts had been allowed to view the videos. Trial counsel said specifically in the transcript that he had reviewed the videos. And there's a case, *Hyman*, H-y-m-a-n, *v. State* that talks about that specifically, whether trial counsel looking at it is sufficient to satisfy *Brady* in a prosecutor's duty to turn over information. So that did not seem to me to be a viable issue on appeal, and trial counsel had not really objected himself to it.

Again, this was in that period where it looked like the judge was leaning toward granting self-representation, was engaging with Mr. Roberts personally but then had Mr. Griffith continue to represent him.

Q Did you consider arguing that Mr. Roberts had been denied the right to prepare a defense?

A No, sir, I did not consider that issue.

Q Okay. Why not?

A I didn't see anything in the transcript of the record that would support it.

Q Were you and are you part of a conspiracy against Mr. Roberts?

A I'm not.

ATTORNEY SMITH: No more questions. Thank you.

MR. ROBERTS: Can I ask one more question?

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY ATTORNEY SMITH:

Q When you talk about the -- I understand the court reporter doesn't provide transcripts or assign court reporters -- I mean, I wrote the court reporter manager. I just don't -- but what I'm saying is they have to choose to assess whether a court reporter was assigned. Right or wrong?

A I don't believe so, Mr. Roberts, because court administration is not assigning a court reporter to the statewide grand jury, so I don't know why court administration would have that information at all.

Q So what does a court reporter manager do? I'm saying -- the reason why I'm saying that is because I was clear in what I wrote to them. I wrote to this lady about 11 times over 3 years in every which way I could, right. She's telling me that, now, if the court reporter has to -- wherever the court reporter comes from, they only can charge at the rate prescribed by court administration; that the court reporter manager would be able to assess whether, in fact, that happened.

Coupled with the fact that every time at trial I requested these, they failed under the obligations under *Brady*, there was no objection, and the ruling was erroneous because I'm entitled to it. I ain't crazy. I ain't even no lawyer, but I can

understand that. Every time I exercised my right, whether you want to call it a hybrid representation or what --

ATTORNEY SMITH: Objection.

MR. ROBERTS: -- even if I do not request, that doesn't -- he still has the obligation to disclose exculpatory evidence. I was denied my right to present a complete defense.

THE COURT: She's answered that question. She answered that she didn't see where Mr. Griffith objected on any of those grounds, so those grounds, in her opinion, weren't preserved for appeal. That's my recollection of her testimony under oath.

MR. ROBERTS: So I contend that made him ineffective.

THE COURT: I understand that. I understand that. All right.

MR. ROBERTS: I mean, he's my attorney. Like why -- you know what I'm saying?

THE COURT: I understand your argument, and I'm going to review this transcript and read -- I'm going to read everything that went down in your trial. This is your bite at the apple, so --

MR. ROBERTS: It is.

THE COURT: -- have you got any further questions for Ms. Hackett?

MR. ROBERTS: No, Ms. Hackett. Thank you.

THE COURT: All right.

ATTORNEY SMITH: May Ms. Hackett be excused, Your Honor?

THE COURT: She may.

THE WITNESS: Thank you.

THE COURT: Mr. Roberts, do you have any more witnesses you want to call? I know you said you were done earlier but I want to make sure you didn't say that out of frustration, because if you want to call any other witnesses that have relevant testimony to this issue, now's the time, because once this hearing is concluded it's done forever.

MR. ROBERTS: Can I call Desiree Allen?

ATTORNEY SMITH: Your Honor, I believe that Judge Goodstein has already addressed that and instructed Mr. Roberts that he would not be allowed to subpoena Ms. Allen. And I think Judge McCoy may have done that in the past, but I won't confirm that.

THE COURT: Well, if she's not under subpoena, and given the fact that that may have been addressed by other judges -- if she were under subpoena you could call her, but apparently that has been decided by other circuit judges. So of the witnesses that are here today, is there anybody else you want to call?

MR. ROBERTS: But doesn't that violent my Sixth Amendment right for compulsory process to obtain witnesses in my favor?

THE COURT: I don't know what went down between and you Judge Goodstein and/or Judge McCoy on this issue. I don't know. I can't overrule another circuit judge's decision.

So my question is, again, of the witnesses that are here today is there anybody else you want to call?

MR. ROBERTS: The key person -- I understand what you're saying. I ain't gonna take up too much of your time. But the key person, she denied me that because she knew that would prove my case. That's the only reason. She issued subpoenas to everybody else.

THE COURT: Mr. -- aren't the -- the grand jury documents, Mr. Smith, were they produced at some point, the grand jury impanelment documents?

MR. ROBERTS: No.

ATTORNEY SMITH: I have them sitting here on the bench, Your Honor, about five feet away from Mr. Roberts.

MR. ROBERTS: Five years later they manufactured --

ATTORNEY SMITH: I've had them here since we started today.

THE COURT: Well, again, my question is, Mr. Roberts, are there any other witnesses that can testify as to your allegations of ineffective assistance of counsel?

MR. ROBERTS: I want Underwood.

THE COURT: Okay.

MR. ROBERTS: I wanted to get the court reporter's name so I can request this transcript.

THE COURT: You can look at the -- I mean, the documents are here. I would assume that there are transcripts in there that --

MR. ROBERTS: No. No. No. This hearing.

