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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J. Mark Hayes, II, Circuit Court Judge

CARNELL BLAND,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001739

APPENDIX

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1 STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 2 COUNTY OF SPARTANBURG)

3 The State,)
 4) TRANSCRIPT OF RECORD
 -vs-) 2010-GS-42-1158
 5)
 6 Carnell Antonio Bland,)
) July 11, 2011
 7 Defendant.) Spartanburg, South Carolina

8
 9

10 B E F O R E :
 11 HONORABLE J. DERHAM COLE, JUDGE
 12

13
 14

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

15
 16 DANNY FULMER, ESQUIRE
 Attorney for the State

17 WILLIAM S. BEAN, IV, ESQUIRE
 Attorney for the Defendant

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Linda D. Moffitt
 Circuit Court Reporter

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1

2 Guilty plea -- page 2.

3 No sworn testimony; no exhibits entered into evidence.

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1 MR. FULMER: Your Honor, this is Carnell Antonio
 2 Bland. He's here on Indictment No. 2010-GS-42-1158.
 3 That's a true-billed indictment for armed robbery. He's
 4 pleading guilty today without recommendation or negotiation
 5 from the state.

6 Count two of the indictment is being dismissed upon
 7 his plea, Your Honor, as well as the accompanying burglary
 8 charges and kidnapping charges.

9 THE COURT: You are Carnell Antonio Bland.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Bean is your lawyer.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: How long has he been representing you?

14 THE DEFENDANT: Since I say about like a year or two
 15 years.

16 THE COURT: And --

17 THE DEFENDANT: Since I had this case.

18 THE COURT: Since October of 2009 or shortly
 19 thereafter?

20 THE DEFENDANT: Shortly after that, sir.

21 THE COURT: All right. During that time have you had
 22 plenty of opportunity to talk with him about your charge --

23 THE DEFENDANT: Yes, sir.

24 THE COURT: -- and your apparent decision to plead
 25 guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did he go over this indictment with you
3 and explain to you what the state claims you did?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: The state alleges on October the 27th of
6 2009 that you while armed with a deadly weapon -- that
7 weapon being a gun -- did take, steal and carry away from
8 the person or presence of William J. Brown by using force
9 or violence or the threat of the use of force or violence
10 and in possession of a weapon certain goods or monies.

11 They've described the goods or monies as being money
12 that belonged to Mr. Brown. And they say intended to
13 deprive him permanently of the use or possession of his
14 property.

15 That constitutes armed robbery for which you could
16 receive a sentence of up to 30 years in jail. It requires
17 a mandatory minimum sentence of not less than ten years in
18 jail.

19 They also allege in a separate count in the indictment
20 that you did possess a weapon during the commission of a
21 violent crime, the violent crime being armed robbery. They
22 allege you possessed a gun or visibly displayed one during
23 that robbery, which carries an additional five years in
24 jail if you are convicted.

25 Mr. Fulmer has I think indicated that if you plead

1 guilty to armed robbery he's going to dismiss that second
2 count of the indictment.

3 Is that true?

4 MR. FULMER: That's right, Your Honor.

5 THE COURT: And he's also going to dismiss a burglary
6 first charge and two kidnapping charges. Did you
7 understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. So you understand now what you're
10 charged with and what you are pleading guilty to.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand the potential sentence I
13 can impose if I accept that plea?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you still want to go forward?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Bean explained to you the -- well, let
18 me ask you this.

19 Did you tell Mr. Bean everything you know about these
20 allegations?

21 THE DEFENDANT: Allegations that on --

22 THE COURT: In other words, what they claim you did.
23 Did you tell him everything you know about this event that
24 occurred back in October of 2009?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And did you and he discuss whether or not
2 you had a defense to the charge of armed robbery?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you know of any defense that you have
5 to that charge?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Well, what defense do you have?

8 THE DEFENDANT: Say that. Say that one more time now,
9 sir.

10 THE COURT: I said did you discuss with Mr. Bean
11 whether or not you have some defense to the charge of armed
12 robbery.

13 THE DEFENDANT: Yes, sir, yes, sir.

14 THE COURT: All right. After y'all discussed it --

15 THE DEFENDANT: Yes, sir.

16 THE COURT: -- did you decide that you did or did not
17 have a defense to armed robbery?

18 THE DEFENDANT: I decided I had something to do with
19 it, sir.

20 THE COURT: No. I asked if you had a defense to it.
21 A defense is some reason why you should not be found
22 guilty.

23 THE DEFENDANT: Oh, no, sir.

24 THE COURT: Do you know of any reason why you should
25 not be found guilty?

1 THE DEFENDANT: No, sir.

2 THE COURT: Okay. Did he explain to you each of the
3 constitutional rights that you have to give up if you want
4 to plead guilty?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand you have the right to
7 remain silent?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And that of course means you don't have to
10 say anything. You don't have to answer any questions. You
11 don't have to testify. You don't have to make a statement.

12 You never have to assist the state in their efforts to
13 prove your guilt by you admitting your guilt or testifying
14 to facts that might tend to prove it or answering questions
15 that might tend to prove it.

16 You have an absolute right to remain silent and to
17 require the state to come into court with sufficient
18 evidence to establish your guilt to the satisfaction of a
19 jury beyond a reasonable doubt.

20 Do you understand your right to remain silent?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Well, now, you understand you have to give
23 that up if you want to plead guilty.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Well, do you want give it up?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you doing so voluntarily?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You also a right to confront any witness
5 that would offer evidence against you.

6 In other words, you've got a right to make the state
7 bring the witness into court. Anybody that would testify
8 or provide any evidence of your guilt would have to take
9 the witness stand. They'd have to testify in your presence
10 under oath. You could see them; you could hear them. Your
11 lawyer could examine them in order to test their
12 reliability and the credibility of the information they're
13 providing.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, when you plead guilty the witnesses

16 don't, don't take the witness stand and testify. You don't
17 get to examine. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Well, understanding that you have a right
20 to confront them do you wish to give that right up in order
21 to plead guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you also have right to have a jury
24 trial. You have a right to have 12 jurors decide if you're
25 guilty or not.

1 If you elect to have a jury trial you help pick the
2 jury. Twelve are chosen from a larger group of jurors.

3 Once those 12 are selected they'd sit over there in
4 the jury box. They'd listen to all of the testimony. They
5 consider all the evidence. From that evidence they decide
6 what they think happened back in October of 2009 as it
7 relates to these charges.

8 And once they decide the facts they apply the law that
9 I provide them, and they determine whether or not you are
10 guilty of armed robbery or not. Before you could be found
11 guilty of armed robbery all 12 jurors would have to be
12 convinced of your guilt beyond a reasonable doubt.

13 The burden is on the state to convince the jury of
14 that fact. The burden's not on you to prove anything. So
15 you can have a jury trial and still sit at the table and
16 remain silent. You don't have to take the witness stand.
17 You don't have to testify. You don't have to call any
18 witnesses, don't have to produce any evidence. The burden
19 is not upon you to prove anything. The burden is on the
20 state to prove you guilty. Do you understand your right to
21 have a jury trial?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you wish to give that right up in order
24 to plead guilty?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: The solicitor says he's going to dismiss
2 count two of this indictment, which is a weapon charge;
3 going to dismiss two kidnappings and one burglary first
4 degree if you plead guilty to armed robbery.

5 Other than his agreement to drop those charges were
6 you promised anything else that caused you to make your
7 decision to plead guilty?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you pleading guilty freely and
10 voluntarily?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you guilty of armed robbery?

13 THE DEFENDANT: Yes, sir, I am.

14 THE COURT: And what did you do that makes you guilty
15 of armed robbery?

16 THE DEFENDANT: I went in, went in their house.

17 THE COURT: Went into a house?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And what did you do when you went in?

20 THE DEFENDANT: Went in there, me and a couple of
21 other guys, and took some weed.

22 THE COURT: Took some weed?

23 THE DEFENDANT: Yes, sir, and money.

24 THE COURT: Sir?

25 THE DEFENDANT: Weed and money.

1 THE COURT: How much money did you get?

2 THE DEFENDANT: I don't know, sir.

3 THE COURT: Did you tell Mr. Jeter about that money?

4 THE DEFENDANT: Sir?

5 THE COURT: Did you tell Mr. Jeter about the money?

6 THE DEFENDANT: Did I tell him about the money?

7 THE COURT: Right. Mr. Jeter. Was he with you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did you tell him about taking the money?

