

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

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S.C. Supreme Court

JONATHAN SINCLAIR PORTERFIELD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001336

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
County of Richland	)	08-GS-40-11807
		08-GS-40-11925
		08-GS-40-11804
		08-GS-40-12450
		08-GS-40-11805
	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JONATHAN PORTERFIELD,	)	
	)	
DEFENDANT,	)	

May 20th, 2008
Columbia, South Carolina

BEFORE:

THE HONORABLE J. MICHELLE CHILDS, JUDGE.

APPEARANCES:

ANNA GOOD, ASSISTANT SOLICITOR
Attorney for the State

GRADY COLLINS, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KAREN TRACY
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 JONATHAN PORTERFIELD, after being duly
2 sworn, testified as follows:

3 THE COURT: Mr. Porterfield, are you under the
4 influence of any alcohol, drugs, or medication?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: And have you ever been evaluated for your
7 mental health?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Okay. And you understand that you have
10 two indictments for armed robbery that have not been
11 presented to the grand jury. Do you wish to waive that
12 proceeding, in which they would determine whether they had
13 sufficient evidence, and instead go forward here?

14 THE DEFENDANT: No, I'm ready to just go, go forward
15 here.

16 THE COURT: Okay. And is that -- you understand that
17 you have the ability to waive that proceeding? You
18 don't -- you don't wish to let them determine if they have
19 enough evidence?

20 THE DEFENDANT: Yes.

21 THE COURT: You -- okay. You want to go forward with
22 a plea, and you discussed that option with your attorney?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: That would also apply to your attempted
25 armed robbery?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Okay. All right. And as to your
3 indictments, then, for the armed robbery, it indicates in
4 Richland County on or about August 11, 2007 that you
5 committed a robbery in the presence of a Susan Campbell at
6 Burnett's Cleaners.

7 You committed another one in Richland County on or
8 about July 7, 2007 in the presence of Thomas Allen at
9 Arnold's Cleaners, and then on November 2nd, 2007 in
10 Richland County, committed a robbery in the presence of
11 Thomas Allen, also at Arnold's Cleaners, and then on
12 November 5th, 2007 in the presence of Brian -- Breeland
13 Holmes (phonetic) at the Pantry Express.

14 Do you agree that those were the allegations --

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: -- and that's the offenses for which

17 ~~you're here?~~

18 Okay. And then as to the attempted armed robbery,
19 indicating on November 2nd, 2007 you attempted to commit a
20 robbery in the presence of Olympia Air Market on Olympia
21 Avenue; is that correct?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Okay. Okay. The State will give me
24 further information with respect to the case, but just to
25 be sure, we are here for three armed robberies, one

1 attempted armed robbery, and then one strong arm robbery.

2 Is that what you understand?

3 MS. GOOD: Yes, ma'am.

4 MR. COLLINS: Yes, Your Honor.

5 THE COURT: All right. Thank you, Ms. Good.

6 MS. GOOD: Thank you, Your Honor. The first incident
7 was an armed robbery that occurred on July 7th, 2007 at
8 the Arnold's Cleaners here in Richland County on 400
9 Beltline Boulevard.

10 The victim in that case, Your Honor, was an employee,
11 Thomas Allen. The defendant -- Defendant entered the
12 business holding a gun in his hand demanding that the
13 victim give him the money from the register. The victim
14 did so, and the defendant then left.

15 Mr. Allen was contacted about the plea today. He
16 didn't want to be present. He is in agreement with the
17 negotiations that we have, Your Honor.

18 The second armed robbery occurred August 11th, 2007
19 at 623 Beltline Boulevard here in Richland County, which
20 is a Burnett's Cleaners.

21 The victim in that case, Your Honor, is Samantha
22 Hines. She was the clerk behind the desk. Once again,
23 the defendant entered and presented a revolver, demanding
24 money from her. She gave him the money, and he, once
25 again, left. She was notified and didn't want to be

1 present and was also in agreement with negotiations.

2 The third was an armed robbery that occurred
3 November 2nd, 2007 at the same Arnold's Cleaners from the
4 July 7th incident, Your Honor, with the same victim. The
5 defendant entered the business, pointed the gun at him,
6 said "Give me the money. You know how this goes."

7 He victim gave him the money. He left. There is six
8 -- the victims in that case are asking for \$600
9 restitution, Your Honor, for their robberies.

10 The fourth incident was also on November 2nd, 2007 at
11 Olympia Air Market, 1163 Olympia Avenue here in Richland
12 County. This is the attempted armed robbery, Your Honor.

13 The defendant entered the business with a gun,
14 pointed it. There were three customers in there that he
15 did not see or know that were in there.

16 When he demanded the money, one of the guys pushed
17 ~~him, and the defendant got scared and ran out of the~~
18 store. We have attempted to contact the victims in that
19 case, Your Honor. They have not responded to our phone
20 calls or letters, but they have been notified pursuant to
21 the statute.

22 The last incident is an armed robbery, Your Honor,
23 that we're allowing him to plead down to strong arm
24 robbery. It occurred November 5th, 2007 at 4905 Main
25 Street, which is the Pantry Express here in Richland

1 County.

2 The defendant entered the store with an aluminum bat
3 and demanded money. He was able to get \$124 from them,
4 Your Honor. They are asking for restitution for that.

5 They -- the victims gave a description of the car.
6 When they searched, the cops searched for the car, they
7 found it and the bat was on the back seat.

8 The victim with that case, Your Honor, is currently
9 in Alabama. She has been notified. She didn't want to be
10 present, but she was in agreement with what we have come
11 up with.

12 When the defendant was arrested, Your Honor, he gave
13 a full detailed confession to each crime. He has no prior
14 record, and due to the fact, Your Honor, that the
15 defendant has no prior record and that he was fully
16 cooperative with law enforcement, he actually confessed to
17 two robberies that law enforcement weren't -- weren't
18 aware of, I do believe, we are recommending ten years.

19 THE COURT: Okay. Mr. Porterfield, you have heard
20 the facts as indicated by the State.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And how do you wish to plead with respect
23 to those facts?

24 THE DEFENDANT: Guilty.

25 THE COURT: Okay. And are you pleading guilty

1 because you are, in fact, guilty?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Okay. And you understand that by
4 pleading guilty, you're giving up your right to remain
5 silent, as well as your right to be presumed innocent
6 until proven guilty?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: You understand that you have a
9 constitutional right to actually go to trial and have your
10 attorney present defenses, testimony, and other evidence
11 on your behalf?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: As well as to challenge any of the
14 evidence that's presented by the State?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Has anyone forced you or threatened you
17 to plead today?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Are you doing so freely and voluntarily?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And after consulting with your attorney?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you believe that your attorney has
24 explained to you in terms you can understand the nature of
25 the offense, your maximum possible punishment, as well as

1 your Constitutional Rights?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And have you understood those
4 conversations?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. Do you feel like you've had enough
7 time to speak with your attorney?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. Do you understand that for your
10 armed robbery offenses, that these are considered most
11 serious offenses?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And that's a strike against you?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And that to the extent that you have got
16 other most serious offenses, that would also include your
17 attempted armed robbery, that you will be facing life
18 without the possibility of parole?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Okay. And that would include if you got
21 serious and/or most serious offenses. Do you understand
22 that?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. With respect to this offense, as
25 well, what is your age, is it 21?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Okay. You cannot be eligible for a
3 Youthful Offender Act sentence. Do you understand that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: I also cannot suspend the sentence.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: You're going to have to serve the
8 mandatory minimum of the ten years, and it's considered a
9 violent offense. You also are not eligible for parole.
10 Do you understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Okay. And these consequences have been
13 explained to you by your attorney?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you still wish to plead guilty knowing
16 those are the consequences of the plea?

17 ~~THE DEFENDANT: Yes, ma'am.~~

18 THE COURT: You'll also be placed into a D.N.A.
19 database. Are you aware of that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. All right. The Court will accept
22 your plea. You have ten days to appeal it. To the extent
23 that you wish to challenge your attorney's representation
24 of you, you would need to do so within a year under the
25 Post Conviction Relief application. Are you aware of

1 that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Are you satisfied with your attorney?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. Mr. Collins?

6 MR. COLLINS: Thank you, Your Honor. May it please
7 the Court. With Mr. Porterfield here today is his mother
8 and his aunt. He has a very supportive family. They have
9 been involved from the beginning of this case.

10 I do kind of want to give you a little bit of a
11 back-story. There originally was a codefendant, who is
12 much larger and older than Mr. Porterfield.

13 Mr. Porterfield, unfortunately, wrote a letter saying
14 that what he put in his original statements was untrue
15 about the codefendant, and that somehow along the process,
16 the codefendant was not billed by the grand jury.
17 Mr. Porterfield informs me he was kind of pressured into
18 writing that letter.

19 Some of the specifics in his statements about the
20 codefendants, as far as the codefendant's gun and other
21 specifics, were corroborated when the codefendant was
22 arrested in Virginia with the same gun. That's just to
23 kind of give a back-story that he's not the only culpable
24 one. He's here to take full responsibility.

25 As the Solicitor said, there were a couple of

1 robberies they weren't going to solve if Mr. Porterfield
2 hadn't been so forthcoming.

3 He has two children. One is four and one is one. He
4 was falling behind on child support payments, and he made
5 a terrible decision.

6 This was how he was attempting to get the money. He
7 ended up losing all of the money to the codefendant before
8 he was arrested. So he was in on child support and on
9 these charges when he was arrested.

10 He has never been arrested before. Honestly, Judge,
11 I don't say this very often, but he had a gun, he had the
12 weapon, but he wasn't going to hurt anybody. I can
13 honestly say that. I think that's evidenced in the
14 attempted armed robbery that when somebody challenged him,
15 he ran away.

16 He was just there to get money, and he did it in an
17 ~~extremely bad fashion. He's very remorseful for what he~~
18 has caused in the victims' lives.

19 I think he can -- he can definitely come out of this
20 a much better man, and he wants to provide for his
21 children. Unfortunately, because of the mandatory
22 minimum, he's looking at ten years, which is a long time.
23 I mean, these children are going to be into adolescence.

24 He has his G.E.D. He has ambition he -- when he gets
25 out. I'm sure he will take full advantage at the

1 Department of Corrections in every single educational
2 thing that they have. When he gets out, he wants to go to
3 Midlands Tech and pursue, I think, business.

4 THE DEFENDANT: Mechanics.

5 MR. COLLINS: Mechanics. I think he's going to do
6 very well with that. Unfortunately, he has to take
7 responsibility for what he did.

8 We're just asking that you to follow the
9 recommendation of the Solicitor's Office and give him the
10 mandatory minimum on these armed robberies, all
11 concurrently.