THE COURT: Of this hearing?

MR. ROBERTS: Yes.

THE COURT: We'll do that in a minute.

MR. ROBERTS: All right.

JOSHUA R. UNDERWOOD,

having first been duly sworn, is examined and testifies as follows:

CLERK OF COURT: State your full name for the record, and please spell your last name.

THE WITNESS: Joshua Richard Underwood, U-n-d-e-r-w-o-o-d.

THE COURT: All right, Mr. Roberts.

DIRECT EXAMINATION

BY MR. ROBERTS:

Q Did the State Grand Jury convene on April 12th - April 13th, 2016?

A Yes.

Q Did prosecutors fail in their obligation to disclose these impanelment documents?

A No.

Q When did prosecution disclose these impanelment documents at trial -- before trial?

A After you were charged and appointed your first attorney, your first counsel, Ms. Cleary, was provided with all the discovery in your case. As part of that, she was given an explanation as to how to obtain or review the State Grand Jury transcripts.

MR. ROBERTS: Objection, hearsay.

THE COURT: No. You asked the question, sir. I mean, he has a -- he's talking about stuff that's in his knowledge, not what someone told him, so --

MR. ROBERTS: Yes, but he's not answering the question. I asked him, prior to trial when I requested these impanelment documents, did prosecution disclose them.

A I attempted to answer that question. The answer is yes, and I'm explaining to you how if you would allow me to finish, sir.

THE COURT: Go ahead. Explain your answer.

A Mr. Roberts, your first counsel -- and again with your second counsel, as well, when he was appointed later -- was given the discovery in the case. As part of that discovery material was a memorandum explaining how to go about either obtaining copies of the State Grand Jury transcripts or an offer to come and review the Attorney General's copies of those transcripts.

The method of obtaining copies of those transcripts is to contact the court reporter who was working for the State Grand Jury under a contract with the State Grand Jury. That is totally separate from court administration. That court reporter's name was Carla Dominick from Creel Reporting. The way for that counsel to obtain those is to go directly to the court reporter to obtain copies. If counsel did not wish to obtain copies, they were welcome to come to the Attorney General's Office and review our copies of those transcripts. That same offer was made to Mr. Griffith, all prior to trial.

Q July 24th, page 15, lines 5 through 9, I was denied these impanelment documents by the trial judge, and then prosecution, yourself, conceded that I'm entitled to them but I have to get them from the court reporter. My question was, did you disclose these when I requested them?

A They were available to your counsel. Yes, sir.

Q Being available and disclosing at the time that I requested them is two different things.

A Wrong. They were available to your counsel.

Q Who? Griffith just said that he didn't think that was necessary.

A Because the grand jury did, in fact, meet on those dates. I know that for a fact.

Q At each point when I requested those impanelment documents, right, page 85, lines 5 through 7, she told me, the judge said -- I asked for them. She said, You have no basis to challenge it.

A You had no basis to challenge whether the grand jury was impaneled because it was.

Q How do I have no basis if I'm entitled to these impanelment documents? I am entitled to it to see whether the grand jury was legally constituted. Each time I asked for them I was denied.

A You requested them from Desiree Allen, who had nothing to do with them. The Court actually advised you the proper method on how to request those documents, and they were available to your counsel for him to review.

Q Judge Jefferson, when I asked her, Well, who would I write to? Who would I write to to get these impanelment documents? She said you have to have the court reporter's name, and you would have to write to court administration to get them, right? Each time --

A You might want to read that transcript again.

THE COURT: Hold on.

MR. ROBERTS: This is what the judge said.

THE COURT: What the judge said has no bearing on whether Mr. Griffith was ineffective or not, so -- because we're not -- the direct appeal grades whether the judge made errors are not. PCR is for Mr. Griffith.

So this witness has said Mr. Griffith was given the mechanism to seek out those documents, and you made it clear that he -- he admitted he didn't do it. So I guess what I'm getting at, that point's been made.

If you've got any other questions for this witness regarding Mr. Griffith's -- whether Mr. Griffith's representation was effective or ineffective and whether you suffered any prejudice because of that, you can ask him any of those, but what the judge ordered during your trial is not necessarily relevant to the PCR here. And I'm not trying to limit you, but we've got rules we've got to follow -- we've got to narrow the focus to the issues that are properly before the Court.

MR. ROBERTS: All right.

Q Did the defense suffer prejudice from the failure of disclosure?

ATTORNEY SMITH: Objection. That's a legal opinion for the Court.

THE COURT: Again, Mr. Roberts, that's for me. I mean, I know that they weren't disclosed. I know you've asserted that that prejudiced your defense. Mr. Underwood, he doesn't -- he can't make that conclusion.

MR. ROBERTS: Yeah. I have no more questions for him.

THE COURT: All right.

CROSS-EXAMINATION

BY ATTORNEY SMITH:

Q Mr. Underwood, can you tell me when you were admitted to practice in South Carolina?

A 2007.

Q And can you give me a summary of your legal experience?

A 2007 I was hired at the South Carolina Attorney General's Office to work as a prosecutor in the insurance fraud division. I worked there in that division until 2009 at which time I was promoted to another position in the combined general prosecution and State Grand Jury division. Starting in 2010 I began, in addition to working on conflict cases, working on State Grand Jury cases, and I worked on State Grand Jury cases up until the time I left the Attorney General's Office in 2021.