10 THE DEFENDANT: I don't understand what you mean by
11 that, sir.

12 THE COURT: Don't understand. Did you tell Mr. Jeter
13 that you took some money from Mr. Brown?

14 THE DEFENDANT: Oh, yes, sir, yes, sir.

15 THE COURT: You did?

16 THE DEFENDANT: Yes, sir, yes, sir.

17 THE COURT: Because he says he didn't know anything
18 about money. He said he knows about that weed but he
19 didn't get any money. He got the weed. Is that true or
20 false?

21 THE DEFENDANT: That's false, sir.

22 THE COURT: What'd he get?

23 THE DEFENDANT: I got, got money.

24 THE COURT: What did he get?

25 THE DEFENDANT: He just got weed, sir.

1 THE COURT: He just got the weed?
2 THE DEFENDANT: Yes, sir, he got the weed.
3 THE COURT: He didn't get any money.
4 THE DEFENDANT: Not that I know of, sir.
5 THE COURT: Okay. Who got the money?
6 THE DEFENDANT: I did, sir.
7 THE COURT: How much did you get?
8 THE DEFENDANT: I'd say about two hundred or three
9 hundred dollars, sir.
10 THE COURT: All right. And how much weed did you get?
11 THE DEFENDANT: A good bit of it, sir.
12 THE COURT: Well, like how much?
13 THE DEFENDANT: About like two or three pounds, sir.
14 THE COURT: Two or three pounds?
15 THE DEFENDANT: Yes, sir.

16 THE COURT: Was Mr. Brown just using that for his own
17 consumption?
18 THE DEFENDANT: Sir?
19 THE COURT: Was he just using that? Did he smoke a
20 lot?
21 THE DEFENDANT: I don't know, sir.
22 THE COURT: You don't know?
23 THE DEFENDANT: No, sir.
24 THE COURT: Well, how did you know to go down there
25 and get it?

1 THE DEFENDANT: How?

2 THE COURT: How did you know Mr. Brown had two pounds
3 of weed down there?

4 THE DEFENDANT: Oh, through somebody else, sir.

5 THE COURT: Who?

6 THE DEFENDANT: I was in the wrong by listening to
7 somebody else, sir.

8 THE COURT: Somebody told you he had a lot of dope and
9 money?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And y'all decided to go down there and
12 take it?

13 THE DEFENDANT: Yes, sir, on a drug deal went bad,
14 some things. I sent some money down there to him through
15 somebody else, and it's some misunderstanding with the

16 situation. And I went down there, sir.

17 THE COURT: Okay. But there's no doubt that you --
18 did you have a gun?

19 THE DEFENDANT: No, sir, I didn't have no gun.

20 THE COURT: Who had the gun?

21 THE DEFENDANT: One of my codefendants that was with
22 me, sir.

23 THE COURT: Which one?

24 THE DEFENDANT: Donald Cheeks.

25 THE COURT: Mr. Cheeks had the gun?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: What kind of gun did he have?

3 THE DEFENDANT: I don't know what kind it is.

4 THE COURT: Well, what did it look like?

5 THE DEFENDANT: It's just long. That's all I know.

6 Just long.

7 THE COURT: Long.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Is it a rifle?

10 THE DEFENDANT: I don't know if it was a rifle or not.

11 THE COURT: Well, do you know the difference in a
12 rifle and a revolver?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you know the difference in a shotgun
15 and automatic pistol?

16 THE DEFENDANT: Well, probably can be a rifle or a
17 shotgun. I don't know.

18 THE COURT: Do you think that's what it was, sir?

19 THE DEFENDANT: Sir, it's one of them --

20 THE COURT: In other words, he didn't have it hidden
21 in a pocket or a coat or anything?

22 THE DEFENDANT: No, sir. It was, it was a rifle and a
23 shotgun, I know of, sir.

24 THE COURT: Long gun.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: He just walked in with it and took the
2 money and took the -- took the weed.

3 THE DEFENDANT: No, sir.

4 THE COURT: Well, what happened?

5 THE DEFENDANT: Just knocked on the door and he opened
6 it. That's when we went in, sir.

7 THE COURT: Okay. And so no doubt it was armed
8 robbery.

9 THE DEFENDANT: Yes, sir. It was no doubt it's armed
10 robbery, sir.

11 THE COURT: Did you know that armed robbery is
12 classified as a violent crime?

13 THE DEFENDANT: Not, not at the time I didn't. Now I
14 know, sir.

15 THE COURT: And who told you that?

16 THE DEFENDANT: My lawyer.

17 THE COURT: Did you know that armed robbery was
18 classified as a most serious offense?

19 THE DEFENDANT: No, sir, not until, no, sir.

20 THE COURT: Do you know it now?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you know what that means?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you know what the significance of that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And did you know that armed robbery was
2 also classified as a no-parole offense?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you understand the significance of
5 that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Bean has explained all of that to you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You're 25 years old?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: How far did you go in school?

12 THE DEFENDANT: To the tenth.

13 THE COURT: Why did you quit?

14 THE DEFENDANT: I had went down the road, had got in
15 trouble in school, and I went down the road, DJJ, violation

16 of probation.

17 THE COURT: Are you married?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you have any children?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: How many?

22 THE DEFENDANT: One.

23 THE COURT: Do you work?

24 THE DEFENDANT: Yes, sir. I was.

25 THE COURT: Where?

1 THE DEFENDANT: I was working Carolina -- Carolina
2 Customs.

3 THE COURT: Carolina Customs?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is that a van --

6 THE DEFENDANT: No. It's a -- you build pallets.

7 THE COURT: Build pallets?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. And you're in jail now?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You been there since October or shortly
12 thereafter -- 2009?

13 THE DEFENDANT: Since October the 9th -- November the
14 9th.

15 THE COURT: Okay. You been using any dope or drinking
16 any alcohol while you've been in jail?

17 THE DEFENDANT: No, sir, I haven't, sir.

18 THE COURT: You found any over there yet?

19 THE DEFENDANT: No, sir, I haven't. Wasn't looking
20 for none, sir.

21 THE COURT: You weren't looking for any?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you ever suffered from any type of
24 substance abuse or addiction?

25 THE DEFENDANT: No, sir.

1 THE COURT: No. Have you ever been treated for any
2 type of mental illness or emotional disturbance?

3 THE DEFENDANT: No, sir, I haven't.

4 THE COURT: And you understand fully what you're doing
5 now?

6 THE DEFENDANT: Yes, sir. I am.

7 THE COURT: All right. Listen to what the solicitor
8 tells me about the facts that relate to your cases. And
9 once he's finished I'm going to ask you if you agree with
10 him --

11 THE DEFENDANT: Yes, sir.

12 THE COURT: -- or disagree. So listen to what he says
13 so you can tell me.

14 THE DEFENDANT: Yes, sir.

15 MR. FULMER: Judge, this happened October the 27th of

16 2009 down in Enoree at Road during the evening.

17 The homeowner told me that or told police that he
18 heard a knock at the door. A person identified himself as
19 Nick. When he opened the door four men rushed in wearing
20 masks and dressed in dark clothes and held him and his wife
21 at gunpoint while their home was ransacked and money stolen
22 from their home.

23 At some point there was a fight ensued where he was
24 hit and almost knocked out. During the course of that
25 fight Mr. Jeter's mask came off his face and the homeowner

1 was able to recognize Mr. Jeter as a man he had gone to
2 middle school with, which is how the police got their
3 initial lead.

4 They found Mr. Jeter and approached him and gave him
5 his rights, and thereafter Mr. Jeter confessed and named
6 Mr. Cheeks and Mr. Bland as two of the other men who were
7 participating in that robbery.

8 THE COURT: And is everybody in agreement on who had
9 the gun and what kind of gun it was?

10 MR. FULMER: No. I don't think they are, Your Honor.

11 THE COURT: Well, tell me what everybody says.

12 MR. FULMER: I think each of the codefendants say that
13 the other ones had the guns.

14 The homeowner told me that he thought either they all
15 had guns or there were at least three guns involved. But

16 his best recollection is they were all carrying guns.