12 I don't believe...

13 (Pause).

14 They don't wish to say anything, but they -- they do
15 offer the support. They've been there for him since day
16 one. They'll be there for him when it comes time for him
17 to be released.

18 THE COURT: Okay.

19 MR. COLLINS: It's unfortunate, as I said, it can't
20 be less than ten years. I think he's going to be a very
21 productive member of society, as well. We would just
22 request the Court follow the recommendation.

23 THE COURT: Okay. And how long has he been
24 incarcerated?

25 MR. COLLINS: He's been in since November 6th of

1 2007.

2 THE COURT: Okay. Anything further then,
3 Mr. Porterfield?

4 THE DEFENDANT: No, ma'am. I just want to say that I
5 apologize for the things I did. You know, I know I did
6 some wrong things, made some wrong decisions, but I guess
7 I just got to be the man and do my time. So I thank you
8 for taking out the time to, you know, handle my case.

9 THE COURT: Okay. And you, obviously, realize the
10 decisions you made affect other people, as well?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And your children will suffer as a result
13 of this, as well?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. The Court will accept the
16 recommendation and sentence you to the ten years for the
17 armed robbery, as well as the attempted armed robbery, and

18 then five years under the strong armed robbery. These
19 will all run concurrently. You'll get credit for time
20 served since November 6th, 2007.

21 You will owe restitution to Winnsboro Petroleum
22 Company, care of Steven Burney, in the amount of \$124 and
23 then also Arnold's Cleaners, care of Damon Ritchie in the
24 amount of \$578.

25 MR. COLLINS: Your Honor, considering he's doing the

1 active jail time, this restitution matter wouldn't be held
2 until eight-and-a-half years from now?

3 THE COURT: Right.

4 MR. COLLINS: We would just ask that when that time
5 comes to have a restitution hearing, because we haven't
6 seen any -- because I don't -- I don't believe he signed
7 that restitution paper.

8 THE COURT: Oh, I'm sorry.

9 MR. COLLINS: We would just ask for a restitution
10 hearing at that time, which we will be provided with the
11 paperwork --

12 THE COURT: Okay.

13 MR. COLLINS: -- to be approved by that amount of
14 months --

15 THE COURT: What I will do --

16 MR. COLLINS: -- what they're going to be asking of
17 us --

18 THE COURT: And we don't need to wait
19 eight-and-a-half years because we've not -- none of the
20 paperwork might be missing then, but I'll just say
21 restitution held open for 60 days for the State to then
22 come forward with whatever proof they have. Okay.

23 MR. COLLINS: Thank you, Your Honor.

24

25 (Whereupon, the proceedings were concluded.)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Tracy, Official Court Reporter for the 5th
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 of the captioned case,
relative to appeal, in the Court of General Sessions for
Richland County, South Carolina, on the 20th day of May,
2008.

June 13, 2009

Karen Ambrozjak

Karen Tracy, Court Reporter

My Commission Expires: 04/01/14

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS

State of South Carolina)

vs.)

TRANSCRIPT OF RECORD
(Motion)

Jonathan Porterfield,)

Defendant.)

September 25, 2008
Columbia, South Carolina

BEFORE:

THE HONORABLE J. MICHELLE CHILDS, JUDGE.

APPEARANCES:

ANNA GOOD, ASSISTANT SOLICITOR
Attorney for the State

GREG COLLINS, DEPUTY PUBLIC DEFENDER
Attorney for the Defendant

JENNY H. WILLIAMS
Official Circuit Court Reporter
(803) 576-1743

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1 Thursday, September 25, 2008

2 **MS. GOOD:** The State vs. Jonathan Porterfield.
3 This is number 23 on your A.M. motions list, Your
4 Honor.

5 **MR. COLLINS:** May it please the Court?

6 **THE COURT:** Yes.

7 **MR. COLLINS:** Your Honor; I'll waive my client's
8 presence for this hearing. Apparently the Department
9 of Corrections is very choosy on when they'll bring
10 people over and when they won't.

11 **THE COURT:** Or if at all.

12 **MR. COLLINS:** Yes. He was here yesterday, but
13 he didn't stay long enough to get into court. But,
14 Your Honor, this is a motion to enforce a plea deal.
15 Jonathan Porterfield pled guilty in front of Your
16 Honor back on May 20th of 2008. He pled to numerous
17 counts of -- was it four counts of armed robbery?

18 **MS. GOOD:** It was four counts of armed robbery
19 and one count of attempted armed robbery, Your Honor.

20 **MR. COLLINS:** And that was based on the
21 discovery that was provided to defense. The crux of
22 the agreement was that was his pending charges in
23 Richland County. Upon going to Department of
24 Corrections, we realized that there were two more
25 warrants outstanding, one for armed robbery and one

1 for possession of a weapon during the commission of a
2 violent crime.

3 *THE COURT:* And these are Richland warrants?

4 *MR. COLLINS:* These are Richland County warrants
5 that were signed out the same day the other warrants
6 were signed out by the same investigator, were from
7 the same confession that my client gave. The deal
8 was --

9 *THE COURT:* And you were under the impression
10 that the four counts of armed robbery and attempted
11 armed robbery were the only ones. Did you discuss
12 that there was pending warrants or that there was a
13 dismissal of those other ones?

14 *MR. COLLINS:* I didn't have those warrants in my
15 discovery, Your Honor. I had his confession. We
16 didn't have those warrants in discovery. The crux of
17 the deal was that that was all of his pending
18 charges, because it makes absolutely no sense --

19 *THE COURT:* No sense to plea.

20 *MR. COLLINS:* -- to plea to that and then be
21 subjected to possible life without parole for these
22 other pending warrants that he's already confessed
23 to. I contacted the Solicitor's Office and asked
24 that we just dismiss those charges to go along with
25 the deal. They have refused to dismiss the charges

1 and said they want to go forward. They have offered
2 to consent to withdraw the plea and then go forward
3 under all the charges but no offer this time.

4 I'm making this motion to enforce the deal that
5 was made and accepted that prejudiced my client
6 because he's prejudiced as soon as he enters that
7 plea because he is accepting all those facts that
8 they indicated, including what's in his confession,
9 is true. So he's already been prejudiced. We can't
10 turn that back.

11 **THE COURT:** Did the confession admit to other
12 crimes other than what was pled?

13 **MS. GOOD:** It was in the confession but we were
14 not aware that he was charged with that at the time.
15 I think what happened, Your Honor, we're not quite
16 sure yet between the clerk's office and our office;
17 those warrants were never in our system. And still
18 to this day they're not in our system but they are
19 open in the clerk's office and we're trying to fix
20 that problem right now. But we were never aware of
21 those warrants when making the negotiation.

22 **THE COURT:** Okay. But the confession does
23 allude to some other things?

24 **MS. GOOD:** It alludes to that charge, but there
25 were no warrants that we had in our possession. So

1 we didn't think he had been charged with it, because
2 just because somebody confesses to something doesn't
3 mean that they're necessarily charged with
4 everything.

5 **THE COURT:** But, I mean, he's putting you on
6 notice that they exist, but they just weren't in your
7 system.

8 **MS. GOOD:** Right.

9 **MR. COLLINS:** Your Honor.

10 **THE COURT:** Did discussions between the two of
11 you take place that is this everything essentially,
12 is this what we're going forward on?

13 **MS. GOOD:** Your Honor, I have emails with Mr. --
14 I'll hand one up to the Court. The first email, Your
15 Honor, is when we started our negotiations, and it
16 discussed three armed robberies and an attempted
17 armed robbery. And then the next email dated Monday,
18 March 17th, at the top, we discussed four armed
19 robberies. There is never any discussion of an
20 additional gun charge or the fifth armed robbery that
21 we are talking about. So, no. There were never
22 discussions regarding those warrants in our plea
23 negotiations.

24 **THE COURT:** But talk to me about the common
25 practice. Because generally people will plead to

1 everything outstanding --

2 MS. GOOD: Right. And during the plea --

3 THE COURT: -- and discuss it with their client.

4 MS. GOOD: And kind of also, Your Honor, during
5 the plea we put on the record what he was originally
6 charged with that we were aware of which was the four
7 counts of armed robbery and one count of attempted
8 armed robbery. And during that plea we said that it
9 was ten years recommendation and we went into the
10 reasons why later. But there was nothing in the
11 record about this being a charge to all pending
12 charges or anything of that nature.

13 THE COURT: Okay. But there was --

14 MS. GOOD: Nor was there anything by Mr. Collins
15 indicating that there were these other charges that
16 should be dismissed or pled to at the same time.

17 MR. COLLINS: I made a mistake.

18 MS. GOOD: Because nobody was aware of them at
19 the time.

20 THE COURT: Okay. Because nobody was aware of
21 them.

22 MS. GOOD: And we may have had made a different
23 deal, Your Honor, if we had been aware of those two
24 charges. It wouldn't have necessarily been the ten
25 years that we had recommended. We may have decided

1 to negotiate something different because we weren't
2 aware of them.

3 **THE COURT:** Okay. But he, meaning Mr. Collins,
4 didn't -- I mean, you all didn't really discuss it
5 because neither side was aware of it.

6 **MS. GOOD:** Correct.

7 **THE COURT:** Other than through the confession
8 alluding to something else.

9 **MR. COLLINS:** The Defendant's position is we
10 weren't aware of it; they should have been. The same
11 investigator swore out the warrants on the same day.
12 He works for the Sheriff's Department --

13 **THE COURT:** Right.

14 **MR. COLLINS:** -- who is under control of the
15 Solicitor's Office. They should have known about it.
16 And it's kind of weird to be in a position where you
17 make an 18-year-old kid plead to ten years and then
18 you pull up two more warrants after he's pled.

19 **MS. GOOD:** Your Honor, like I said, he's also
20 mentioned that we have no problem withdrawing his
21 plea. He would not be prejudiced in any way. We
22 would renegotiate as to what the plea could be. But
23 at that time when we did the negotiations we had no
24 idea of these other two warrants and our negotiations
25 may have been very different if we had been aware of

1 them.

2 **THE COURT:** But were you in contact with your
3 investigators and all and it never got mentioned that
4 they were signed out but just didn't --

5 **MS. GOOD:** Whenever we spoke with investigators,
6 Your Honor, we just assumed it was all the same armed
7 robberies. Nobody knew that we didn't have those two
8 warrants because we were never aware of them.

9 **THE COURT:** And so when did the warrants come to
10 your attention?

11 **MS. GOOD:** When Mr. Collins -- I guess when Mr.
12 Porterfield went to the Department of Corrections and
13 these two warrants came up and he mentioned them to
14 Mr. Collins and Mr. Collins mentioned them to me.