Q Okay. What was your involvement in Mr. Roberts' case?

A I was the lead prosecutor.
Q Can you give me a timeline as best you remember it of other lawyers' involvement in his case on the defense side?
A I don't remember the exact dates of when the attorneys were appointed but the original attorney, I believe, was Ms. Eleanor Cleary. She was eventually relieved as counsel due to some fears that she had of her client, Mr. Roberts, involving an altercation and some threatening behavior. After she was relieved, Mr. Timothy --

MR. ROBERTS: Objection, hearsay. I never met the lady. That's a fact.

THE COURT: It doesn't --

MR. ROBERTS: I'm sorry, but he's just lying. I never met the lady. I don't even know how she looks.

THE COURT: That's fine. I mean --

MR. ROBERTS: That's crazy.

THE COURT: -- she's not a party to this matter. Her representation isn't at issue. Let's move along to Mr. Griffith's representation.

THE WITNESS:

A And after she was --

THE COURT: I'm not going to hold that against you, Mr. Roberts. Those are allegations. She got off your case. She doesn't have anything to do with it. I'm going to strike that from my consideration.

MR. ROBERTS: Can I just say one more thing?

THE COURT: In a minute.

MR. ROBERTS: All right.

THE COURT: Let him testify, and then I'm going to give you the opportunity to give me, both sides, a brief -- a brief argument because I'm aware of the issues that are present. But let him finish and then we'll -- I'll give you an opportunity to be heard.

Q What are the facts of the case as you remember them?

A There were a group of individuals, most of whom originally were from the state of New York. They had relocated to South Carolina in the area of, sort of going back and forth between, the North Charleston area, Ladsen, Summerville, and into kind of that area that kind of crosses back and forth between Dorchester County, Berkeley County, and then touching into Charleston County, and essentially they were involved with the selling of heroin and other drugs, but heroin was the primary drug.

Q Okay.

A I know more details if you'd like, but that's the general.

Q Okay. You testified earlier about that you knew for a fact that the State Grand Jury met about Mr. Roberts' case. How do you know that for a fact?

A I was there.

Q Did they true-bill that indictment?

A Yes, they did.

Q Did you do anything to infringe upon the grand jurors' independent judgment?
A Absolutely not.
Q Did you withhold anything in discovery from Mr. Roberts or his lawyers?
A No.
Q Are you part of a conspiracy against Mr. Roberts?
A Certainly not.
Q Have you suppressed any exculpatory evidence regarding Mr. Roberts?
A No.
Q Have you fraudulently conveyed any information to the courts about Mr. Roberts and the grand jury?
A No.
Q Have you done anything to conceal State Grand Jury impanelment documents from Mr. Roberts?
A No.
Q What was the role of David Fernandez in the case?
A David Fernandez assisted me during the course of the trial. He was not involved with presenting the case to the grand jury.
Q Did he have any role in the discovery in this case?
A Not that I recall. That would have been my primary responsibility as the lead attorney.
Q Was Justin Hunter present for this trial?
A He was tried in his absence.

Q When the exhibits, the mass exhibits, were admitted by stipulation for Mr. Griffith, how long of a period of time did he take to review those exhibits before making that stipulation?
A I don't recall exactly how long it was. I do know that all of the items that were prepared into those exhibits were in the discovery material that was provided well in advance of the trial for Mr. Griffith.

After they were premarked as exhibits I had a short conference -- and I say short because I can't remember exactly how long it was -- but I had a meeting with Mr. Griffith who represented Mr. Roberts, as well as Ms. Johns who represented Mr. Hunter, to go overall of those premarked exhibits to determine if there were any objections so that we could settle those prior to bringing in the jury.
Q So someone who would review the discovery would have understood what the exhibits were?
A Yes.
Q Okay. Tell me about your conversations with Mr. Griffith when you discussed the chain of custody issues at trial?
A With both Mr. Griffith and Ms. Johns, I believe we were all speaking together at the same time, essentially I went over all of the chain of custody documents. That would include the certified chains from SLED, as well as any other documents showing who touched the suspected drug evidence, when, how, et cetera. We went over all that information. I also went over who

the witnesses were that would be involved in the chain of custody. I demonstrated that all of them were available to testify should they be needed to if there were any concerns about the chain of custody.

Both Mr. Griffith and Ms. Johns agreed that they had no good-faith basis to challenge the chain of custody for any of the drug evidence that was admitted at the trial.

Q Do you know how long that conversation lasted?

A I couldn't tell you a number of minutes but it was sufficiently long enough to make sure that everyone understood each piece that was being put in.

Q And the exhibits, were they visible in the courtroom once they were admitted?

A Yes.

ATTORNEY SMITH: Just one moment. No more questions. Thank you.

THE COURT: Anything? Any more questions for this witness, Mr. Roberts?

MR. ROBERTS: Yes.

REDIRECT EXAMINATION

BY MR. ROBERTS:

Q Pursuant to Section 14-7-1750, once the presiding judge finds the indictment to be within the provisions in accordance with Article 15, it states that he has to return it by an order, right?