17 THE COURT: What kind of guns?

18 MR. FULMER: He's here. I can let him talk to you.

19 THE COURT: Okay. Yeah. Where is he? This is

20 Mr. Brown?

21 MR. FULMER: This is Mr. Brown, yes, sir.

22 THE COURT: You're William J. Brown.

23 THE VICTIM: Yes, sir.

24 THE COURT: You're the victim of the armed robbery.

25 THE VICTIM: Yes, sir.

1 THE COURT: Now, Mr. Bland says that he took a
2 couple -- or how many pounds did you say it was?

3 THE DEFENDANT: Three pounds outta the refrigerator,
4 sir.

5 THE COURT: Three pounds of marijuana out of the
6 refrigerator.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is that true or false?

9 THE VICTIM: False.

10 THE COURT: Did he take any marijuana at all?

11 THE VICTIM: False.

12 THE COURT: Didn't take any marijuana?

13 THE VICTIM: No.

14 THE COURT: What'd they take?

15 THE VICTIM: Money.

16 THE COURT: How much money did they take?

17 THE VICTIM: Somewhere around three hundred outta my
18 pocket I gave them because they kept demanding it. And
19 then after I gave them that they even demanded even more
20 holding my kids up at gunpoint. And I ended up -- what I
21 had to put back, saved, was in the refrigerator. And I
22 ended up going to the refrigerator and getting it and
23 giving it to them also.

24 THE COURT: Getting the money out of the refrigerator?

25 THE VICTIM: Yeah.

1 THE COURT: And which one -- how many were in the
2 house?

3 THE VICTIM: Four.

4 THE COURT: Four. And how many of them had guns?

5 THE VICTIM: All of them.

6 THE COURT: All four?

7 THE VICTIM: Three handguns and a shotgun.

8 THE COURT: Three handguns and a shotgun.

9 THE VICTIM: Yeah.

10 THE COURT: Okay. Is there anything else you need to
11 tell me, Mr. Brown?

12 THE VICTIM: No, sir.

13 THE COURT: Okay. Thank you.

14 All right. Tell me about Mr. Bland's record.

15 MR. FULMER: From 2003 he's got an ABHAN and a simple
16 assault; 2005, unlawful carrying of a weapon; also a simple
17 assault and battery from 2005, possession or sale to a
18 person under -- no -- possession of a stolen pistol.
19 That's from 2005. Criminal domestic violence from 2006;
20 another criminal domestic violence in 2006; escape from
21 2007; and drug paraphernalia from 2008; D.U.S. in 2008 as
22 well.

23 THE COURT: All right. Mr. Bland, you heard what the
24 solicitor told me about your record. Do you agree or
25 disagree?

1 THE DEFENDANT: Yes, sir. I disagree a hundred
2 percent, sir.

3 THE COURT: All right. You disagree a hundred
4 percent?

5 THE DEFENDANT: I, I, I agree a hundred percent.

6 THE COURT: You agree a hundred percent.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And, Mr. Brown, you agree or disagree with
9 his version of the facts?

10 THE VICTIM: I agree.

11 THE COURT: You agree with Mr. Brown's version --
12 Mr. Brown.

13 THE VICTIM: Oh, no, no, no, sir, I don't.

14 THE COURT: So you're sticking with the story you told
15 me earlier.

16 THE VICTIM: No, sir. It wasn't no -- whatever he
17 say --

18 THE COURT: Listen to me. I said so you're staying
19 with the story -- in other words, the story you told me
20 earlier is still what you contend happened.

21 THE DEFENDANT: Yes, sir, positive.

22 THE COURT: Okay. All right. Do you still want me to
23 accept your plea of guilty?

24 THE DEFENDANT: Yes, sir, I do, sir.

25 THE COURT: All right. I'll accept it and hear from

1 you and Mr. Bean.

2 MR. BEAN: Thank you, Your Honor.

3 Judge, as Mr. Bland told you, he did attend Woodruff
4 High School and got into some trouble while he was in
5 school. He went to the department of juvenile justice,
6 which is why he did not finish at Woodruff.

7 He is not married. He does have a five-year-old
8 daughter who he lived with and supported until this
9 happened and he got put in jail where he's been for the
10 past couple of years.

11 Judge, his family is here. His mama is here in the
12 front row in the center, and his mother's -- the baby in
13 the blue top over here, they're here to support him today.

14 He does admit that he committed the crime that he's
15 charged with as far as the armed robbery is concerned. We

16 would ask that Your Honor consider perhaps a reasonable
17 minimal sentence with a chance while he is in prison for
18 him to get some education so that hopefully when he comes
19 out he'll be able to go back to work at a legitimate job
20 and not have anything like this happen again.

21 Your Honor, we have talked about this case. I
22 probably spent more time with Mr. Bland on this case than
23 any other case I have pending in any of these courts.

24 He is very adamant about what happened. His story
25 hasn't varied. And he is -- has expressed to me that the

1 facts as he related them to Your Honor are correct and what
2 actually happened during this instance.

3 THE COURT: All right. Mr. Bland, anything you want
4 to add to what your lawyer has told me?

5 THE DEFENDANT: Sir, I just want to say, ask you be
6 lenient on me. And could you forgive me for what I did,
7 sir? I want to apologize to the victim and the
8 codefendant, I mean, the victim and the solicitor, what I
9 did commit, my crime. Thank you.

10 THE COURT: Thank you. Did you see any children in
11 the house when you went in there?

12 THE DEFENDANT: Sir?

13 THE COURT: Did you see the children in the house when
14 you went in there?

15 THE DEFENDANT: Yes, sir, I did. I seen them once.

16 She came to run, to run to her mama saying, Mama, it's --
17 and she went down where her mama is by the refrigerator on
18 the floor. She got down by her mama. I didn't see nobody
19 else but one little girl, sir.

20 THE COURT: On Indictment 2010-1158, Sentence of the
21 Court is you, Carnell Antonio Bland, be confined to the
22 South Carolina Department of Corrections for a period of 15
23 years.

24 END OF REQUESTED TRANSCRIPT OF RECORD

25

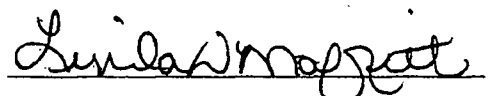
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 11th day of July 2011.

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

April 12, 2012



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA

County of Spartanburg

Carnell Bland #294049
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2012-CP-42-0510

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached to the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Court for the County in which the applicant was convicted.

1. Place of detention Fury Correctional Center
2. Name and location of Court which imposed sentence Spartanburg General Session
3. Name(s) of co-defendant(s) (if any) Alonzo Jeter, Donovan Cheeks
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Arm Robbery
 - (b) N/A

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(c) N/A

5. The date upon which sentence was imposed and the terms of the sentence:

(a) July 11th 2011

(b) 15 years,

(c) N/A

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Plea guilty

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Conviction

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. PCR 1st stage

ii. PCR 1st stage

iii. PCR 1st stage

(b) the result in each such Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) PCR is the only avenue, Direct Appeal isn't a avenue.

(b) PCR is only avenue at this time.

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(c) PCR is only stage at this time.

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

- (a) ineffective assistance of counsel
- (b) prosecutor misconduct.
- (c) Judicial misconduct.

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

- (a) Attorney fail to move for Direct Appeal upon my request.
- (b) Codefendant was release, but hands of are hands of all.
- (c) Judge fail to inform me of nature of offense.

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

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

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

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

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(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

No it has not, PCR is the only and 1st stage that I move within the judicial level.

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

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

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

- (a) Because this is the 1st level of an appeal,
- (b) PCR is 1st stage and are now is the
- (c) Court to hear such grounds.

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes preliminary hearing,

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

- (a) the name and address of each attorney who represented you:
 - i. William Bean
 - P.O. Box Drawer 91.
 - ii. Spartanburg SC. 29304.
 - iii. N/A
- (b) the proceedings at which each such attorney represented you:
 - i. Preliminary, Plea, Sentencing
 - ii. N/A
 - iii. N/A

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

that the lesser included offence be submitted
which is Strong Arm Robbery, and that I
get lesser sentence with parole date.

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

NO,
N/A.

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, Carnell Bland 294049, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Carnell A. Bland

SWORN to and subscribed before me this 18th day of January, 2012.

Atina T. Milord (L.S.)
Notary Public

My Commission Expires: August 7, 2016

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

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

I, Carnell Bland 294049, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

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

Carnell A. Bland
Applicant

SWORN or affirmed to and subscribed before me this

12th day of January, 2012.