15 **THE COURT:** So short of D.O.C. catching it
16 somehow, how do they even know about it?

17 **MR. COLLINS:** Because it's in the Clerk of
18 Court's office as a pending warrant. It popped up
19 after the plea.

20 **THE COURT:** Hmm.

21 **MR. COLLINS:** Your Honor, we would be okay with
22 withdrawing the original plea if we can get the same
23 ten-year offer because all of the information in
24 these warrants is contained in his confession that
25 was in the discovery and that they knew about when

1 they made the offer. Everything was in there. I am
2 confused as to why now we can't come to the same
3 agreement. But if Your Honor is inclined to give him
4 ten years, since you took the original plea, we would
5 be happy to withdraw and go forward with that.

6 **THE COURT:** And I understand your position about
7 just not doing anything. But have you even had the
8 chance to really talk about it? I mean, right now
9 you're just saying no just because you haven't had
10 the chance to further investigate it and deal with
11 it.

12 **MS. GOOD:** We haven't started -- we were
13 waiting, Your Honor. We haven't started
14 renegotiations or anything of that nature regarding
15 these two warrants.

16 **THE COURT:** Okay. Can I just give you all some
17 time?

18 **MR. COLLINS:** Your Honor, --

19 **THE COURT:** I know.

20 **MR. COLLINS:** -- we spent a lot of time
21 negotiating this case based on his confession and
22 everything that was in there. I don't know what we
23 could renegotiate other than maybe they don't feel
24 like they don't want to give him ten years in this,
25 too. I mean, it's either we withdraw the plea and we

1 go forward on the original agreement or we're going
2 to have to go through a whole process where I get
3 PCR'd because I should have known about these
4 warrants and done a more thorough investigation and
5 found all these things and we go through it the long
6 way and then we wind up back in the same position.

7 *THE COURT:* That's right. And I'm trying to
8 avoid that as well. You don't have any indication as
9 to what the State wants to do at this point?

10 *MS. GOOD:* Not at this point, Your Honor.

11 *THE COURT:* Okay.

12 *MS. GOOD:* Because I haven't spoken with the
13 victim of that one armed robbery on the new
14 indictment or the new warrants that we just became
15 aware of.

16 *MR. COLLINS:* The problem is he's been
17 prejudiced because he went under oath and pled guilty
18 on these charges which implicates him in these other
19 two as well. That's the problem with renegotiations.
20 He took the benefit of the bargain and decided to
21 plead guilty and admitted this based on -- now, it
22 may not have been written or specifically said in the
23 plea; however, no attorney in this courtroom is going
24 to walk their client up here and plead him to four
25 out of six charges when it's going to be automatic

1 life without parole on the other two. So that was
2 the terms of the agreement, the oral agreement that
3 can easily be implied into that agreement, whether it
4 was said directly or not.

5 **THE COURT:** But are you all seeking life without
6 parole, like using what he pled to as an
7 enhancement for this other charge?

8 **MS. GOOD:** At this point, no, Your Honor. But
9 we're not sure, depending on what happens with this
10 motion with renegotiation. If he were to withdraw
11 his plea, there would be no reason for life without
12 parole.

13 **THE COURT:** Right.

14 **MS. GOOD:** The only reason it would be life
15 without parole at this time is because of the prior
16 plea. And then these warrants came up afterwards, we
17 became aware of them afterwards, and it would be life
18 without parole.

19 **THE COURT:** Well, I would definitely feel that
20 it was fair not to subject him to life without parole
21 if these were sworn out all at the same time because,
22 generally speaking, we deal with all the cases at
23 once anyway. And if you all had known, I would
24 assume that that would have been your intention as
25 well.

1 MS. GOOD: We would have done one deal together.
2 But at the time we weren't aware --

3 THE COURT: Oh, I know. But I'm just saying
4 that your intention if you had known would have been
5 to go forward with it all together, too.

6 MS. GOOD: All together.

7 THE COURT: That's what he thought as well.

8 MS. GOOD: Correct. But neither one of us were
9 aware of those warrants and they were not part of any
10 negotiations.

11 THE COURT: Okay.

12 MS. GOOD: Which is why we don't mind
13 withdrawing the plea and allowing to renegotiate.

14 THE COURT: And packaging it.

15 MS. GOOD: Right.

16 THE COURT: Okay.

17 MR. COLLINS: I would disagree with the fact
18 that it wasn't part of the original negotiation. It
19 was in his confession. The information about these,
20 it was part of the negotiation. And that's what we
21 relied upon to go forward with the plea.

22 MS. GOOD: But, Your Honor, if you look at the
23 --

24 MR. COLLINS: Just because they change their
25 mind shouldn't give them the basis to renege on the

1 deal that was made.

2 MS. GOOD: So, Your Honor, if you look at the
3 emails when we were in negotiations, he never
4 mentions this other armed robbery or this gun charge.
5 So --

6 MR. COLLINS: I don't have to point out the fact
7 it's in discovery.

8 MS. GOOD: So nobody was aware he was actually
9 put under warrant for those at the time that we were
10 doing the negotiations and there was nothing in the
11 plea agreement regarding that. There's nothing on
12 the record during the plea that Mr. Collins had put
13 on the record about it.

14 THE COURT: Right. What I am trying to protect
15 him from is an automatic LWOP. I mean, as the bottom
16 line, I think that that's unfair.

17 MS. GOOD: And, Your Honor, we won't LWOP on
18 this new charge.

19 THE COURT: Okay. All right. I think that's
20 fair. So the best we can do right now is to allow
21 him to withdraw it, no automatic LWOP, renegotiate,
22 and then just see if you can either get the same deal
23 or something as close as possible to it. Because it
24 seems like an innocent situation on both parts. I
25 mean, the Solicitor's Office didn't have it there.

1 He said it was there. But I could just as well say
2 that from the defense standpoint or the Solicitor's,
3 either one could have brought it and said just in
4 case there's anything out there, just make sure
5 that's conclusive. And that's just going to have to
6 be part of anybody's sentence because at least we
7 would have that on record. That's assuming that
8 you're pleading to any possible thing that's out
9 there.

10 MR. COLLINS: Yes, ma'am. I'll put that with
11 every plea now.

12 THE COURT: I agree. Okay.

13 MS. GOOD: Thank you, Your Honor.

14 MR. COLLINS: Thank you, Your Honor.

15 (Whereupon, the proceedings are concluded)
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I, Jenny H. Williams, Official Court Reporter for the Fifth 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 Motion of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 25th day of September, 2008.

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Jenny H. Williams 12/13/10
Jenny H. Williams, Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5) OF
6 PLAINTIFF,)
7 VS.) RECORD
8 JOHATHAN PORTERFIELD,) 2008-GS-40-11804 - 11805
9 DEFENDANT.) 2008-GS-40-11807
2008-GS-40-11925
2008-GS-40-12450

10
11 March 19th, 2010
12 Columbia, South Carolina

13 B E F O R E:

14 THE HONORABLE J. MICHELLE CHILDS, Judge.

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

16 VANESSA SHIPLEY
17 ASSISTANT SOLICITOR
18 Attorney for the State

19 ASHLEY THOMPSON
20 ESQ.
21 Attorney for the Defendant

22
23
24 PAMELA E. GREEN
25 Circuit Court Reporter
Seventh Judicial Circuit

I N D E X O F W I T N E S S E S

(There were no exhibits marked or testimony taken during this hearing.)

P R O C E E D I N G S

MS. THOMAS: Mr. Collins, Mr. Porterfield's former attorney, is standing with me. I will start with a little bit of procedural background.

He was arrested November of 2007 on a series of armed robberies. I believe there were six total armed robberies, arrested on November 6th, and he gave a confession confessing to all six. Two of which I believe the police were not even aware of at the time. Really cooperated, and as a result of his confession and police investigation, was charged with six counts of armed robbery. By November 28th he had been served with all six of the warrants, had a file opened in our office with all warrants listed on our file, Your Honor.

Mr. Collins represented Mr. Porterfield and on May 2008 he pled to armed robbery. There was a negotiation of -- recommendation of ten years, which is the minimum.

At that plea, Your Honor, Mr. Porterfield pled to five of the six armed robberies. It was Mr. Porterfield's understanding and Mr. Collins' understanding at that time -- he can speak to that a little more in a moment -- that those five, that plea made up the entirety of his case. It resulted in all of the pending charges against him and that he pled to those knowing what the negotiations were

1 following the charges.

2 THE COURT: That was with the solicitor at that time,
3 Ms. Good?

4 MS. THOMAS: Yes, Your Honor.

5 THE COURT: The Court is in the middle of the
6 arraignments. I do recall because I was the one at the plea
7 who was saying that you want to make sure it encompassed all
8 charges. Apparently he didn't have all the warrants, but
9 you're saying that he -- the State knew, the officers knew
10 about all of them, and he just assumed that all of them
11 would be done at one time?

12 MS. THOMAS: Correct, Your Honor.

13 THE COURT: But to enter the plea he needs to make sure
14 they were part of the sentencing sheets and everything else.

15 MS. THOMAS: To add a little extra confusion is, I
16 don't have a copy of the original warrants he pled to, but
17 when he pled, the facts and the warrant numbers did not add
18 up.

19 THE COURT: Okay.

20 MS. THOMAS: So, he was pleading to facts for a warrant
21 number that was a different armed robbery. So, that kind of
22 adds a second layer of confusion to all of this, and then
23 one of the sets of facts were not pled to, but the warrant
24 number was and it was part of the plea. So, there was two
25 that kind of got switched around somehow, but I believe Ms.

1 Good's opinion was that they were unaware of this extra
2 outstanding warrant, but it kind of goes against that when
3 you pled to those facts. So, that doesn't really make sense
4 if you didn't know about it.

5 How you can be pleading to those facts, and I believe
6 Mr. Collins filed a motion to enforce the plea deal that was
7 heard in September of 2008. I don't believe you ruled
8 specifically on whether or not to enforce the plea deal, but
9 you did allow -- Mr. Porterfield had been spending time on
10 that ten year sentence until Monday when I remanded and the
11 negotiations at this point though I believe Mr. Collins
12 argued against this, and I was arguing with Ms. Good, before
13 Ms. Shipley could get over to that, be fair to Mr.
14 Porterfield, the system, and to be fair to our understanding
15 of what the negotiations were that either that warrant
16 should be dismissed or he should be entitled to the same
17 negotiations, the same recommendation of the minimum of ten
18 years.

19 THE COURT: From the time Ms. Good had the case until
20 when he pled guilty, did y'all get that understanding?

21 MS. THOMAS: I believe the solicitor's position was
22 they are not aware of it. So, they can not dismiss the --
23 they were unwilling to dismiss the warrant.