A Yes.
Q What's the order? What kind of order?
A It was titled a venue order, and it was signed when the indictments were returned on April 13th. It was signed by Judge Clifton Newman.
Q Were there warrants for these indicted offenses?
A Yes.
Q May I see them?
A I don't have them. You'd have to get those from the clerk of court's file. I don't have those with me.
Q You got all this paperwork but not warrants? Come on, man.
A Sir, I don't work at the Attorney General's Office anymore.
Q David Fernandez, he's here and others. He works -- Smith is here, he works. Can I see the warrants for the indicted offenses?
A To answer your question, I can explain how the warrant process works.
Q I don't want you to do that. I want to see --
A So you don't want to understand what the documents are?
Q I want to see the warrants issued for the indicted offenses, because if they exist why was I held on a letter?
A You were not held on a letter.
Q Yes, I was.
THE COURT: All right. We're not going to argue back and forth. You got any further questions for this witness? He says

he doesn't have the warrants. Anything else for this witness?

MR. ROBERTS: No.

RECROSS-EXAMINATION

BY ATTORNEY SMITH:

Q Can you tell me, what would have been the reason that Agent Wingo would have transferred the defendants from one detention center to another?

A Because the venue order that was signed by Judge Newman returned the case as venue to Berkeley County as the primary jurisdiction where the case was going to be tried. That's the reason why the defendants were relocated from Richland County which is where they had their initial bond hearing set because, as is required by a combination of statute and administrative order by the Supreme Court, the administrative judge over the State Grand Jury had to set all the initial bonds in the case. Judge Newman was seated in Richland County. That's the reason they were initially held there.

After that, sometime later, they were transported to Berkeley County. And I couldn't tell you the exact dates. Typically the way that occurs is there is some type of transfer order that is filled out through the clerk of court's office. It's a very routine matter. Oftentimes there's various correspondence that goes along with the inmates to the facilities so that they understand completely why these inmates are there because the State Grand Jury system is outside of the normal

activity of both the various county jails, and it's outside the scope of the local county clerks of court. All that material goes to the State Grand Jury Clerk of Court.

So if a jail were to receive an inmate on a State Grand Jury case, they wouldn't be able to call their normal contacts at the county clerk's office to say, Why is this person here?, and if they didn't know it was a State Grand Jury defendant they wouldn't know what do with them, so oftentimes, in addition to those transportation orders, there's usually an explanation that would go along with the inmate, so that way the receiving facility knows who the individuals are, why they're there, and to whose custody they would need to be returned to for court and other things of that nature.

MR. ROBERTS: But no warrants.

Q So Mr. Roberts would have been arrested at the time of that transfer; is that right?

A Yes. I believe he was arrested in February.

Q Okay.

ATTORNEY SMITH: No more questions. Thank you.

REDIRECT EXAMINATION

BY MR. ROBERTS:

Q But no warrants? So once this happens, does -- when you're indicted, does a warrant issue for those indicted offenses?

A So the way that it works --

Q No. No. Just yes or no.

THE COURT: He can own -- he can't answer that question without explaining it. I'm going to overrule the objection. He can answer how the State Grand Jury and how these --

MR. ROBERTS: The reason why I say this, Judge, is because the facility itself had a problem with accepting us. They was like, No, where's your warrants? Where's your holds?

THE COURT: Again, once an indictment is issued the warrants are really immaterial because the indictment is the thing that gives the Court, and specifically in State Grand Jury, gives the court jurisdiction. And again, this issue's been raised. This doesn't have anything to do -- this testimony about the warrants -- I understand that you feel like Mr. Griffith should have challenged them, but that's before -- that's on the record. It's an issue that I'm going to consider, and it's before this Court. So is there anything tailored to the questions that Mr. Smith asked Mr. Underwood on recross?

MR. ROBERTS: No, Your Honor. I'm all right.

THE WITNESS: Did Your Honor wish me to answer that question or not?

THE COURT: You can step down.

ATTORNEY SMITH: May Mr. Underwood be excused, Your Honor?

THE COURT: Yes, sir.

THE WITNESS: Thank you, Your Honor.

ATTORNEY SMITH: And I'd like to clarify, Your Honor. I think I made a misstatement a moment ago when I talked about the

hearing in front of Judge Goodstein. I think I said that Judge Goodstein had told Mr. Roberts that he could not subpoena Ms. Allen. I checked the transcript from that which I have and can hand up to the Court if the Court would like to see it, but Judge Goodstein ordered me to have several witnesses here today at Mr. Roberts' request. Those witnesses are the people that have been here today, Your Honor. But she denied his request to order me to have Ms. Allen present, and she said that she will not order me to do that but if Mr. Roberts wanted to serve a subpoena on Ms. Allen, he could do that, although Judge Goodstein said that it was her position that Ms. Allen had nothing relevant to say to the application. I just wanted to correct my statement.

THE COURT: The record will reflect that. All right. Mr. Roberts, any more witnesses you'd like to call, sir?

MR. ROBERTS: No.

THE COURT: Okay. All right. Before I give y'all the opportunity to make a brief argument -- and I stress the word brief -- I do want to put one thing on the record.

Obviously the Court has taken more of a role in questioning witnesses by the Court. Ordinarily the Court just sits here and rules on objections, but I have asked numerous questions in this proceeding, and that is pursuant to Rule 614 of the Rules of Evidence. 614(b) allows interrogation by the Court. When required by the interest of justice, the Court may interrogate a

witness. So given the nature of this case, I have exercised my right under 614(b).