Steve T. McLauchly
Notary Public

My Commission Expires: January 7, 2016

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	
Carnell Bland, #294049,)	2012-CP-42-0510
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 31, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the February 2010 term of the Spartanburg County Grand Jury for armed robbery and possession of a weapon during the commission of a violent crime (10-GS-42-1158, counts 1 and 2). Applicant was represented by William S. Bean, IV, Esquire. On February 22, 2010, the Applicant pled guilty to armed robbery and the charge of possession of a weapon during the commission of a violent crime was dismissed. Applicant was sentenced by the Honorable J. Derham Cole for a period of fifteen (15) years. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South

Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to file a direct appeal at Applicant's request
2. Prosecutor misconduct, in that;
 - a. "Codefendant was released, but the hands of one hands of all"
3. Judicial misconduct, in that;
 - a. The judge failed to inform Applicant of the nature of the offense

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Respondent submits that the second allegation fails to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true and Applicant's co-defendant was released, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The Respondent therefore moves for summary dismissal of this allegation pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

V.

The third allegation appears to raise an issues of trial court error, which is a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the allegation of ineffective assistance of counsel.


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEY'S FOR RESPONDENT

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

Sept. 27, 2012.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
)
)
 Carnell Bland, # 294049)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent)
 _____)

IN THE COURT OF COMMON PLEAS
 IN THE SEVENTH CIRCUIT


2012-CP-42-0510

AFFIDAVIT OF SERVICE BY MAIL

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

Kenneth P. Shabel, Esquire
104 North Daniel Morgan Avenue
Suite 201
Spartanburg, SC 29306

DATED this 27th day of September, 2012


 Troyeshi Brailey, Legal Assistant
 For Respondent

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	
Carnell Bland,)	
)	TRANSCRIPT OF RECORD
Applicant,)	2012-CP-42-0510
-vs-)	
)	
The State,)	
)	April 3, 2013
Respondent.)	Spartanburg, South Carolina

B E F O R E:

HONORABLE J. MARK HAYES, II, JUDGE

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

KENNETH P. SHABEL, ESQUIRE
Attorney for the Applicant

SUZANNE H. WHITE, ESQUIRE
Attorney for the Respondent

Margaret A. Woods
Circuit Court Reporter

ORIGINAL

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WILLIAM S. BEAN

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Certificate of reporter

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MOTIONS AND MATTERS

1 MS. WHITE: Thank Your Honor, this is the case of Carnell
2 Bland vs. the State, excuse me, it's Case Number
3 2012-CP-42-0510. He's represented today by Mr. Ken Shabel.
4 Mr. Bland was indicted in February 2010 on charges of armed
5 robbery and possession of a weapon durin' a violent crime.
6 The possession of a weapon charge was nol-prossed and he pled
7 guilty February 22nd 2010 to a 15-year or, excuse me, to the
8 armed robbery to which he received a 15-year sentence. He's
9 alleged various allegations of ineffective assistance of
10 counsel, prosecutorial misconduct and judicial misconduct.
11 Obviously the State would move to summarily dismiss the
12 prosecutorial and judicial misconduct as direct appeal issues
13 per our return and then the ineffective assistance of counsel
14 claim he alleged that counsel failed to file a direct appeal
15 at his request and I will turn it over to Mr. Ken Shabel at
16 this time.

17 MR. SHABEL: May it please the Court.

18 THE COURT: Yes, sir.

19 MR. SHABEL: For the record the only thing I would
20 primarily disagree with would be the fact that my client's
21 plea date was actually July 11 ---

22 MS. WHITE: I'm so sorry.

23 MR. SHABEL: --- 2011, it was not 2010. Uh, he did file
24 his post-conviction relief application in January of 2012
25 which is, uh, well within the statutory time frames and (cough

MOTIONS AND MATTERS

1 interruption) limitations. As to, uh, State's motion, uh,
2 Your Honor, I would argue that one of the concerns that my
3 client brought up in his, uh, petition for post-conviction
4 relief was failure to file a direct appeal so I believe those
5 issues are extremely relevant on these issues and we believe,
6 uh, Mr. Bean did not file direct appeal on those issues
7 pursuant to my client's wishes and that's part of the reason
8 we're here today as well as other, uh, significant factors
9 related to what we believe to be an involuntary guilty plea.
10 Although I agree that we cannot technically get
11 post-conviction relief for prosecutorial or judicial
12 misconduct, it is part and partial to a direct appeal request
13 that my client did make of Mr. Bean.

14 THE COURT: So is your client as part of his application
15 requesting that he be allowed the opportunity for a direct
16 appeal on those issues?

17 MR. SHABEL: That is part of his appeal of his
18 post-conviction relief, Your Honor, yes, sir.

19 THE COURT: Okay. . . Alright.

20 MR. SHABEL: We're prepared to go forward at this time,
21 call Mr. Bland.

22 THE COURT: Sir, just come right up here (indicating).
23 Place your left hand on the Bible and raise your right hand
24 and allow me the opportunity to swear you in, sir.

25 (Whereupon, the applicant came forward.)

CARNELL BLAND - DIRECT EXAMINATION BY MR. SHABEL

1 (Whereupon, a discussion was held off the record.)

2 CARNELL BLAND, having been
3 first duly sworn, testified as follows:

4 THE COURT: Sir, please have a seat in the red chair,
5 watch your step when you step up there, sir. Pull the red
6 chair up to the microphone.

7 MR. SHABEL: May it please the Court.

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION BY MR. SHABEL:

10 Q. Sir, would you state your full name for the record.

11 A. My name Antonio Bland.

12 Q. Mr. Bland, how old are you?

13 A. Twenty-six.

14 Q. What's the highest level of education you completed?

15 A. Eight grade.

16 Q. Are you currently incarcerated?

17 A. Yes, sir.

18 Q. In what facility?

19 A. Perry Correction Institute.

20 Q. How long have you been at Perry?

21 A. Since ju -- twelve thousand twelve December 5th.

22 Q. Before that where were you?

23 A. Kirkland Correction.

24 Q. And were you in the Spartanburg County Detention Center
25 before that?

CARNELL BLAND - DIRECT EXAMINATION BY MR. SHABEL

1 A. Yes, sir.

2 Q. Did you go straight from the detention center to the, uh,
3 the Department of Corrections?

4 A. Yes, sir.

5 Q. How long were you at or in, uh, the Spartanburg County
6 Detention Center approximately?

7 A. Uh, ---

8 Q. Rough guess, I won't hold ya to it.

9 A. --- November the 9th to 2011.

10 Q. Okay, so was there a period of time after you got
11 arrested for the charges here that you were out of jail and
12 then went back in?

13 A. No, sir.

14 Q. Okay, so you got arrested, stayed in jail 'til you
15 pled, ---

16 A. Yes, sir.

17 Q. --- 'til you had your plea hearing.

18 A. Yes, sir.

19 Q. Okay. Now, Mr. Bland, you are currently incarcerated for
20 a, uh, on a 15-year sentence for armed robbery, is that
21 correct?

22 A. Yes, sir.

23 Q. And that was based on on a plea hearing that you had in
24 July of 2011, is that correct?

25 A. Yes, sir.

CARNELL BLAND - DIRECT EXAMINATION BY MR. SHABEL

1 Q. Who was your attorney?

2 A. Mr. Will Bean.

3 Q. And was he retained or was he appointed?

4 A. I don't understand that, sir.

5 Q. Did you pay for an attorney or did ---

6 A. Yes, sir.

7 Q. --- you have the Court appoint one?

8 A. Paid for one.

9 Q. Alright, thank you. Uh, how many times did you meet with
10 Mr. Blan -- Mr. Bean about these charges?

11 A. One time.

12 Q. When was that?

13 A. I say like a week before we go to court or sumtin'.

14 Q. Is that the first time you met with him?

15 A. Um, 'bout the charges, the rest the time they were at my
16 bonds hearin's.

17 Q. Okay. When you went in for bond hearings, when you went
18 in to have a bond reduction or a bond request hearing, did you
19 ever get into the allegations of the charges themselves?