24 THE COURT: They were not aware of the---

25 MS. THOMAS: They were aware, Your Honor. Our position

1 was they did not have it in their computer system.

2 THE COURT: You are saying they believed the facts were
3 discussed?

4 MS. THOMAS: Correct, Your Honor.

5 MR. COLLINS: I think I might be able to shed a lot of
6 light on the situation. Mr. Porterfield gave a detailed
7 statement.

8 THE COURT: These would be the statements the State was
9 privy to?

10 MR. COLLINS: Absolutely. I spent countless hours with
11 Ms. Good trying to talk her down to the deal we ended up
12 with. I spoke with Investigator Ellis who took that
13 statement and signed all the armed robbery warrants. I'm
14 aware of (untranslate) for one. He was the same warrant
15 after the plea so they were definitely aware of the facts.

16 They made up the warrants. For some reason they
17 decided not to serve him that last warrant until after he
18 pled to ten years.

19 Your Honor, I suggested to Ms. Thomas to file this
20 motion to reconsider when I heard he was sentenced to 15
21 years because I feel personally responsible. In the motion
22 to enforce the plea deal, I didn't say that magic sentence
23 that no new warrants will come out with the information
24 contained in the discovery. I didn't say that sentence, and
25 according to South Carolina law, if I don't say those exact

1 words on the record, we can't enforce the plea deal.
2 Everything else off-the-record and the understanding with
3 the solicitor were based on the facts and I feel like it is
4 personally my fault because I didn't do my job and I think
5 it is extreme for him to have a 50 percent increase in a
6 sentence because I didn't say five or six words on the
7 record in the original plea because otherwise he would have
8 a ten year sentence.

9 THE COURT: From my prospective on the sentence, y'all
10 don't need to look at it as a 50 percent increase with the
11 sentence. I'm looking at the six armed robberies. So, this
12 is a lower sentence or reasonable for, sentence for that.
13 I'm looking at it from that prospective. But I understand
14 that y'all have an understanding or agreement and that's
15 what we want to get to because I'm also on the other side
16 that if there was such an agreement, then we all need to be
17 people of our word and honor it. But I'm not privy to that.

18 MR. COLLINS: Your Honor, the first plea was under the
19 facts of all the armed robberies. It wasn't like we were
20 hiding anything.

21 THE COURT: What I'm asking is was Ms. Good at that
22 plea because I know I wanted you to make sure if he's
23 pleading it all comes in. I'm not one of these people where
24 you-all plead and the solicitor finds it under the warrants.
25 That's not happening as to how we do it. I know sometimes

1 the State makes that happen, but that doesn't go on in
2 Richland County.

3 Did you ever have detailed conversations with Ms. Good
4 after the fact to say can we work this out, we have no
5 warrant, and nothing has changed?

6 You have the packet and all that?

7 Was there ever any response about how the State was
8 going to handle the matter?

9 MR. COLLINS: After the plea, when she informed me she
10 had another warrant, she informed me her superiors told her
11 she had to go forward with that warrant even though it was
12 contained in the discovery. What we discussed was based on
13 his statement, which had all the information they used for
14 these extra warrants.

15 So, my understanding of the deal was that this is the
16 deal he's getting for what he admitted to because he gave
17 ~~them the cases on the Silver matter and the State and my~~
18 understanding was that this was the deal for what he gave
19 the plea since he cooperated. They weren't going to bring
20 in new warrants and going to recommend ten years because he
21 was so forthright and cooperative.

22 I was honestly outraged after the plea. They were,
23 told me they were coming forward with new warrants because
24 it is a lesson I have learned and you noticed I started off
25 this is the reliance, no more warrants, and I never forget

1 that because this has stuck in my mind so significantly
2 because I worked so hard to get that deal of ten years to
3 see it go up in smoke because I didn't say a sentence.

4 I'm here to beg the Court to reconsider the 15 years
5 because it is my lack of experience and my lack of saying
6 that sentence in the plea that I should have done. As I
7 said that, again, they would not have been allowed to bring
8 these extra warrants.

9 THE COURT: I recall making sure, at a prior hearing,
10 not the one Monday, but that everything was going to be
11 taken care of in the plea, but you're saying since then the
12 State agreed to not let that one be included?

13 MR. COLLINS: I don't know what's happened since my
14 motion to enforce the plea deal. When the plea was
15 withdrawn the case was transferred to us very shortly
16 thereafter. When I was involved with the case we had all
17 the same discovery minus two warrants. We came in to the
18 deal. It had been in October to May, and my understanding
19 they had dismissed one of the warrants that was encompassing
20 it all because I said no further warrants.

21 As soon as he pled, the same investigator served him
22 with another warrant, the one is here today, and looking at
23 15 years instead of the so hard to get with the same set of
24 facts.

25 MS. THOMAS: Mr. Porterfield is not willing to say he

1 is pleading to that additional warrant taking responsibility
2 as he had from the beginning. I think that while 15 years,
3 ten years, a number of armed robberies, all that cases is
4 reasonable and I'm not saying it's not, but in this fairness
5 it's fairly relative. In this particular case, I think
6 fairness would dictate he should be entitled to his
7 understanding of his negotiations, arrested at one time, and
8 confessed at one time. Everything in his world is happening
9 with all of his warrants together and not his fault.

10 His attorney -- the Court -- he, he was not in control
11 of what happened after that point, and I think, in fairness,
12 in this particular case, he should be entitled to
13 negotiations of his original plea.

14 SOLICITOR SHIPLEY: Your Honor, I'm going to hand up
15 the transcript from the hearing where you granted a request
16 to withdraw his plea. I underlined two portions. The first
17 one is where Ms. Good reports to Your Honor -- she

18 apparently handed up emails during the hearing where she
19 indicates there's no mention, the only robberies, that's the
20 one that he pled to.

21 It's correct the defendant was allow to plead guilty
22 and served with original warrants. The defendant -- handing
23 up all the warrants -- served on November 6th of 2007 with
24 the warrant for armed robbery, which was not in our system
25 which was not -- it was in the Clerk's Office system, but

1 for some reason it didn't make it to our office. So, that
2 was never part of the negotiations.

3 If it's the, the defendant's contention that the, the
4 intent to involve was all the armed robberies, he didn't
5 plead guilty to those because the Kangaroo indictment armed
6 robberies were not in the indictments. He did two different
7 armed robberies at Arnold's Cleaners. And, so, the
8 allegations of the second armed robbery at Arnold's Cleaners
9 was put on the warrant number that belonged to the Kangaroo
10 robbery.

11 Anyhow, the warrant I handed up to you dated
12 November 6th of 2007, when it was served on him, was the
13 second to Thomas Allen Arnold's Cleaner robbery. So, he did
14 confess to a total of six different robberies in his
15 statement. There were only five that were pled to on that
16 day.

17 Also, if it is the defendant's contention that the
18 intention was to incorporate everything in one package deal
19 for ten years, that flies in the face of assault of a
20 corrections officer because that's an automatic six months
21 consecutive. That warrant too is apparently not in the
22 system and I handed that up to Your Honor. That warrant was
23 served on the defendant while he was incarcerated on these
24 armed robberies and it wasn't served on him until April, May
25 8th of 2008. The guilty plea happened on May 20 of '08.

1 So, that warrant didn't make it to our office until after
2 the plea.

3 Anyhow, I wanted to make it clear there is -- no, no
4 warrants were served on this man after his guilty plea, but
5 all served on him prior. Clearly, a clerical error. No
6 prosecutorial misconduct or deception. The defense was
7 unaware of it, prosecutor unaware of it. So, based on the
8 agreement reached by both parties, they were not privy to
9 the additional warrants.

10 There is also possession of a firearm being dismissed
11 charge served with back on November 8th of 2007. So, Your
12 Honor, my understanding -- I spoke with Ms. Good. When this
13 case was assigned to me after she left our office, she
14 indicated to me, and it is reflected in the, the transcript
15 I handed up, and you asked both parties to go back and
16 renegotiate to incorporate every single charge pending
17 against him in Richland County and that was done.

18 My understanding, in speaking with Ms. Good, was the
19 new negotiations involving the new armed robberies and
20 assault on a corrections officer was a negotiated sentence
21 ranging between 12 to 15 years. Since then I have been in
22 negotiations with Ms. Thomas and I offered a cap of 15
23 years. I left it up to Your Honor. It is simply a
24 recommendation. It is not binding on the Court. Noting
25 is -- you listened to the facts and agreed to 15 years, but

1 14 and a half years on all these armed robberies and six
2 months on the assault on a corrections officer was a
3 reasonable sentence given all these different armed
4 robberies.

5 I would also like to point out the motivation for him
6 to commit these robberies was to get \$1,600 for child
7 support and two of these would have satisfied that amount.
8 One he got \$1,300 and another he got \$300. So, he could
9 have satisfied his obligations by just committing two armed
10 robberies, but he did six and two of them were at the same
11 store with the same clerk where it is reported to me that
12 the clerk said he pointed the gun at his head.

13 MS. THOMAS: Your Honor, if I may respond to that.
14 There was also a codefendant in these cases. So,
15 Ms. Shipley indicates it's like Mr. Porterfield was taking
16 all this money. There was a codefendant who took a
17 substantial amount of the money who was actually later --
18 Mr. Porterfield made a statement which led to them
19 dismissing all charges against him. There was a codefendant
20 originally.

21 Your Honor, Ms. Shipley is correct, he was charged with
22 all of those warrants in a three week period. That kind of
23 goes to my point here that because he was served with all
24 these warrants, he went to Court for the same time on all of
25 these warrants. His understanding was that pleading to the,

1 the ten year recommendation was on all of these warrants.
2 That is reasonable I think for anybody in his situation to
3 think. If, Your Honor, I may---

4 THE COURT: Okay. He was served with all of the
5 warrants prior to the plea?

6 SOLICITOR SHIPLEY: Yes, ma'am.

7 MR. COLLINS: Your Honor, the warrant was served on
8 him. It was never entered in their system or turned over in
9 discovery. The deal was negotiated based on the statement,
10 all the information since the warrants were served
11 intermittently, and I spoke with Investigator Ellis who was
12 responsible for all the warrants being sworn out and he was
13 in agreement as well.

14 I don't think his intention was that, for that to pop
15 up either. His thing for the plea was not all the armed
16 robberies had been sworn out because he admitted to some
17 they weren't investigating. So, they were of the
18 understanding that a certain number of warrants were sworn
19 out, were closing those cases, weren't going to do the ones,
20 they were missing, went forward with all the information
21 they had, and, again, it is because of my mistake that
22 became enforceable.