So Mr. Roberts, this is your petition. I'm going to give you the last argument. So, Mr. -- well ...

ATTORNEY SMITH: I have one question, Your Honor. I have David Fernandez here today. He is one of the witnesses that I was ordered to bring by Judge Goodstein. And at that hearing in November Mr. Roberts indicated on the record that he had allegations that Mr. Fernandez had committed fraud upon the court and misconduct. I have him here in the courtroom. I could put him on the stand and ask him about that, but if that's no longer an accusation then I don't see a point in that, but I didn't want to not call him if that was still something on the table.

THE COURT: Okay.

ATTORNEY SMITH: So I just want a clarification from Mr. Roberts on that.

THE COURT: Mr. Roberts?

MR. ROBERTS: Yes. I believe he's tied in the conspiracy to commit fraud upon the court with the rest of them.

THE COURT: Let's take his testimony. Y'all give me five minutes. I need to take a recess. But we're going to tie up all the loose ends before we adjourn. So I'll be right back. And if anybody else needs to take a recess, now's the time.

(Court recessed at 5:49 p.m. and reconvened at 5:56 p.m.)

ATTORNEY SMITH: Your Honor, I'd call Mr. Fernandez.

DAVID FERNANDEZ,

having first been duly sworn, is examined and testifies as follows:

CLERK OF COURT: State your full name for the record, and please spell your last name.

THE WITNESS: David Fernandez, F-e-r-n-a-n-d-e-z.

DIRECT EXAMINATION

BY ATTORNEY SMITH:

Q Can you give me a summary of your legal experience?

A Admitted to the bar in 2008. Practicing since that time. Began working with the City of Columbia in the city attorney's office until 2014 where I transferred to the Attorney General's Office, and have been in prosecution and in State Grand Jury prosecution since that time.

Q What was your role in Mr. Roberts' case?

A I assisted Mr. Underwood as cocounsel primarily for the trial of Mr. Roberts and Justin Hunter.

Q Did you have a role in discovery?

A I was not involved in the case in the early stages other than having a very general knowledge of the overall investigation, that being named "Footloose". My specific -- when I became more an active participant would have been in preparation for trial.

Q Were you privy to any conversations between Mr. Griffith and Mr. Underwood about a series of exhibits that were admitted by

stipulation?
A I don't have any specific recollection of it. I know we had a number of conversations just in order to make a trial go smoother and see what we can agree to and what we need to have -- involve the Court with. I do vaguely recall having a conversation, at least being a part of that conversation, with stipulating to the chain of custody.
Q Okay. Were you present when the State Grand Jury considered Mr. Roberts' case?
A I do not believe I was. I don't recall being there.
Q Okay. Did you personally do anything to withhold exculpatory evidence from Mr. Roberts or his attorneys?
A No.
Q Did you make any statements to a court that were fraudulent?
A No.
Q Are you or have you been a part of the conspiracy against Mr. Roberts?
A No.
Q Have you seen any indication that Mr. Underwood is part of any conspiracy against Mr. Roberts?
A I've seen no indication of that.
ATTORNEY SMITH: No more questions. Thank you.
THE COURT: All right. Mr. Roberts.

CROSS-EXAMINATION

BY MR. ROBERTS:

Q At the trial when I requested impanelment documents did the prosecution make disclosure at that request?

A Did we disclose the jury -- the State Grand Jury impanelment documents?

Q Yes.

A I know that all relevant information was made available to you through your attorneys, and it would be governed by a protective order, and I know Judge -- Presiding Judge Jefferson did rule on that matter as far as the impanelment of the grand jury, so I don't believe we turned over any grand jury impanelment documentation, if that's what you're talking about.

Q Yes. And you have a duty to make sure that my rights are protected, right?

A Absolutely.

Q All right. When she ruled and denied me the impanelment documents did it prevent me from presenting a complete defense?

A No.

ATTORNEY SMITH: Objection, Your Honor. This is not a proper question for this witness.

THE COURT: He answered.

A No.

Q When a presiding judge transfers -- when a presiding judge transfers the case for the prosecution to -- whether venue is

appropriate, right, is it a normal practice that you be brought there and a letter be handed up? I mean, wouldn't that create a lot of confusion?

A When you say "you", who are you referring to? When who's brought were?

Q I mean, Justin Wingo, when he came and got us from Alvin S. Glenn, took us to Hil Finklea, and supplied a letter. Is it a normal practice once you are, so-called, indicted, to -- once the judge determines venue, is it a normal practice to show up to that county or wherever with the typed letter from Christina Bass?

A Normal practice would be some sort of transport order authorizing the transfer of a defendant or a person that's jailed to another institution.

Q And does Christina --

A And administratively SLED may use a letter as far as letting the jail know specifics, but there would be an underlying document produced by generally our clerk of court, the State Grand Jury Clerk of Court.

Q So no warrants would have to be procured in order to -- you can just have a letter and say they was indicted by State Grand Jury, take him?

A To answer your question, no, a warrant would not be necessary for that, but your question says a letter would satisfy that, and I believe there would be more than just a letter.