20 A. No, sir.

21 Q. Did you ever discuss with him other than that one meeting
22 any of the defenses you might have?

23 A. What you mean by that, sir?

24 Q. Any alibi witnesses, any people that you wanted him to
25 investigate?

CARNELL BLAND - DIRECT EXAMINATION BY MR. SHABEL

- 1 A. I have talked to him one time 'bout that havin' a alibi.
- 2 Q. Okay, you did talk to him about an alibi witness.?
- 3 A. Yes, sir.
- 4 Q. What was the alibi witness's name?
- 5 A. Tiffany Hughes.
- 6 Q. Did he ever tell you he contacted Tiffany?
- 7 A. He never told me that, he just wrote a name down.
- 8 Q. Okay. How early in his representation did he know of
- 9 that alibi witness?
- 10 A. How early?
- 11 Q. Yes, like compare when you told him to when you
- 12 ultimately went to your hearing.
- 13 A. I told him 'bout the, um, that, um, 'bout her this
- 14 basically the same day really ---
- 15 Q. Okay. Same day as your first meeting with him?
- 16 A. No, sir.
- 17 Q. Same day as your hearing.
- 18 A. I went to court yes, sir.
- 19 Q. Alright. What things did you ask Mr. Bean to do on your
- 20 behalf representing you?
- 21 A. I aksed him.
- 22 Q. What did you want him to do for you?
- 23 A. I wanted him to get me 10 years.
- 24 Q. Okay.
- 25 A. In order for me to plead guilty, I want him get me 10

CARNELL BLAND - DIRECT EXAMINATION BY MR. SHABEL

1 years.

2 Q. Alright. Did you tell him you did it?

3 A. Sir?

4 Q. Were you ever -- were you, were you even at the scene of
5 the ---

6 A. No, I wasn't.

7 Q. --- incident?

8 A. No, sir, I wasn't.

9 Q. Okay. Do you tell him that?

10 A. Yes, I have told him that.

11 Q. More than one occasion.

12 A. Yes, I have.

13 Q. To your knowledge would Tiffany have verified that that
14 you weren't there?

15 A. Yes, yes, sir.

16 Q. For the record was this a situation where multiple
17 individuals were charged with this crime?

18 A. Yes, sir.

19 Q. Okay. One a those individuals was here today for a
20 post-conviction relief application on his charge too, is that
21 correct?

22 A. Yes, sir.

23 Q. That the first time you'd seen him since ---

24 A. Since since we, um, since I had my charge?

25 Q. Yes.

CARNELL BLAND - DIRECT EXAMINATION BY MR. SHABEL

1 A. No, that aint my first time seein' him, no, sir.

2 Q. Okay, is this the first time you had a chance to talk
3 with him about it since then?

4 A. Yes, sir.

5 Q. And what's that guy's name?

6 A. Uh, Terez Jeter.

7 Q. Is Mr. Jeter prepared to testify that you weren't
8 there?

9 A. Yes, sir.

10 Q. You mentioned in your application prosecutorial
11 misconduct, what concerns did you have about the prosecution
12 in this case?

13 A. I was, well I was, I wanted that throw that out right
14 there.

15 Q. Okay, you don't wanna pursue that at this time.

16 A. No, sir.

17 Q. Alright. Okay, thank you. Um, were you ever made aware
18 of any of the negotiations involving any other defendants?

19 A. Uh, what you mean by that?

20 Q. Were you ever made aware what their charges were and what
21 they ended up getting convicted or pled guilty of?

22 A. No, sir.

23 Q. Mr. Bean never went over that with you?

24 A. No, sir.

25 Q. Were you aware that on the same day that you pled guilty

CARNELL BLAND - DIRECT EXAMINATION BY MR. SHABEL

1 the other two, two of your other co-defendants were also there
2 to plead guilty?

3 A. Yes, sir, I was aware of that.

4 Q. Okay. You think Mr. Bean did anything to re -- in in the
5 course of his representation of you to investigate your
6 case?

7 A. What you mean by that, sir?

8 Q. Did he ever talk to any witnesses to the best of your
9 knowledge?

10 A. Not that I know of.

11 Q. Okay. Did he ever tell you, Hey, I talked to this guy
12 or, Hey, I talked to that guy?

13 A. No, sir.

14 Q. During the course of your conversations with Mr. Bean,
15 was it all about a guilty plea? Were all his conversations
16 with you about getting a guilty plea?

17 A. Yes, sir.

18 Q. Did he ever tell you about any defenses you may have?

19 A. One.

20 Q. Okay. What did he tell you would be any defense you
21 might have?

22 A. Only defense he said I had was, um, they don't have no,
23 um, or get, um, fingerprints and the people that see me on the
24 scene.

25 Q. Alright. Did you wanna go to trial?

CARNELL BLAND - DIRECT EXAMINATION BY MR. SHABEL

1 A. I wanted to go to trial, sir.

2 Q. Why did you plead guilty that day?

3 A. I was scared.

4 Q. Did you testify scared that day?

5 A. Yes, sir, I did.

6 Q. Why were you scared?

7 A. The time.

8 Q. How much time could you been facing?

9 A. Life. Life.

10 Q. Alright. Ms. White mentioned another charge that they
11 dropped, truth is there were several charges that were dropped
12 that day, is that correct?

13 A. Yes, sir.

14 Q. Kidnapping being one of 'em?

15 A. Kidnap, yes, sir.

16 Q. In fact, there were two charges of kidnapping I believe
17 that were dropped.

18 A. Two counts of it.

19 Q. You believe if Mr. Bean had done his proper investigation
20 you woulda been able to show the Court that you weren't there
21 that day?

22 A. Yes, sir.

23 Q. Do you believe if Mr. Bean had done a proper
24 investigation he would have never advised you to plead
25 guilty?

CARNELL BLAND - DIRECT EXAMINATION BY MR. SHABEL

1 A. Right.

2 Q. If he'd a talked to the people you asked him to talk to,
3 he would have never advised you to plead guilty.

4 A. Right, sir.

5 Q. Are you asking this court to grant you post-conviction
6 relief?

7 A. Yes, sir.

8 Q. You understand what it means to get post-conviction
9 relief?

10 A. No, sir, could you explain it to me.

11 Q. Sure. Do you understand that if you got granted
12 post-conviction relief you will be given a new trial, do you
13 understand that?

14 A. I understand that, sir.

15 Q. Do you understand that if you are given a new trial that
16 the results could come out very differently than what you have
17 right now?

18 A. Yes, sir.

19 Q. You could come out better, you could come out acquitted,
20 you could come out worse, ---

21 A. Yes, sir.

22 Q. --- do you understand that?

23 A. Yes, sir, I understand.

24 Q. You understand that any charges that were dropped could
25 very easily be brought back up as a result of a

CARNELL BLAND - DIRECT EXAMINATION BY MR. SHABEL

1 post-conviction relief case?

2 A. Yes, sir.

3 Q. Knowing all of that, do you still wish to go forward and
4 have the Court grant you post-conviction relief?

5 A. Yes, sir.

6 MR. SHABEL: That's all I have for the witness, Your
7 Honor.

8 MS. WHITE: And, Your Honor, if we can since you have I'd
9 like for you to take judicial notice of the transcript for
10 Mr. Jeter's plea.

11 MR. SHABEL: No objection, it was shown to me.

12 THE COURT: Transcript of Mr. Jeter's pl -- do I have
13 that as part ---

14 MS. WHITE: Yes, sir, ---

15 THE COURT: --- of this package?

16 MS. WHITE: --- it should be in the packet, he was one
17 that withdrew earlier today.

18 THE COURT: I mean, do I have it in Mr., uh, ---

19 MS. WHITE: Oh, I'm ---

20 THE COURT: --- Bland's pa ---

21 MS. WHITE: --- sorry, no, Your Honor. I just became
22 aware of that being an potential issue, uh, a few moments ago
23 so it is in Mr. Jeter's packet but I can make it -- we can get
24 another copy for you.

25 MR. SHABEL: I have no objection of the Court taking

CARNELL BLAND - CROSS-EXAMINATION BY MS. WHITE

1 judicial notice of that transcript, it is a court record, of
2 course the Court already has the transcript from this
3 particular hearing.

4 MS. WHITE: Right, do ---

5 MS. SHABEL: We just note for the record that my client
6 was not in the courtroom during any of the portions of the
7 transcript of Mr. Jeter's hearing.

8 THE COURT: Alright, I have Mr. Jeter's transcript.

9 MR. SHABEL: Thank Your Honor.

10 MS. WHITE: Thank Your Honor.

11 CROSS-EXAMINATION BY MS. WHITE:

12 Q. Uh, Mr. Bland, to your knowledge Mr. Jeter identified you
13 in a statement to police, did he not?

14 A. Yes. Yes, ma'am.

15 Q. Okay. And in fact, have you learned that he also talked
16 about and they acknowledge that you participated and that he
17 actually had described you as the one with the gun on the
18 night of the robbery?