23 THE COURT: Let me understand where the breakdown -- if
24 the warrants were served prior to the plea, then why
25 wouldn't all of them be encompassed in the plea just because

1 they didn't have one physically?

2 MR. COLLINS: Apparently it was floating in the Clerk
3 of Court's Office and---

4 MS. THOMAS: The file we opened had the warrants listed
5 in the file. So, somehow it became open in our system and
6 it was the Clerk of Court, but it was not transferred from
7 the Clerk of Court to the solicitor in their system.

8 THE COURT: Okay. Then the -- Ms. Goodman's part of
9 the transcript, she says he never mentioned the other armed
10 robbery or this gun charge in the negotiations.

11 what does that mean?

12 MR. COLLINS: Your Honor, the negotiations were based
13 on his statement, which included all the information where
14 all these warrants stem from. I didn't go through each
15 number because I was saying we're going to PA change all
16 this up and -- he has admitted to everything. So---

17 THE COURT: why would be missing a charge like tonight
18 see either be dismissed or plead?

19 MR. COLLINS: My fault. My incompetence.

20 THE COURT: I'm not going to call you incompetent.

21 MR. COLLINS: With this plea, I obviously was. I
22 missed warrants. I didn't say the magic words because I
23 assumed the deal was for everything encompassed, and I
24 assumed if it wasn't included in the paperwork provided to
25 me for the deal before the plea that they weren't intending

1 to go forward on it. I was mistaken and now he's paying
2 because of my mistake.

3 SOLICITOR SHIPLEY: Your Honor, I disagree because the
4 remedy for the mistake was allowing the defendant to
5 withdraw his guilty plea which was granted. You vacated all
6 the previous sentences on Monday and the bottom line is
7 Ms. Thomas and I negotiated a cap of 15 years. The
8 defendant was aware that was the agreement, and he agreed to
9 that based on the corrections officers offense as well as a
10 new armed robbery and the dismissal of a possession of a
11 (untranslate).

12 THE COURT: Help me with that because of the good --
13 she is -- and Mr. Collins gets to withdraw the guilty plea
14 because we've got to clear all this information.

15 would you be entering into negotiations if that was the
16 prior deal?

17 Is. is---

18 MS. THOMAS: We didn't really have much of a choice,
19 Your Honor.

20 THE COURT: Okay.

21 MS. THOMAS: I mean he had no choice.

22 THE COURT: If -- in---

23 MS. THOMAS: If you---

24 THE COURT: Let me ask you this though. If you then
25 come to the Court and the negotiations say cap of 15, then

1 the Court can do whatever and all this is kind of erased
2 because---

3 MS. THOMAS: I can't force the solicitor to give the
4 deal I want.

5 THE COURT: I understand you. You can only argue to me
6 it should be based on that. I'm saying that to say I don't
7 see you-all in error at all for purposes of other reasons or
8 remedies to him. It's just that you wanted the lower part
9 of it versus---

10 MS. THOMAS: I believe that he is entitled to what he
11 believed and what his attorney at the time believed were the
12 negotiations.

13 THE COURT: I totally agree you get to argue that, and
14 she gets to argue that up to the cap, and I'm going to read
15 back through the transcript to see what I gleamed from that.
16 But what I'm saying is that we're not back to where we were
17 with Ms. Good. Something has transpired since then. The
18 new warrant in the system and then the renegotiation up to a
19 certain amount from which when there was a cap the State
20 argues where they think it ought to be, and you argue where
21 they think it ought to be in that range. If I may go into
22 negotiations, it started with a range of ten to fifteen, and
23 with that range, he would be taken out of a possibility of
24 ten years. Not that I wanted him to get 15 for the ten.
25 That would give the opportunity completely in the Court's

1 discretion, but my argument would be a fairness argument in
2 that this particular situation there's no facts that are
3 anymore egregious than any others.

4 You know, essentially that's, you know, nullity. My
5 reason be there is no one set of facts that are any real
6 different than any others and Ms. Goodman's original
7 negotiations and plea the rational for the ten years has not
8 changed. He was cooperative, confessed to everything, and
9 that has not changed. So, the rational has not changed, and
10 that's with his confession to everything, Your Honor.

11 MR. COLLINS: My main reason is so the Court understood
12 that I did extensive research before my motion to enforce
13 the plea. Walking into that motion, I knew I didn't have a
14 leg to stand on, and I wanted the Court to be aware, had I
15 said those magic words, they wouldn't have been able to
16 bring anything else. Those, those warrants would have been
17 dismissed because that would have been in reliance with

18 everything pending or to come from this information.

19 THE COURT: If I recall it, that's what I was trying to
20 force the State to do is to say they were going to encompass
21 it all, but I can't make them do that. That's why---

22 MR. COLLINS: I can, if I may, is the magic words and I
23 did---

24 THE COURT: You could, but---

25 MR. COOPER: I feel horrible about it.

1 THE COURT: I'm going to read it all and take it under
2 advisement.

3 SOLICITOR SHIPLEY: The State is allowed to make
4 mistakes like the defense and clearly Ms. Good made a
5 mistake in not knowing about the other warrants served that
6 were in the Clerk's Office, which never made it to our
7 office, but I think the transcript from the hearing where
8 you granted -- the remedy is in there, in place.
9 Mr. Collins asks, you know, and I indicated there was a
10 mistake because not all the charges were encompassed and you
11 fixed that mistake. You allowed this defendant to withdraw
12 his guilty plea.

13 There is the remedy. You ordered both parties to go
14 back to the drawing board and make sure that all of the
15 charges were encompassed in new negotiations, which has been
16 done, and the defendant agreed to plead guilty to a cap of
17 15 years. That takes care of all his charges.

18 THE COURT: Go ahead.

19 Do I have everything I need to know?

20 I have got the transcript and I have got---

21 MR. COLLINS: Transcript of the original plea?

22 THE COURT: September 25, 2008.

23 MS. THOMAS: Would you like a copy of the original plea
24 transcript in that is the motion to---

25 THE COURT: That's the motion?

1 MS. THOMAS: Yes, for the record, our Rule 5 does
2 contain the warrant numbers at issue.

3 THE COURT: Okay.

4 MS. THOMAS: And also, you know, this is, is an issue
5 of misconduct not -- Mr. Porterfield, but other -- some sort
6 of mistake that either the defense counsel or the solicitor
7 made and this is a prime situation for this to come back on
8 PCR and be here trying to avoid that here if possible, Your
9 Honor, and that's all I have and I'll provide you with any
10 information you'd like.

11 THE COURT: Send me that other transcript, but I have
12 all the warrant numbers, all the warrants.

13 Is that what the State guess the just gave me?

14 SOLICITOR SHIPLEY: I'll need those warrants back for
15 my file, but the warrants in question, Your Honor, he did
16 not plead guilty to.

17 THE COURT: I'm interested in the facts as well.

18 SOLICITOR SHIPLEY: The warrants that he -- not in our
19 system are warrants -- on the second page of the cheat sheet
20 I handed up, I think you have this, Your Honor, but I'll
21 give you my copy, Your Honor. The warrant numbers for the
22 record are J561344. That's for assault on a corrections
23 employee. That was served on him on May 6th of 2009.

24 MS. THOMAS: I don't believe---

25 SOLICITOR SHIPLEY: Then the armed robbery from

1 Arnold's Cleaners that never made it to the Solicitor's
2 Office was warrant I898710 and this was an accompanying
3 charge of possession of a weapon during the commission of a
4 violent crime from the same incident, and that's I898711 and
5 those were the -- to that were not part of the negotiations
6 or originally because they were not in the Solicitor's
7 Office system at the time, but they were served on him on
8 November 6th, 2007.

9 MS. THOMAS: The facts to those are the ones that he
10 pled guilty to.

11 SOLICITOR SHIPLEY: Your Honor, on the original plea he
12 pled guilty to those facts on 2008, 11/8/05. I discovered
13 the discrepancy when I was re-doing all the paperwork for
14 the plea this past Monday and the facts that should have
15 been alleged on Indictment 2008-11-805 is for the armed
16 robbery that happened at Kangaroo Gas Station located at
17 3800 Rosewood Drive and that incident took place at
18 November 2, 2007.

19 THE COURT: He pled guilty to---

20 SOLICITOR SHIPLEY: He did not plead guilty to the
21 Kangaroo armed robbery facts on May 20 of 2009.

22 THE COURT: That's on what indictment?

23 SOLICITOR SHIPLEY: The indictment for the Kangaroo
24 robbery Indictment Number I think scheduled for 2008-1105
25 should be the indictment for the Kangaroo armed robbery, and

1 the indictment number for the facts that were inadvertently
2 put in that indictment are for 2015-152. That's the
3 indictment number. I fixed that on Monday.

4 THE COURT: Okay. Then I will need whatever that cheat
5 sheet you call it.

6 SOLICITOR SHIPLEY: Yes, ma'am.

7 MS. THOMAS: I have something in the transcript.

8 THE COURT: All right. All these will come back to
9 you-all. Thank you-all.

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11 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 19th day of March, 2010, as reported by Priscilla Nay and transcribed my myself to the best of my ability.

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

January 24th, 2012

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Jonathan Sinclair Porterfield #328448
Full name and prison number (if any) of Applicant,

vs.

The State Of South Carolina
Name of Respondent.APPLICATION FOR
POST-CONVICTION RELIEFJEANNETTE M. MCBRIDE
C.P. G.S.

2010 DEC - 2 PM 2:43

RICHLAND COUNTY
FILEDINSTRUCTIONS — 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 it clear to which question any such continued answer refers.

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

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

1. Place of detention Kershaw Correctional Institution
4848 Goldmine Hwy. Kershaw, S.C. 29067
2. Name and location of Court which imposed sentence In The Court Of General Sessions (Fifth Judicial Circ
1701 Main St. Post Office Box 192, Columbia, S.C. 29202
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) (4) Armed Robberies = 2010-GS-40-152, 2010-GS-40-11805, 2008-GS-40-11807, 2008-GS-40-12450
 - (b) (1) Strong Arm Robbery = 2008-GS-40-11925 / (1) Attempted Armed Robbery = 2008-GS-40-11804
 - (c) (1) Assault On A Correctional Officer = 2008-GS-40-4246
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 3-15-10 = (4) Armed Robberies = 14 1/2 yrs. (Everything ran concurrent with 14 1/2 years except 6 months
 - (b) 3-15-10 = (1) Strong Arm Robbery = 5 yrs. / 3-15-10 = (1) Attempted Armed Robbery = 10 yrs.
 - (c) 3-15-10 = (1) Assault On A Correctional Officer = (b) month: (To be ran consecutive with 14
yrs

20105148

ATTORNEY GENERAL'S OFFICE

RECEIVED 1213110
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FILE OPEN U
HAVE COPIES OF 3
ROUTE TO ORDER TRANSFER
PER RECORDS CLERK FOR 3
OTHER:

20105148002422

5. Check whether a finding of guilty was made

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

7. If you answered "yes" to (6), list

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) Was awaiting final decision from my motion to re-consider sentence.