There would be a transport order, an order.
Q Do you have that with you?
A No.
MR. ROBERTS: Can I compel the Court to have Smith produce that transport order?
ATTORNEY SMITH: I can look, Your Honor. I don't know if I have it. I was instructed to bring certain documents by Judge Goodstein. I'm not sure if that's one of them, but I can look. But we covered this at the last hearing where I discussed the fact that Mr. Roberts needed to tell us things he wanted to see because if we did not have notice it would be difficult to produce them at the last minute, so that is something I did raise. I can check, but I think I can maybe do that after Mr. Fernandez has finished testifying.
THE COURT: What I'm going to do is I'm going to order you to look for it, and if you have it send it to Mr. Roberts.
MR. ROBERTS: He's going to manufacture it like those pages he did right there. That's all he's gonna do.
THE WITNESS: I'll note, though, for the record, Your Honor, that transport orders are generally not standard inclusion in discovery. They are --
Q Does the case agent --
THE COURT: Hold on.
MR. ROBERTS: I'm sorry.
THE WITNESS: They are usually attainable upon request if

someone would want it, but generally not a part of a standard case with --

Q So as far as the transfer goes, right, is it the normal practice for the presiding judge to contact the actual case agent that investigated the so-called drug, conspiracy trafficking thing, the case agent, not an officer of the court or somebody?

A I don't handle transports so I don't have any -- I couldn't tell you what normal practice is.

All I would tell you is that, from my observations having done this job for some time, is that a transport order is usually issued and transport is arranged. That's primarily a law-enforcement matter that generally does not involve an attorney.

Q Does it generally involve the case agent who investigated the case?

A It could. It doesn't have to. It can involve someone else at SLED. It can involve the local law enforcement. It can involve anyone. Like I said, generally it involves law enforcement. If there's some issue that you needs to be handled that makes a difference, an attorney/the prosecutor might get involved, but that would not be the norm.

Q Have you seen on the video me sell any drugs to anybody?

A Yes.

Q Can I see that?

A You did. It was at trial.

Q That's crazy. It's your testimony that you viewed me selling drugs?

A The jury did, as well, and the Court. Yes.

MR. ROBERTS: Your Honor, each time agent was asked did they ever personally see me sell drugs, they answered no. Understand, because he's giving testimony, and it's a lie.

THE COURT: Again, we're not going to retry the case. We're dealing with whether your lawyer at trial and your appellate counsel were ineffective, so whatever was presented to the jury in your trial, we can't relitigate that.

Now, if you have some question as to some item of evidence that was presented to the jury that you feel like they shouldn't have seen or your lawyer should have objected, those are issues that are before this Court.

But as far as what the jury saw -- and he wasn't a witness so he, you know -- he may believe he saw you on that video. I don't know. We can't relitigate the case. We're dealing with the assistance of your counsel at trial and your appeal. So if you've got any questions dealing with those issues --

MR. ROBERTS: No.

THE COURT: I can't retry your case.

MR. ROBERTS: No. I understand, but I'm just saying, he's gonna ...

THE COURT: That's the law. You know, the issues -- it's clear in PCR law that these are the issues that are before the

Court and, you know, I'm happy to consider any relevant evidence that may be tangential to those issues, but --

MR. ROBERTS: I'm just saying, they gave me 25 years for something I didn't even do and I can't even get a warrant. Twenty-five years. I got two babies.

THE COURT: All I can do is review the transcript of your trial and review the testimony that was given here today. Do you have any further questions --

MR. ROBERTS: No, I don't.

THE COURT: -- for Mr. Fernandez?

MR. ROBERTS: No.

THE COURT: All right. Any redirect?

ATTORNEY SMITH: No, Your Honor.

THE COURT: All right. I believe that concludes the list of witnesses that were ordered here today.

ATTORNEY SMITH: Yes, Your Honor.

MR. ROBERTS: I just -- the court reporter.

ATTORNEY SMITH: Your Honor, may Mr. Fernandez be excused?

THE COURT: You may.

THE WITNESS: Thank you, Your Honor.

THE COURT: All right. I know the issues. You all can give me a brief summary if you want to. You don't have to. You may if you have to. I'm going to let the State goes first. Because it's his case, he gets the last word.

ATTORNEY SMITH: Okay. I'll try to get through, Your Honor.

In terms of the State Grand Jury documents, Mr. Griffith felt that he had no reason to question them. It seems that Mr. Roberts' complaint about it is not the process whereby he was indicted; he believes that the State Grand Jury was never convened at all.

So to that extent, the fact that the State Grand Jury true-billed the indictment is evidence that they convened so, therefore, there would be no reason for Mr. Griffith to do any further investigation in that. That is proof on its face.

So secondly, even with that being the case, the indictment is a notice document. Mr. Griffith agreed that he had adequate notice from the indictment and was able to prepare a defense for Mr. Roberts. And I submit to Your Honor that the indictment does convey adequate notice on what Mr. Roberts would face at trial.

Secondly, we've been ordered to produce these documents that he's been saying he was not allowed to see. His lawyer, who was appointed in this case for the sole purpose of reviewing the documents with him, he did not want to see her. So I have the documents here today. They have been five feet from Mr. Roberts all day. He has not wanted to view them. That's because his position is that they don't exist or they must be fraudulent, but you can't complain that he's been prejudiced by not being allowed to see documents when they've been here all day and he has declined to see them, so I will carry them back with me to Columbia today.