19 A. Yes, ma'am.

20 Q. Okay. In fact, all three of the co-defendants gave
21 statements identifying you, you're the only one that did not,
22 is that correct?

23 A. No, ma'am. No, ma'am.

24 Q. Okay.

25 A. No, ma'am, it was two of 'em gave 'ems.

CARNELL BLAND - CROSS-EXAMINATION BY MS. WHITE

1 Q. Alright. Give me just one minute. Mr. Cheeks and
2 Mr. Jeter, ---

3 A. Yes, ma'am.

4 Q. --- is that correct?

5 A. Yes, ma'am.

6 Q. Okay, and I'm sorry that's two. Um, and you actually
7 acknowledged and said you were pleading freely and voluntarily
8 and that nobody had promised you anything, is that right?

9 A. I did say that then ma'am.

10 Q. And you do acknowledge that they dismissed burglary and
11 kidnapping charges in addition to the possession of a weapon
12 with a violent crime, is that right, a burglary first degree,
13 kidnapping and possession of a weapon during violent crime?

14 A. The whole time I never had no, uh, possession with, um,
15 weapon of violent, uh, crime. I was ---

16 Q. Alr ---

17 A. --- never charged with that.

18 Q. You heard me say earlier that you were indicted
19 originally count one was armed robbery, count two was
20 possession of a weapon during the commission of a violent
21 crime, that was dismissed and described to be dismissed at the
22 beginning of your plea.

23 A. No, we didn't, we didn't, we didn't, we didn't dis -- we
24 didn't talk about that.

25 Q. Okay. If the transcript reflects that the solicitor read

CARNELL BLAND - CROSS-EXAMINATION BY MS. WHITE

1 out your indictment on page 3 ---

2 A. Um-hum.

3 Q. --- the first of your plea saying, It's a true billed
4 indictment for armed robbery, pleading today without
5 recommendation or negotiation from the State, count two of the
6 indictment is being dismissed upon his plea, Your Honor, would
7 you agree then that the count two of the indictment ---

8 A. Yes, ---

9 Q. --- was dismissed?

10 A. --- yes, ma'am.

11 Q. Okay. Now you testified that you talked with Mr. Bean
12 about the fact that there was no DNA or no fingerprints,
13 excuse me, and that the victim could not identify anyone, is
14 that right?

15 A. Right.

16 Q. And you said that you gave him the name of an alibi
17 witness on the day of your plea?

18 A. You're right.

19 Q. Okay. Did you send him any letters ahead of time so that
20 he could try to investigate that prior to the plea?

21 A. No, ma'am.

22 Q. Okay. And, in fact, you testified that you actually
23 wanted him to get 10 years for you.

24 A. That's when I thought I was goin' in with 10, ---

25 Q. Okay, so ---

CARNELL BLAND - CROSS-EXAMINATION BY MS. WHITE

1 A. --- why I pled.

2 Q. --- you thought you were goin' in for ---

3 A. Yes.

4 Q. --- 10 years?

5 A. Yeah, I thought I was gonna get 10 years, that's why I
6 pled.

7 Q. And what made you think that?

8 A. He told me ---

9 Q. So your testimony is Mr. Bean promised that you would get
10 10 years?

11 A. Ten years what he told me.

12 Q. So when the judge talked to ya about the fact that you
13 were facing up to 30 years and that he could give you any any
14 time of up to 30 years and not less than 10, did you not
15 believe him?

16 A. Yes, ma'am.

17 Q. Okay. So so he did tell you he could give you between 10
18 and 30 ---

19 A. Um-hum.

20 Q. --- and they did say that there were no negotiations or
21 recommendations.

22 A. I don't, um, I don't remember that. I don't remember
23 sayin' that.

24 Q. Okay, and the part I just read earlier on page 3
25 indicated pleading guilty today without recommendation or

CARNELL BLAND - CROSS-EXAMINATION BY MS. WHITE

1 negotiation from the State, does that sound familiar?

2 A. Say that one more time.

3 Q. That you were pleading guilty today without
4 recommendation or negotiation from the State?

5 A. Why's -- in my transcript it say, uh, that we had, we had
6 negotiation in my transcript?

7 Q. Do you have a page number?

8 A. I think it's, um, I don't have my, um, ---

9 MS. WHITE: And if I can approach, Your Honor.

10 Q. I'm gonna show you the beginning of your transcript see
11 if you would agree with me that it says, Mr. Fulmer who is the
12 solicitor, "He's pleading guilty today without recommendation
13 or negotiation," and that that's where they discuss dismissing
14 count two as well as the burglary and kidnapping charges, so
15 do you agree that that they mentioned at the beginning that
16 there were no recommendations or negotiations?

17 A. Yes, ma'am.

18 Q. Okay. And then the judge did tell you minimum of 10 and
19 maximum of 30.

20 A. Um-hum.

21 Q. Okay, but you still chose to plead guilty that day?

22 A. Yes, ma'am.

23 Q. And you told the Court that you were pleading guilty
24 because you were guilty and you went in their home.

25 A. Yes, ma'am, I had to say that just to plead guilty,

CARNELL BLAND - CROSS-EXAMINATION BY MS. WHITE

1 right?

2 Q. So you said you went in there to take some weed and
3 money.

4 A. Yeah.

5 Q. Okay.

6 MS. WHITE: Your Honor, that's all I have for this
7 witness.

8 THE COURT: Any redirect limited to what she went into?

9 MR. SHABEL: No, Your Honor.

10 THE COURT: Thank you, sir, you may step down. Be
11 careful with that first step.

12 (Whereupon, the applicant left the stand.)

13 THE COURT: Applicant have any other witness?

14 MR. SHABEL: Not at this time, Your Honor, possibly on on
15 redirect.

16 MS. WHITE: Your Honor, we would call Mr. William Bean to
17 the stand.

18 THE COURT: C'mon around, Mr. Bean. Please place your
19 left hand on the Bible and raise your right hand, let me swear
20 you in.

21 WILLIAM S. BEAN, having been first
22 duly sworn, testified as follows:

23 THE COURT: Thank you, sir. Please have a seat in the
24 red chair and pull the red chair up to the microphone.

25 DIRECT EXAMINATION BY MS. WHITE:

1 Q. You could state your name for the record.

2 A. William S. Bean.

3 Q. And, Mr. Bean, you've heard Mr. Bland testify that you
4 were retained in this case, do you recall how far in advance
5 of the plea you were retained?

6 A. Uh, well over a year, I don't remember exactly.

7 Q. And you also heard him testify that you only met with him
8 once to discuss the charges, uh, is that what your
9 recollection is of your meetings with Mr. Bland?

10 A. No, I met with Mr. Band -- Bland on numerous occasions,
11 uh, and in addition to that he had, uh, telephone privileges
12 from the county jail and we talked quite a few times on the
13 telephone as well.

14 Q. And during those discussions, did you have a chance to
15 talk with him about the charges and about any possible
16 defenses he might have?

17 A. Yes, I did.

18 Q. And during those conversations did you discuss with him
19 any possible witnesses including an alibi witness?

20 A. Uh, yes, I did. Uh, we spoke about the co-defendants, we
21 spoke about his, uh, stated non-involvement in the case and he
22 did give me the name of, uh, a potential alibi witness, uh,
23 and if I can refer to my notes I can give you that specific.
24 Uh, on April the 13th 2011, he told me that he had been with a
25 Tiffany Hughes the night that the crime occurred and that she

1 would, uh, give a statement to that effect which would provide
2 him with an alibi. Uh, Ms. Hughes according to Mr. Bland, uh,
3 was Alonzo Jeta's -- Jeter's, uh, baby mama and that's why
4 Mr. Jeter says he was with 'em. Uh, on the 14th of April the
5 next day, I called Ms. Hughes and spoke to her on the
6 telephone, she told me that she does not remember if Carnell
7 was with her, uh, at her home that night or not, uh, she could
8 not provide anything in the way of an alibi for him.

9 Q. Okay. And in regards to talkin' with him about
10 proceeding to trial or pleading guilty, what was the general
11 thought as you were discussing the case with him?