(b) _____

(c) _____

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

(a) I was originally sentenced to 10 yrs. for these same charges. Everyone except (2008-GS-40-424

(b) _____

(c) _____

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

(a) I cannot be re-sentenced & given a harsher sentence for the same charges I already plead to.

(b) _____

(c) _____

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?
YES

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Motion To Enforce Plea Agreement
- ii. Motion To Re-Consider Sentence
- iii. _____
- iv. _____

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

- i. In The Court Of General Sessions (Fifth Judicial Circuit)
- ii. In The Court Of General Sessions (Fifth Judicial Circuit)
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Motion was denied
- ii. Sentence was amended to 12 yrs. & 6 months
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 9-25-08
- ii. 8-12-10
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) Former attorney Greg Collins did not work for the Richland County Public Defender Office anymore
- (b) Did not know who my new attorney was until 1-5-10
- (c) Did not know what steps to take to move forward on grounds presented.

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? NO TRIAL
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES. Except my motion to enforce plea agreement.

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Greg Collins (Richland County Public Defender)
1701 Main St. Post Office Box 192. Columbia, S.C. 29202
- ii. Ashley R. Thomas (Richland County Public Defender)
1701 Main St. Post Office Box 192. Columbia, S.C. 29202
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Motion To Enforce Plea Agreement (Greg Collins)
- ii. Motion To Re-Consider Sentence (Ashley R. Thomas & Greg Collins)
- iii. _____

18. State clearly the relief you seek in filing this application.

I want my original 10 year sentence back. I want my sentence changed to where I only have to serve 85% of 10 years. Which was my original agreement

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

NO

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, Jonathan Sinclair Porterfield, 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.

Jonathan S. Porterfield

SWORN to and subscribed before me this 24

day of November, 182010

Caroline A. Amos (L.S.)
Notary Public

My Commission Expires: December 22, 2018

RICHLAND COUNTY
 FILED
 2010 DEC -2 PM 2:43
 JERAMETTE W. McBRIDE
 C.C.P. & C.S.

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Jonathan Sinclair Porterfield, 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 therefor.

Jonathan S. Porterfield
Applicant

SWORN or affirmed to and subscribed before me this

24 day of November, 182010

Caroline A. Amos
Notary Public

My Commission Expires December 22, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Porterfield Jonathan S -
00328448,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2010CP4008477

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 2, 2010, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Greg Collins, Esquire. On March 15, 2010, the Applicant pled guilty and was sentenced by The Honorable J. Michelle Childs. The Applicant had been indicted and/or pled guilty to the following: Armed

1

<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2010CP4008477&CourtType=G&CaseType=Civil&CourtAgency=40002>

State's Return - (2010CP4008477) - Applicant: Porterfield Jonathan S

Page 1 of 6

Robbery (5 counts), Attemp. Arm Robbery, Assault on Correctional Officer - (2010-GS-40-152;11805;4;7).²

<u>Offender Type</u>	Adult-straight Sentence
<u>Offense</u>	Armed Robbery
<u>Sentence Start Date</u>	11/06/2007
<u>Sentence Length</u>	14 YRS, 6 MOS, 0 DYS
<u>Admission Date</u>	05/22/2008
<u>Committing County</u>	Richland
<u>Location</u>	Kershaw
<u>Projected Release Date</u>	03/18/2021
<u>Projected Parole Date</u>	Not Eligible
<u>Supervised Furlough Eligibility</u>	Not Eligible
<u>Sex Offender Registry</u>	No

II.

Attached herewith and incorporated herein are the records of the Richland 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 or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective

² <https://sword.doc.state.sc.us/incarceratedInmateSearch/incarceratedInmateFaceSheet.do?id=00328448&youth=N&type=F>

assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

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.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis

that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Rowland Alston, III, Esquire regarding when the hearing should be set.³

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

February 4, 2011

³ The current PCR Roster for the 5th Circuit is available at <http://www.scattorneygeneral.com/inside/pdf/5th.pdf>

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Porterfield Jonathan S -
00328448,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

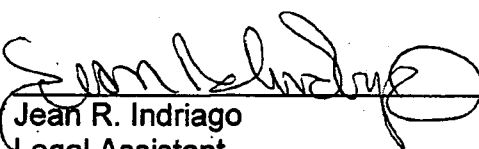
2010CP4008477

CERTIFICATE OF SERVICE

67. I am an employee of the Respondent in the above-captioned action.
68. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
69. I have this day served a copy of the a letter in the above-captioned matter on the ~~following person(s) by depositing same in the United States mail, postage prepaid:~~

Rowland Alston, III
P O Box 12009
Columbia, SC 29211

DATED February 9, 2011.


Jean R. Indriago
Legal Assistant

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Jonathan S. Porterfield, # 328448,)
Applicant,)
vs.)
The State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C/A No.: 2010-CP-40-8477

**SUPPLEMENTAL APPLICATION
FOR POST-CONVICTION RELIEF**

RICHLAND COUNTY
FILED
2011 AUG 23 PM 12:25
JANELL M. McBRIDE
C.C.P. & G.S.

Applicant, pursuant to S.C. Code §17-27-10 *et seq.*, would respectfully show:

STATEMENT OF FACTS

1. That Applicant is currently incarcerated at the Kershaw Correctional Institution in the County of Lancaster, State of South Carolina, and is an indigent applicant.
2. That Applicant was indicted for the following offenses:
 - a. Warrant # I-898710/Indictment # 2010-GS-40-0152 for a July 7, 2007, armed robbery of Arnold's Cleaners;
 - b. Warrant # I-898711/(Indictment # unknown) for a July 7, 2007 possession of a weapon during a violent crime at Arnold's Cleaners;
 - c. Warrant # J-559346/Indictment # 2008-GS-40-11804 for a November 2, 2007 attempted armed robbery at Olympia Open Air Market;
 - d. Warrant # J-559347/Indictment # 2010-GS-40-11805 for a November 2, 2007 armed robbery at a Kangaroo Station;
 - e. Warrant # J-559349/Indictment # 2008-GS-40-11807 for a November 2, 2007 armed robbery at Arnold's Cleaners;
 - f. Warrant # K-291302/Indictment # 2008-GS-40-11925 for a November 5, 2007 armed robbery at a Pantry Express; and,
 - g. Warrant # K-291582/Indictment # 2008-GS-40-12450 for an August 11, 2007 armed robbery of Burdette Cleaners.
3. That Applicant was appointed a public defender for Applicant's defense.

4. That Applicant was represented by Greg Collins, Esq. and Ashley R. Thomas, Esq. with the Richland County Public Defender's Office.
5. That Applicant understood and was advised by his counsel that he was to plead to all outstanding charges against him.
6. That Applicant entered a plea of guilty, and, upon recommendation by the Solicitor, a judgment was entered against Applicant of ten years for the offenses of armed robbery, ten years for the attempted armed robbery offence, and five years for the strong arm robbery offence, all to run concurrent and with credit for time served, on or about May 20, 2008, in the Court of General Sessions, Fifth Judicial Circuit.
7. That, at the sentencing, the indictment for the July 7, 2007 armed robbery charge contained the incorrect warrant number. The indictment contained warrant # J-559347, the warrant number for the November 2, 2007 armed robbery. The correct warrant # is I-898710.
8. That subsequent to Applicant's transfer to the custody of the Department of Corrections, the Solicitor discovered two outstanding indictments against Applicant, for Warrant ## I-898710 and I-898711, that had been misplaced, and informed the Applicant that the May 20, 2008 plea agreement and sentencing did not encompass those indictments.
9. That on September 8, 2008, the public defender filed a motion to enforce the plea agreement of May 20, 2008 as to all charges.
10. That Applicant, upon advice of counsel, entered a second guilty plea on March 15, 2010. The Court entered a judgment of fourteen and one half years for all of

the charges, plus an additional six months consecutive for a subsequent charge of assault upon an employee of the Department of Corrections (Warrant # J-561344/Indictment # 2008-CP-40-4246), with credit for time served. Warrant #I-898711/(Indictment # unknown) was dismissed at this second guilty plea.

11. That on March 16, 2010, the public defender filed a motion for reconsideration of the sentence.
12. That on August 12, 2010, the Court reduced the sentence to twelve years for the armed robbery charges, with six months consecutive for the charge of assault upon an employee of the Department of Corrections. However, in its Order, the Court referenced the outstanding charge of armed robbery of July 7, 2010, which was pled to on March 15, 2010, as being Indictment # 2008-GS-40-4246. (See Order, at Book 230, page 748, with the Richland County Clerk of Court.) Indictment # 2008-GS-40-4246 is for the assault upon an employee of the Department of Corrections.
13. That as a result of the typographical error in the Order, the Department of Corrections still has the Applicant as serving a sentence of fourteen and one half years, and, upon information and belief, will not correct the same absent a directive from the Attorney General or this Court. (See 06/10/11 correspondence attached hereto.)
14. That Applicant timely filed a first application for post-conviction relief on December 2, 2010.

15. That Applicant has not filed any prior petition with any Court, State or Federal, under South Carolina law, for habeas corpus or conviction relief, for writ of certiorari, or any other petitions.
16. That Applicant has not set forth any ground for relief to this or any other Court, State or Federal, in any motion, petition, or application, other than the initial application for post conviction relief for this action pending in the Court of Common Pleas.
17. That Applicant incorporates by reference his first application, files this first supplemental application, and seeks post-conviction relief for the reasons set forth herein.

GROUND FOR RELIEF

18. Paragraphs 1 through 17 of this Application are incorporated herein by reference.
19. That public defender's performance as counsel for Applicant was deficient under the United States Constitution and the South Carolina Constitution in the following particulars:

-
- a. ~~That public defender for Applicant did not properly monitor the charges that~~
the Applicant pled guilty to on May 20, 2008, and ensure that Applicant was pleading to all outstanding charges with the correct warrant and indictment numbers.
 - b. That, as a result, Applicant had to re-plea, and was sentenced to more time than agreed to on May 20, 2008.