And in terms of the issue of whether he was denied the right to proceed, pro se, you know, that came up and was addressed at trial, I'll also ask the Court to find that Mr. Roberts abandoned that right anyway because once Mr. Griffith took over the representation and made some arguments at trial on his behalf, Mr. Roberts told him, I'm glad you're representing me now. So I think that that's -- he's abandoned that right at that point regardless of what happened before.

Even then I think it's clear from the record that Mr. Roberts likes the hybrid representation format of that, and I think even today a lot of his actions, I think, are just obstructionist.

In terms of the specific issues, there's no evidence of misconduct in this case. The evidence is that the grand jury did, in fact, convene and true-bill the indictment. If Your Honor would see in the transcript, that when this issue came up at trial Mr. Underwood told the Court that the transcripts were there in the courtroom and that they would allow him to view them, and it doesn't seem like he wanted to do that. He wanted to make a point about not getting a copy. So if he declines to view them, I think he's also sort of abandoned his request for the impanelment, or for the transcripts, at least, there.

The other thing is, the testimony from Mr. Underwood was that the State had provided, or provided -- provided the documents or instructions for how to obtain them to Mr. Roberts'

prior counsel. It seems he did not make use of that, although that [indiscernible] conduct is not an issue before the Court today, so I won't go any further on that.

No evidence of conflict of interest. No evidence of conspiracy. I think I've essentially covered them all. I'd be happy to address anything specifically Your Honor would like to hear about, but ...

THE COURT: All right. The other issues that I wrote done specifically were his statement of Justin Hunter who apparently was the codefendant who was tried in his absence, and I can review the transcript with regard to that.

And then I made note of the failure to present an alibi. And again, I can -- I'm going to review the transcript on that.

So those were -- I think you've covered the issues that were raised in this hearing with regard to Mr. Griffith. And then obviously we have Ms. Hackett's testimony regarding what she did.

ATTORNEY SMITH: I can really quickly go over those.

THE COURT: If you want to.

ATTORNEY SMITH: There's no evidence of alibi or other defenses. In fact, Mr. Griffith had a good reason that he could not present a defense like that is because Mr. Roberts had been obstructionist and dilatory so, you know, you can't show up on the third day of trial and be upset that your lawyer hasn't presented a defense that you told him about today.

The other issue was the statement. Yes, the agent's

testimony was about a codefendant's confession. However, when you read the text of that confession, it was all about -- I don't think he had a single word of it directly implicating Mr. Roberts. It was about the codefendant's statement that he went to New York and did things there.

THE COURT: So the State would assert that there are no *Bruton* issues in the statement of Mr. Hunter even though he wasn't there?

ATTORNEY SMITH: Yes, Your Honor. It didn't implicate Mr. Roberts. I guess you could --

THE COURT: And I'm going to read it. I mean, I'm not going to -- I don't -- this isn't a test of your memory.

ATTORNEY SMITH: Right. Regardless, I don't think there's any prejudice of it. There was direct evidence of Mr. Roberts' participation in these crimes, and so that's the State's position on that.

THE COURT: All right. All right, Mr. Roberts.

MR. ROBERTS: Yes. The transcript is not going to ever reflect that I said, I'm glad for you to represent me. That just -- I would be a fool to engage if I was to read something that I know is fraudulent.

Mr. Griffith prejudiced my Sixth Amendment rights for effective counsel and my Fourteenth Amendment right to prepare a defense, and he failed to cite directly controlling precedence when the judge erroneously ruled that I was not entitled to the

impanelment documents. I could not prepare a defense from that point.

There are no legitimate warrants. I don't see any warrants.

The point of the impanelment documents was for my preparation for trial.

Evidence/exhibits was introduced after voir dire where prejudice should be presumed. I had not had enough time to prepare for any type of evidence that's being offered while I'm actually in trial.

Mr. Griffith then pulls a guilt-based defense. He failed to object to structural error regarding preparation of a defense, and cite controlling precedence, and he labored under a conflict of interest.

And the prosecution failed to disclose exculpatory evidence. They failed under their obligations under *Brady*.

It is a conspiracy to deprive me of my Fourth Amendment right, my Sixth Amendment rights to impartial jury, effective assistance counsel, and compulsory process to obtain witnesses in my favor.

And I was infringed my Fourteenth Amendment right to notice. I had no notice of the charges. I would not have -- I would not have went through all I went through and wrote to the people I wrote if I had been adequately informed of the charges.

And I actually got an assault on a police officer -- I mean a detention officer -- to get in front of the judge because I was

being held on a charge I didn't know. That was the only thing. I feel if I did that, I'd get in front of a judge and, Look, I'm here, they have me for nothing. I haven't -- like I said, I haven't sold any drugs since I was 15 years old. You know. I'd challenge anybody. I'd take 100 years right now if you can show me selling anything to anybody.

And I feel like the trial judge was complicit in the conspiracy to deprive me of my constitutional rights because everybody know what consisted of the *Evans* case, and it's real peculiar to deny me those impanelment documents at the same time they failed to disclose. There's no objection by trial counsel. That's just -- I mean, it takes two people for a conspiracy, and I was entitled to this.

Under Supreme Court precedent, I believe it's *United States v. Williamson,* if I'm infringed a substantive right or procedural right, prejudice is presumed, and I believe prejudice is presumed under the second prong of *Strickland* where Mr. Griffith failed to object to me being denied preparation of a defense.