12 A. Uh, the concern was that obviously the facts were such
13 that he, uh, would more than likely have been convicted had we
14 gone to trial and he was facing a substantial sentence. Uh,
15 we discussed, uh, plea negotiations, I met with the solicitor,
16 uh, Mr. Fulmer several times to talk about, uh, what we might
17 do, uh, we wound up with a an offer from the solicitor which
18 Mr. Bland accepted where he pled to the one count and the
19 other counts were dropped. Uh, if I remember correctly
20 because the count that he pled to did not carry, uh, a
21 mandatory, uh, minimum, uh, we were of course free to argue
22 for, uh, less time than than, uh, perhaps he might wind up
23 getting and I believe that the 10 years that Mr. Bland just
24 mentioned when he testified, uh, was, uh, what we were hoping
25 that we could persuade the, uh, the sentencing judge to impose

1 by way of the sentence but instead the judge gave 15.

2 Q. And when you said the facts were disturbing, he faced a
3 lotta time, in addition to this armed robbery, you said they
4 dismissed charges, were those burglary and kidnapping charges
5 as well?

6 A. Yes.

7 Q. And what were the the facts as you understood them for
8 the case ---

9 A. Uh, ---

10 Q. --- if you recall?

11 A. --- I think was a home invasion if I remember, it was,
12 uh, it may, I believe it may have been a drug house, I'm not
13 sure about that, but there were several individuals involved.
14 Uh, Mr. Bland did maintain that that he was not there but of
15 course the the others, at least two of the others were, uh,
16 had given statements implicating him as being a participant,
17 uh, and I believe having a weapon, uh, as well at the time of
18 the, uh, of the crime.

19 Q. And ultimately when you proceeded to the plea, had you
20 made any promises to Mr. Bland of any sentence that he would
21 receive?

22 A. The only discussion we had about that was that I would
23 ask the judge, uh, to consider giving him a, uh, lower
24 sentence than the maximum that he could receive. Uh, he did
25 have criminal record but it was not, uh, it was not terribly

1 extensive and I was hoping the judge could do that but, uh,
2 clearly our discussion, Mr. Bland and myself, was to the
3 effect that the judge could sentence him up to the maximum for
4 that particular crime he was pleading to.

5 Q. And at the time he pled guilty did you feel like he was
6 pleading freely and voluntarily based on the information or
7 did you feel like there was any coercion or anything
8 involved?

9 A. I think he understood exactly what he was doing.

10 Q. Okay, thank you.

11 MS. WHITE: That's all I have, Your Honor.

12 MR. SHABEL: May it please the Court.

13 THE COURT: Um.

14 CROSS-EXAMINATION BY MR. SHABEL:

15 Q. Mr. Bean, when you and Mr. Bland arrived at court on this
16 particular day, were you on the trial docket for that week or
17 was this a regularly scheduled plea hearing?

18 A. I honestly don't remember.

19 Q. Okay. Do you recall that two of the other co-defendants
20 involved also pled guilty for their involvement on the same
21 day?

22 A. I think I do remember that.

23 Q. Do you also recall that their sentencing was kind of held
24 off until the disposition of your client's?

25 A. I think that's right.

1 Q. Alright, so would it be fair to say you guys were up for
2 trial that week?

3 A. Uh, that may be correct, I just don't recall.

4 Q. Okay. Um, there were four people allegedly involved,
5 what happened to the fourth guy?

6 A. I believe the fourth guy's charges were dismissed, I'm
7 not sure about that.

8 Q. And was that before, to your knowledge, before or after
9 my client ultimately pled guilty, your -- our mutual client
10 ultimately plead guilty?

11 A. I I don't remember.

12 Q. You obviously did Brady and discovery requests throughout
13 the course of your involvement, correct?

14 A. Yes.

15 Q. Did he ever have a weapon? Did the State ever provide
16 you with a photograph or show you a weapon that was allegedly
17 involved in this particular case?

18 A. I don't believe so.

19 Q. Was it your understanding that if the case went to trial
20 there was no weapon that was gonna be introduced?

21 A. I'm sorry, would you repeat that.

22 Q. Was it your understanding that if he were gone to trial
23 there would not have been a weapon introduced?

24 A. I believe that's right.

25 Q. So that would have been a pretty solid defense in

1 Mr. Bland's favor at trial, would you agree?

2 A. Uh, yes, it coulda been.

3 Q. Right, 'cuz obviously one of the things you'd wanna point
4 out as a criminal defense attorney is they're accusing him of
5 armed robbery yet they don't have the gun.

6 A. Correct.

7 Q. Was there any witness to your knowledge that was going to
8 testify he had a gun at that scene?

9 A. Yes.

10 Q. Anybody other than one of his potential co-defendants?

11 A. No.

12 Q. Did any of the eyewitnesses implicate him?

13 A. I don't believe so. The, uh, people who did the crime
14 were wearing masks, uh, one of them if I remember correctly
15 had his mask come off ---

16 Q. That was Mr. Jeter, correct?

17 A. Uh, yes, it ---

18 Q. Okay.

19 A. --- was Mr. Jeter and the people who were being robbed
20 recognized Mr. Jeter, they knew him and so that's how all
21 this ---

22 Q. Okay.

23 A. --- was resolved. The police contacted mi-- arrested
24 Mr. Jeter I think and then he implicated the other defendants.

25 Q. Okay. And obviously one of them being Mr. Bland.

1 A. Yes.

2 Q. Did Mr. Bland ever give a statement to police to the best
3 of your knowledge?

4 A. Uh, no.

5 Q. He maintained his innocence to police the entire time?

6 A. I believe that's correct.

7 Q. So really the only evidence that was gonna be introduced
8 at trial implicating Mr. Bland for this crime was a statement
9 by one of the other co-defendants or two of the other
10 co-defendants?

11 A. Uh, correct but but my understanding is that they were
12 prepared to testify, uh, that he was involved in the crime and
13 that he had a weapon.

14 Q. Okay, but these were two individuals that you would've
15 been able to cross-examine based on their prior criminal
16 record as well as their involvement in this particular
17 allegation, correct?

18 A. Correct.

19 Q. And I'm sure you've used this tactic before where you
20 could say you're basically testifying to try and get a
21 letter -- a lesser sentence, correct?

22 A. Correct.

23 Q. Okay. For the record no other eyewitnesses, no other
24 evidence other than the co-defendants' testimony that could
25 have implicated him ---

1 A. That's right.

2 Q. --- and yet you believe the overwhelming evidence would
3 have found him guilty.

4 A. I believe so.

5 Q. You recall Mr. Bland ever asking you to file an appeal of
6 his conviction of ---

7 A. He did ---

8 Q. --- his, of his sentence I should say?

9 A. --- he did not.

10 MR. SHABEL: Alright, that's all I have for the witness.

11 THE COURT: Any, uh, redirect?

12 MS. WHITE: Nothing further, Your Honor.

13 THE COURT: Thank you, sir, you my step down.

14 (Whereupon, the witness left the stand.)

15 THE COURT: State have a -- any other witness?

16 MS. WHITE: No, Your Honor, the State has no other
17 witnesses.

18 THE COURT: Applicant have anything in reply?

19 MR. SHABEL: No, Your Honor.

20 THE COURT: Alright, so I am, just so that I'm clear the
21 transcript of the guilty plea of Donovan Cheeks will be made
22 part of the record of this case?

23 MR. SHABEL: That transcript involved Mr. Cheeks and
24 Mr. Jeter ---

25 MS. WHITE: Yes.

1 MR. SHABEL: --- both pleading simultaneously at the same
2 time. I do not oppose that being part of the Court's
3 consideration in this case.

4 THE COURT: Okay.

5 MS. WHITE: Yes, Your Honor.

6 THE COURT: Alright, I'll let you know. Thank you very
7 much.

8 MR. SHABEL: Thank Your Honor.

9 MS. WHITE: Thank you.

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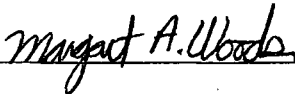
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CERTIFICATE OF REPORTER

1
2
3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on April 3, 2013 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 3 through 29, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

9 I further certify that I am neither attorney nor counsel
10 for, nor related to or employed by any of the parties
11 connected to the action, nor am I financially interested in
12 the action.

13 October 3, 2013

14
15 

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.

8/1

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
)
 Carnell Bland, #294049,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2012-CP-42-0510

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 31, 2012. The Respondent made its Return on or about September 27, 2012. An evidentiary hearing into the matter was convened on April 3, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Kenneth P. Shabel, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. William S. Bean, IV, Esquire also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, the plea transcript, and as Court's Exhibit #1, the transcript of Applicant's co-defendant Jeter's guilty plea.