- c. That public defender did not properly review the Order of August 12, 2010, to ensure that all contained therein was accurate and correct, and would not prejudice Applicant.
- 20. That public defender's performance as counsel for the Applicant, as stated herein, was so deficient that the Applicant was prejudiced such that there is a reasonable probability that, but for public defender's professional errors, the result of the guilty plea(s) would have been different.
- 21. That public defender's conduct so undermined the proper functioning of the adversarial process that the guilty plea(s) and Orders therefrom cannot be relied upon as having produced a just result.

RELIEF DESIRED

- 22. Paragraphs 1 through 21 of this Application are incorporated herein by reference.
- 23. That the Court enter judgment granting Applicant's application for post-conviction relief, and, at the election of the Applicant:
 - a. remand the criminal case for a new trial; or,
 - b. order enforcement of the original sentence of May 20, 2008; or
 - c. order a re-negotiation of a new plea offer; or
 - d. order that the Department of Corrections reduce the sentence of the Applicant to twelve and one half years as called for in the Order of August 12, 2010.

(VERIFICATION AND SIGNATURE OF COUNSEL PAGE TO FOLLOW.)

STATE OF SOUTH CAROLINA)
) VERIFICATION
 COUNTY OF RICHLAND)

I, Jonathan S. Porterfield, 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.

Jonathan S. Porterfield
 Jonathan S. Porterfield, Applicant

August 18, 2011

Sworn to and subscribed before me on August 18, 2011.

Catherine A. Amos
 Notary Public for South Carolina

My commission expires 12 / 22 / 2018.

Rowland P. Alston III
 Rowland P. Alston III
 The Law Office of Rowland P. Alston III, LLC
 1314 Lincoln Street
 Suite 214
 Columbia, South Carolina 29201
 (803) 708-0460
 Attorney for the Indigent Applicant

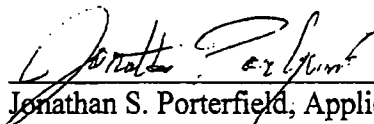
August 23, 2011

(APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS
 AND AFFIDAVIT IN SUPPORT THEREOF TO FOLLOW.)

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

I, Jonathan S. Porterfield, hereby continue to apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my supplemental 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.


Jonathan S. Porterfield, Applicant
August 18, 2011

Sworn to and subscribed before me on August 18, 2011.


Notary Public for South Carolina

My commission expires 12 / 22 / 2018.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2010-CP-40-8477

Jonathan S. Porterfield,)
Applicant/Plaintiff,)
vs.) TRANSCRIPT OF RECORD
The State of South Carolina,)
Defendant.)

May 23, 2012
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

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

ROWLAND P. ALSTON, III, ESQUIRE
Attorney for Applicant/Plaintiff

ROBERT D. CORNEY, ESQUIRE
Attorney for the State

Crystal Holmes
Official Court Reporter

E X H I B I T S

1
2 NO. DESCRIPTION I.D. EVD.
3 (REPORTER'S NOTE: NO EXHIBITS WERE INTRODUCED AT THE
4 HEARING.)
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1 THE COURT: Yes, sir.

2 MR. CORNEY: --- if I misstate anything. But at
3 that point in time, September 25th, 2008, Mr. Porterfield
4 appeared with counsel on -- before Judge Childs for a
5 hearing on a motion to enforce the plea agreement at
6 which Mr. Porterfield alleged two additional warrants
7 were outstanding at the time of his original plea that
8 were not disposed of through his May 2008 plea in front
9 of Judge Childs, he wanted the plea to encompass all of
10 the charges. Judge Childs ultimately denied that motion
11 but allowed Mr. Porterfield to withdraw his plea to try
12 to renegotiate a plea offer from the State to cover all
13 the charges.

14 On March 15th, 2010, Mr. Porterfield appeared
15 before Judge Childs where he pled guilty to four counts
16 of armed robbery, one count of strong armed robbery, one
17 count of attempted armed robbery and one count of assault
18 on a Correctional Officer to dispose of all previous
19 warrants. And I know I'm going through it kind of
20 quickly ---

21 THE COURT: No, take your time.

22 MR. CORNEY: Okay. There was a negotiated
23 sentencing range of 12 to 15 years on which he pled.

24 THE COURT: And Judge Childs gave, let me guess,
25 14?

1 MR. CORNEY: And Mr. Porterfield was sentenced
2 to 14 and a half years.

3 THE COURT: Oh, sorry ---

4 MR. CORNEY: Very close, in concurrent terms of
5 10 years for the attempted armed robbery and five years
6 for strong armed robbery, all to be followed
7 consecutively by six months for the assault on the
8 Correctional Officer, for an aggregate 15 year sentence.

9 A motion for reconsideration was filed on his
10 behalf on March 16th, 2010 and the hearing was held March
11 19th, 2010 before Judge Childs. A transcript of that
12 hearing is included in the packet for Your Honor. By
13 Order filed August 12th, 2010, Judge Childs ordered that
14 the sentences should be amended on the armed robberies
15 for 12 years for each of the armed robbery charges.

16 Upon receipt of the Order modifying the
17 sentences from Judge Childs, SCDC changed the sentences
18 on three of the four armed robbery charges from 14 and a
19 half years to 12 years. The fourth charge was not
20 modified down as the indictment was incorrectly cited in
21 that Order signed by Judge Childs.

22 So I believe at this point in time, Mr.
23 Porterfield is still doing 14 and a half years on the
24 last of the four armed robbery charges he pled to. And
25 like I said, Mr. Alston might disagree about the

1 presentation of facts and I will obviously ---

2 THE COURT: If he does, I'm sure he'll let us
3 know.

4 MR. CORNEY: I'm sure. He filed a timely PCR
5 application December 2nd, 2010, and amended that
6 application on August 23rd, 2011, and he is represented
7 by Mr. Roland Alston today.

8 THE COURT: Well, before you get started, Mr.
9 Alston, I'm going to tell you a quick story, a true
10 story. Judge Peeples, anybody remember Rodney Peeples?
11 He was on the bench and he was asking this Defendant, are
12 you satisfied with your lawyer, he was pleading guilty,
13 and he said, yeah, he's all right. He said, no, no, no,
14 are you satisfied with your lawyer? He says, well, he --
15 he's doing an okay job. He said, well, are you satisfied
16 with his lawyer or not, he said, what's wrong? He said,

17 if he was a good lawyer he would have got me passed you,
18 he would have got a continuance, and not have to have
19 appeared before Rodney Peebles.

20 I'm not saying that's an analogy with Judge
21 Childs but you may proceed now, go ahead.

22 MR. ALSTON: Thank you, Your Honor.

23 Your Honor, I agree with almost everything Mr.
24 Corney has said.

25 THE COURT: Yes, sir.

1 MR. ALSTON: He may have misspoke ---

2 THE COURT: Now, who -- does Mr. Collins
3 represent this gentleman or does Ms. Thomas represent
4 this gentleman ---

5 MR. ALSTON: Both of them.

6 THE COURT: --- or does Ms. Good represent this
7 gentleman?

8 MR. ALSTON: Mr. Collins and Ms. Thomas were
9 both plea counsel for my client.

10 THE COURT: Okay.

11 MS. GOOD: I was the prosecutor.

12 THE COURT: Oh, okay, that makes sense. Go
13 ahead.

14 MR. ALSTON: Your Honor, I think we have an
15 agreement as to one of the forms of relief. My client is
16 asking for two things, he's not asking for a new trial,
17 of course, he's asking to be ---

18 THE COURT: To get 10 years ---

19 MR. ALSTON: He wants 10 years or in the
20 alternative he wants the Order to be corrected to reflect
21 the right indictment numbers so the Department of
22 Corrections will have his sentence properly reflected at
23 12 and a half years. I called an attorney at the
24 Department of Corrections and brought this issue to him.

25 THE COURT: Who was the attorney?

1 MR. ALSTON: He was going to have to -- it's
2 attached to my application.

3 THE COURT: Okay.

4 MR. ALSTON: He said he would have to have an
5 Order from the Court changing it. I think the Attorney
6 General and I are in agreement that he's entitled to two
7 and a half years. So I think that aspect of the relief --
8 --

9 THE COURT: You mean two and a half years credit
10 -- what do you mean two and a half, he's entitled to two
11 and a half years?

12 MR. ALSTON: 12 and half years.

13 MR. CORNER: And, Your Honor, it's based on the
14 reading of the Order and it's ---

15 THE COURT: All right, so -- you said two and a
16 half, that's what confuses me.

17 MR. ALSTON: I'm sorry, I meant 12 and a half.

18 THE COURT: You meant 12 and a half.

19 MR. ALSTON: Yes, sir.

20 THE COURT: All right, I'm sorry.

21 MR. ALSTON: 12 and a half years.

22 THE COURT: Go ahead.

23 MR. ALSTON: Okay. But ---

24 THE COURT: Did you go to Clemson?

25 MR. ALSTON: Yes, sir, I did.

1 THE COURT: That explains it, go ahead.

2 MR. ALSTON: However, my client would like to
3 present his case, he's entitled to the original ---

4 THE COURT: Okay.

5 MR. ALSTON: After the plea deal or after the
6 plea was taken on May 20th, it's my understanding that
7 two warrants were discovered and the Solicitor notified
8 ---

9 THE COURT: And it should have been a global
10 plea, it wasn't.

11 MR. ALSTON: Yes, sir.

12 THE COURT: So that wasn't included as part of
13 -- you're wrapping it all up in one ball.

14 MR. ALSTON: That's correct.

15 THE COURT: All right.

16 MR. ALSTON: Your Honor, I believe we had all
17 the transcripts. I have the three Orders that Judge
18 Childs entered in the case, I have copies of and I think
19 ---

20 THE COURT: Is this strictly a legal issue or do
21 I need to hear some facts or testimony?

22 MR. ALSTON: I -- well --

23 THE COURT: I think ---

24 MR. ALSTON: I think you need -- well.

25 MR. CORNEY: Your Honor, I will submit it's a

GREG COLLINS -- DIRECT BY MR. ALSTON:

11

1 pretty strong legal argument on this ---

2 THE COURT: Hold on for a second. I'm going to
3 have to take a little break. I'm going to drag you two
4 back here while I do this.

5 Be at ease, don't go anywhere, anybody. Yeah,
6 yeah, you two guys.

7 (The Court was in recess.)

8 THE COURT: We all ready?

9 MR. ALSTON: Yes, sir, Your Honor.

10 THE COURT: All right.

11 MR. ALSTON: Your Honor, my client would call
12 Greg Collins to the stand.

13 THE COURT: All right, come around, Mr. Collins.

14 (GREG COLLINS, having first been duly sworn,
15 testified as follows:)

16 THE COURT: All right, please tell us your full
17 name and spell your last name for the record.

18 THE WITNESS: My name is Greg Collins, C-o-l-l-i-
19 n-s.

20 DIRECT EXAMINATION

21 BY MR. ALSTON:

22 Q Mr. Collins, were you my client's counsel during the
23 plea?

24 A During the original plea, yes.

25 Q Okay. And you were in court hearing the history of

GREG COLLINS -- DIRECT BY MR. ALSTON:

12

1 how we came to this PCR?