This happened -- I mean, you're going to read the transcript but, you know, this happened numerous times. I wouldn't put myself out there like that if I had notice of these charges. I asked to be informed my right, the nature and cause. I was prejudiced my Sixth Amendment right to be informed on the nature and cause. I asked the judge. It's on page 14. And she just gave me a lackadaisy answer. She never -- you know.

If you concentrate on the conduct of the parties, I don't even have to say anything. You know what I'm saying? It's highly irregular in a State Grand Jury case that a judge would consistently deny the impanelment documents that I'm entitled to, and it prejudiced my Sixth Amendment right to effective assistance of counsel. Counsel was inadequate.

And there still exists a conspiracy between Goodstein, the state judiciary -- not you -- and state officials. That's just -- that's just -- I can't deny that. They sat here. I'm a man of 44 years old. I'm a man. I would never sit in front of another man and lie to his face. That's -- to me, that's cowardly. You know. They have all the resources in the world, but they can't produce the warrants. Everything is an explained-away excuse.

And I don't feel -- I don't feel -- I know I haven't had a fair opportunity to present my defense, and that's fraud upon the court. That's extrinsic fraud. I was hindered from presenting a complete defense. This is indisputable. Every time I asked for those impanelment documents, she denied it. It denied me from presenting a complete defense.

And you know, there's no -- no court reporter was assigned. And it's not illegally constituted grand jury, is another thing.

And I believe that the indictments should be voided on those grounds and that counsel -- the Court should show rule that counsel was ineffective because he didn't care what happened to

me. He didn't -- he didn't object to nothing. He stipulated -- he stipulated to the chain of custody, which is tantamount to a guilty plea.

So they amass all this evidence from others and because I'm a man and I don't tell on nobody or I really don't -- I don't really concern myself with what other people do. I really don't care. You know what I'm saying? What you do, you do. But I feel like I'm being sacrificed for that, you know. But, you know.

Those -- that transcript, the judge says herself all she sees is steering wheels and some nostrils, and it wasn't my nostrils. You know what I'm saying? The transcript -- every agent was questioned on whether they saw Mr. Roberts sell any drugs. They said no. They said no. When Agent Wingo was asked -- he was asked -- Agent Wingo was asked, Did you have any -- did you have any knowledge that Mr. Roberts was involved with any out-of-state trafficking of heroin? He said no, he was not informed that Mr. Roberts was -- this is the case agent. He was not informed that Mr. Roberts was involved with trafficking any heroin from out of state.

I don't believe the State met their burden on production and persuasion enough to satisfy the fact of purchases were brought into the State and the actual amounts of heroin.

And I believe that trial counsel was ineffective by not -- by not specifically, you know, objecting to the amounts of heroin

and the insufficiency of evidence, and whatever.

But like I said, I'd take 100 years if they can show me doing anything illegal. That's all.

THE COURT: All right, Mr. Roberts.

MR. ROBERTS: One more thing. I'm sorry.

THE COURT: That's okay.

MR. ROBERTS: I just want to request a transcript.

THE COURT: Okay. Well, my understanding is, and madam court reporter can correct me if I'm wrong, but those requests have to be made in writing. And ordinarily the lawyers -- lawyers would find out the court reporter's address to write them, looking at the website -- I don't know if you'll have access to that or not.

Madam court reporter, do you have a card or some way -- I don't want to announce your address on the record, but I do want to afford him the right to request whatever he wants to request.

THE COURT REPORTER: Do you want me to give it to him?

THE COURT: Right. He can take that back with him.

MR. ROBERTS: I'm returning your pencils, sir. Thank you.

THE COURT: All right, folks. Obviously it's rare that a judge rules from the bench on a PCR matter, certainly when it's as involved as this one is so, Mr. Roberts, I'm going to take your matter under advisement. I'm going to review all the documents that I've been handed today, review the notes that I've made.

And I'm not going to promise any date that I'm going to make a decision, but I will tell you I'm going to do it as fast as I can given my other schedule. So I will inform the State by email, I'll write you a letter when I make a decision. And if I find for you, I'll draft an order. If I find for the State, they'll draft the order. Do you understand that?

MR. ROBERTS: Yes.

THE COURT: So I'm happy to receive mail from people, but I promise you I'm not going to forget about this, so don't waste your -- don't waste your stamps writing to me. I don't like to let things linger. I think these lawyers have been in front of me before. It may not be as fast as you want it but in the grand scheme of things it's going to be quick because I don't want the issues to go stale in my mind. But it's probably going to be -- probably sometime in May before you hear from me, you understand? It's the middle of April right now. Probably going to be sometime in the month of May before I make a final decision because I've got a week's worth of these, and next week I'm in another court.

So to give this the amount of time that it deserves it's going to require some patience. So you can write me if you want to, but I would advise you to save your money because I'm not going to forget about it. All right.

MR. ROBERTS: Please don't.

THE COURT: I won't forget about it. I promise you that.

All right. This matter is adjourned.

(End of Transcript of Record.)

CERTIFICATE OF REPORTER

I, Cathy J. Provost, Official Court Reporter for the Fourteenth 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 evidence introduced in the trial/proceedings of the captioned case in the Court of Common Pleas for Berkeley County, South Carolina, on the 18th day of April, 2023.

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

Date: May 7, 2023

\s\ Cathy J. Provost
Cathy J. Provost, RMR
Official Circuit Reporter