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 M. HOPE-BLAKEY

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the February 2010 term of the Spartanburg County Grand Jury for armed robbery and

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possession of a weapon during the commission of a violent crime (10-GS-42-1158, counts 1 and 2). Applicant was represented by William S. Bean, IV, Esquire. On February 22, 2010, the Applicant pled guilty to armed robbery and the charge of possession of a weapon during the commission of a violent crime was dismissed. Applicant was sentenced by the Honorable J. Derham Cole for a period of fifteen (15) years. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to file a direct appeal at Applicant's request
2. Prosecutor misconduct, in that;
 - a. "Codefendant was released, but the hands of one hands of all"
3. Judicial misconduct, in that;
 - a. The judge failed to inform Applicant of the nature of the offense

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

This Court notes the Applicant voluntarily waived his allegation for prosecutorial misconduct at the beginning of the hearing. The Applicant informed this Court that he would be proceeding on the allegations of ineffective assistance of counsel and judicial misconduct based

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upon the theory Counsel failed to file an appeal following the plea and the trial judge failed to inform Applicant of the nature of the offense.

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). With respect to guilty plea counsel, the

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Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Applicant testified that he meet with Counsel to discuss the charges only once in the week prior to court. Applicant testified he met with Counsel about bond hearings, but was never released on bond. Applicant testified that he wanted Counsel to get a ten year plea deal, even though he testified that he told Counsel multiple times that he was not at the scene. Furthermore, Applicant testified he discussed possible evidence issues dealing with a lack of fingerprints or victim identification. On the day of the trial, Applicant testified that he informed Counsel that Tiffany Hughes could be an alibi witness. Applicant testified that he was not aware whether or not Counsel ever interviewed any witnesses. Applicant testified that Counsel only talked about him pleading to the charges. Applicant also testified that his co-defendant, Alonzo Jeter was prepared to testify to the fact that Applicant was not present at the scene of the robbery.

Counsel testified that he was retained to represent the Applicant a well over a year prior to the scheduled trial. Counsel testified that he met with the Applicant on numerous occasions and talked with him a number of times on the phone. Counsel testified that the Applicant and he talked about co-defendants and Applicant gave Counsel the name of an alibi witness on April 13, 2011. Counsel testified the alibi witness' name was Tiffany Hughes, who had a child with the co-defendant, Alonzo Jeter. However, Counsel testified he interviewed Ms. Hughes and she indicated that she did not recall if Applicant was at her home that night. Counsel felt that her statement did not support her being an alibi witness. Furthermore, Counsel testified that he and the Applicant discussed the possible defenses of the fact that no weapon was ever found and the fact that a fourth co-defendant's charges were dismissed.

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M. HOPE BAADLEY

Counsel testified that the other two co-defendants made statements about the incident and were prepared to testify Applicant was at the scene with a gun. However, Counsel testified Applicant claimed he was there but the co-defendants were the ones who actually had the gun. Counsel testified he did not promise a lower sentence, but indicated that he would ask for a lower sentence. Counsel testified that he reviewed with the Applicant the elements of each charge, possible sentence, and evidence that the State had against him prior to the trial. Counsel testified that because this was a home invasion, the facts were disturbing and the Applicant faced a great deal of time. Counsel testified Applicant did not ask him to file an appeal.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. Although the Applicant appeared credible in appearance, his testimony conflicted with or was discredited with other more reliable evidence, including Applicant's own statements at his guilty plea. Although Applicant alleged that Counsel failed to pursue his alibi witness, not only did Counsel testify that he did speak with the witness, but the witness was not present and did not testify at the PCR hearing. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1991), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witness' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

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CLERK OF COURT
SPARTANBURG COUNTY
2019 JUL 26 AM 8:49
MICHAEL R. BACHLEY

This Court also finds that the Applicant's allegation that Counsel failed to file an appeal is without merit. The Applicant has alleged that he is entitled to a review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). The Applicant faced significantly more time than he received following his plea to armed robbery. This Court finds Counsel's testimony that the Applicant never asked Counsel to file an appeal to be credible.

This Court finds no deficiency on Counsel's behalf and finds that the Applicant failed to show any prejudice that may have resulted from Counsel's alleged deficiencies. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). This Court finds that the Applicant has failed to meet his burden of proof. Accordingly, this allegation is dismissed.

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 SPARTANBURG COUNTY
 2016 JUL 26 AM 8:49
 WADOP BLOCKLEY

Judicial Misconduct

As it relates to the allegation of judicial misconduct, this Court finds that although it was raised in the application, the Applicant did not pursue this issue at his hearing. Therefore, this Court deems the claim of judicial misconduct to be voluntarily abandoned by the Applicant.

Summary

This Court finds in regards to the allegations of ineffective assistance of counsel, Counsel's testimony is more credible than the Applicant's testimony. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was

thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test — that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland — that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

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

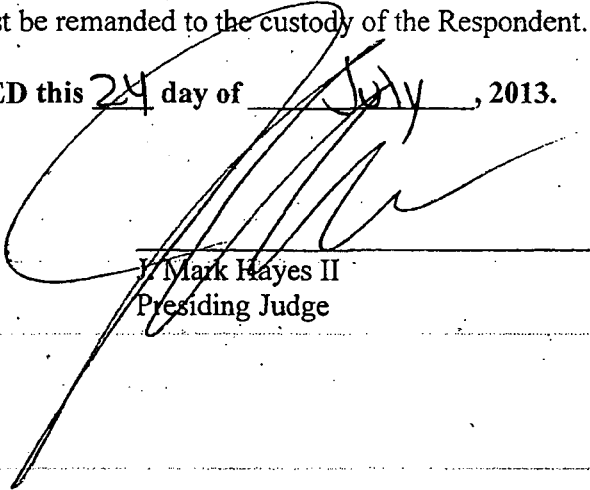
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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CLERK OF COURT
SPRINGBORO COUNTY
2009 JUL 26 AM 8:49
MARCOE BLACKLEY

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24 day of July, 2013.



Mark Hayes II
Presiding Judge

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 JUL 26 AM 8:49
MEMORIE BLACKLEY

WITNESSES

Spartanburg County Sheriff's Office

Computer

- 1. REPORT ENDED
- 2. CARD PULLED
- 3. INDEXED
- 4. CHECKED WARRANTS
- 5. CHECKED SIGNATURE
- 6. ASSESSMENT
- 7. FINE CARD MADE
- 8. TRAFFIC VIOLATION COPY

ARREST WARRANT NUMBER

1117343- Count One

Direct Indictment- Count Two

ACTION OF GRAND JURY

Mike Bell

Mr. Bell

date: 2/18/10

VERDICT

representor of Petit Jury

DOCKET NO.

10-GS-42-1158(R)
The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 22 2010

TERM

THE STATE
vs.

Carnell Antonio Bland

Indictment for

ARMED ROBBERY AND POSSESSION OF
WEAPON DURING COMMISSION OF A
VIOLENT CRIME

SC Code: 16-11-330 (A): 16-23-490
CDR Code: 139: 549
CLASS FEL/A: FEL/F

count two dismissed - def
7/11/11 Computer

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SPARTANBURG COUNTY
2010 MAR -4 AM 11:28

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP 18 2010, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE---ARMED ROBBERY

That Carnell Antonio Bland, did in Spartanburg County on or about October 27, 2009, while armed with a deadly weapon, being a gun, did feloniously take from the person or presence of William J. Brown, by means of force, violence, and/or intimidation, goods or monies, such goods or monies being described as follows: a sum of money belonging to William J. Brown, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO---POSSESSION OF WEAPON DURING
 COMMISSION OF A VIOLENT CRIME**

That Carnell Antonio Bland, did in Spartanburg County on or about October 27, 2009, possess or visibly display a gun during the commission of a violent crime, to-wit: ARMED ROBBERY, in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


 ASSISTANT SOLICITOR

Compute IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG VS. STATE

Carnell Antonio Bland

INDICTMENT/CASE#: 2010GS4201158

A/W#: M117343

Date of Offense: 10/27/2009

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

AKA:

Race: BLACK Sex: M Age: 25

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

SENTENCE SHEET

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury:

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: FULMER, DANNY N 15593 SC Bar# Defendant Call Defendant Attorney for Defendant 602 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Court Reporter: SCCA/217 (03/2011)

Presiding Judge Judge Code: 2053 Sentence Date: 11-11