2 A Yes.

3 Q Okay. Can you please tell the Court what happened
4 during the original plea, what happened after it and
5 what should have been done by you to correct any
6 problem?

7 A I originally got Mr. Porterfield's case, he had a
8 number of armed robberies he was charged with. He
9 had given a confession to a number of armed robberies
10 that the police didn't even know about. He wasn't
11 charged with everything that he confessed to in the
12 original packet that I got. But he was charged with
13 several armed robberies. I was negotiating with Anna
14 Good of the Solicitor's office. We came to a deal of
15 10 years for all of his charges. When we did the
16 plea in front of Judge Childs, we got 10 years. All
17 the facts contained in his confession were talked
18 about at that first plea.

19 After the plea, after he got the 10 years, they
20 then came with two more warrants that were sworn out
21 the same time as all the other warrants by the same
22 investigator but for some reason wasn't handed over
23 to the Solicitor's office, wasn't logged into the
24 Clerk of Court, wasn't served in the courtroom, I had
25 no way of knowing about those.

1 But because I didn't specifically say that the
2 original plea was in reliance that no other warrants
3 would come of his confession or these facts, the case
4 law states that the plea deal could then not be
5 enforced later. Because as soon as I find out --
6 found out about that, I filed a motion to enforce the
7 plea deal of 10 years, because of my understanding of
8 the agreement was that 10 years was for everything
9 that he confessed to which contained those two new
10 warrants. However, the Solicitor's office had a
11 different viewpoint and they wanted to do more time.

12 Another issue that came up with that is since he
13 had already pled to the other armed robberies and
14 they served these new warrants on him from his
15 original confession, he would then be eligible for
16 life without parole status which concerned me as his
17 attorney too because that would be a pretty

18 backhanded thing for the Solicitor's office to do, to
19 trick him into pleading and then get him for LWOP.

20 Well, we came to an agreement on that at the
21 motion to enforce the plea deal with Judge Childs.
22 Instead of enforcing the plea deal, her remedy was to
23 let him withdraw his plea. Somewhere in the mix of
24 one of those times -- when I left the Public
25 Defender's office, that's when the case went to

GREG COLLINS -- DIRECT BY MR. ALSTON:

14

1 Ashley Thomas. I wasn't present for his second plea
2 where I think he got 15 years but I was present for
3 the motion to reconsider that sentence and I believe
4 there's a transcript of that where we tried to get
5 the Judge to just give him the 10 years but I believe
6 she only reduced it to the 12 years.

7 Q Mr. Collins, March 19th, 2010 appeared to be the last
8 hearing where my client was sentenced to 12 and a
9 half years, does that sound about right?

10 A I believe so, yeah.

11 Q And because this is a post conviction relief hearing
12 and we're claiming ineffective assistance of counsel,
13 I'm representing to you that at that hearing you
14 stated, my fault, my incompetence. Do you recall
15 stating that?

16 A Yes, what I -- what I -- what I didn't say in the
17 original plea was, this is in reliance that no new
18 warrants will come from these set of facts. I say
19 that in every single plea now because, like I said,
20 after this plea when they came up with new warrants,
21 I was trying -- I was researching how to enforce a
22 plea deal and apparently in South Carolina, under our
23 law, unless that's specifically on the record of the
24 plea that's in reliance of no new warrants, you can't
25 then enforce the plea deal.

GREG COLLINS -- DIRECT BY MR. ALSTON:

15

1 So had I said that on the record, they would not
2 have been able to bring those next two warrants. But
3 because I didn't say it, I had no legal way of
4 stopping without help from Judge Childs which we did
5 in the plea.

6 Q Is there anything else you would like to add at this
7 time?

8 A I would just hope that we can get it back down to
9 where it should be.

10 MR. ALSTON: Okay. The Court's indulgence, Your
11 Honor.

12 THE COURT: Yes, sir.

13 (Pause.)

14 MR. ALSTON: Nothing further, Your Honor.

15 THE COURT: All right, Mr. Corney.

16 CROSS-EXAMINATION

17 BY MR. CORNEY:

18 Q Mr. Collins, at that time of the original plea you
19 didn't know about any outstanding warrants, did you?

20 A No, the investigator never turned them over to
21 anybody after he swore them out.

22 Q Okay. You knew about the specific charges they
23 related to as they were part of his confession but
24 didn't know they had -- there had been warrants sworn
25 on those actions, on those crimes?

GREG COLLINS -- CROSS BY MR. CORNEY:

16

1 A We knew about all the facts of everything but we just
2 assumed that they weren't going to charge him for all
3 the armed robberies since they had him four or five
4 or six of them.

5 Q Okay. And is it you understanding the State didn't
6 know about those outstanding warrants either?

7 A I don't have a position on that, I don't ---

8 Q That wasn't something you ever discussed ---

9 A My position is they should have known about it.

10 THE COURT: Let me help you out. The police
11 knew about it and that's imputed to the Solicitor's
12 office.

13 MR. CORNEY: Okay.

14 Q After the -- after the motion to enforce the plea was
15 denied and Mr. Porterfield was able to withdraw his
16 plea, did the State ever offer that 10 year plea
17 offer again to you -- to Mr. Porterfield?

18 A No.

19 Q Okay, that was never extended again, it was a 12 year
20 -- 12 to 15 year range that was offered?

21 A I wasn't with the office when they got the offer on
22 that.

23 Q Because you weren't part of the second round of
24 negotiations after he withdrew his plea?

25 A No.

GREG COLLINS -- CROSS BY MR. CORNEY:

17

1 Q Okay.

2 MR. CORNEY: I believe that is all the
3 questions I have.

4 THE COURT: All right. Anything further of this
5 witness?

6 MR. ALSTON: No, sir, Your Honor.

7 (The witness leaves the witness stand.)

8 THE COURT: Call your next witness.

9 MR. ALSTON: Your Honor, I would call Ashley
10 Thompson (sic) to the stand.

11 THE COURT: All right. I think it's Thomas.

12 THE WITNESS: Thank you, Judge.

13 THE COURT: That's all right, of course it could
14 have changed.

15 THE WITNESS: No, it's still Thomas.

16 (ASHLEY THOMAS, having first been duly sworn,
17 testified as follows:)

18 THE COURT: All right. Please take a seat and
19 tell us your full name and spell your last name for the
20 record.

21 THE WITNESS: Ashley Thomas, T-h-o-m-a-s.

22 DIRECT EXAMINATION

23 BY MR. ALSTON:

24 Q Good afternoon, Ms. Thomas, I apologize. The court
25 reporter has it down as Thompson, that's how I got

ASHLEY THOMAS -- DIRECT BY MR. ALSTON:

18

1 that mistake.

2 A That's okay.

3 Q Were you involved in my client's underlying plea at
4 all?

5 A I was involved in the second plea.

6 Q Okay. And what is your understanding of what
7 happened at the second plea and before the second
8 plea in terms of the first plea being set aside?

9 A When I inherited the case, it was right when Judge
10 Childs decided to allow Mr. Porterfield to rescind
11 his previous plea. And then at that point, the case
12 in the Solicitor's office went from Anna Good to
13 Vanessa Shipley and so my negotiations were primarily
14 with Ms. Shipley.

15 And at that point, I was asking for the original
16 sentence to be enforced because -- primarily because
17 the facts were on the record. We didn't really have
18 much of a choice because in the original plea, he
19 pled to the facts, just not the warrant. So his
20 hands were completely tied and he was -- he was stuck
21 and I thought the very thing to do was to enforce the
22 10 year agreement.

23 Ms. Shipley and I went back and forth. She
24 wanted, I think, 15 years originally and then she
25 reduced it to the range between 12 and 15 years. But

1 it was not negotiated, I think it was just her -- it
2 was going to be her recommendation and I believe I
3 was still asking for the 10 at that point.

4 Q So what -- what hearings were you specifically
5 involved in in this history?

6 A I was -- I believe I may have been present at one of
7 Mr. Collins' hearings which is why the case was
8 ultimately given to me as just because I had a little
9 bit of a background. But I was involved in the --
10 the second plea as well as a motion to reconsider
11 that I filed after the second plea.

12 Q Okay. And are you aware of any issue consider --
13 concerning the final order after the motion for
14 reconsideration signed by Judge Childs?

15 A The motion to reconsider, my understanding, was that
16 Judge Childs had agreed to reduce his sentence to 12

17 ~~years plus six months consecutive for the assault on~~
18 a Corrections Officer, bringing the total to 12 and a
19 half years. And that was my understanding. There
20 apparently was a mistake on her Order that I did not
21 catch, that I should have caught, that resulted in
22 him not getting the benefit of that Order and the 12
23 years on the armed robbery charges.

24 Q And were you in the courtroom when Mr. Collins
25 testified?

ASHLEY THOMAS -- DIRECT BY MR. ALSTON:

20

1 A I was.

2 Q Okay. Do you have any dispute about anything he
3 testified to?

4 A No.

5 Q Okay.

6 MR. ALSTON: The Court's indulgence?

7 THE COURT: Yes, sir.

8 (Pause.)

9 MR. ALSTON: Nothing further, Your Honor.

10 THE COURT: All right, Mr. Corney.

11 MR. CORNEY: Briefly, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. ALSTON:

14 Q Ms. Thomas, when you entered in those plea
15 negotiations after the first plea was withdrawn, did
16 the State ever offer 10 years to Mr. Porterfield
17 again?

18 Q Not that I recall.

19 A Did you ever ask them to extend the offer, is that
20 something you negotiated with them?

21 A I was begging them to give back the 10 year offer.

22 Q Okay. And based on your discussions with them, what
23 was the reason behind not wanting to extend that 10
24 year offer to him?

25 A Because there was more charges essentially. They

1 just felt that it warranted more time.

2 Q Okay. So ---

3 A Was my understanding.

4 Q So based on those discussions, it's probably pretty
5 likely that the State didn't offer the 10 years
6 initially to cover all these charges, that they
7 wouldn't reoffer it once they knew all the charges
8 encompassed?

9 A Again, all the facts were the same, the facts didn't
10 change and they were all presented at the first
11 hearing. So none of the facts were different during
12 the second hearing.

13 Q Okay, it was just the warrants, the actual charges he
14 was facing was different?

15 A Correct.

16 Q Okay. There was also an additional assault on a

17 Correctional Officer that was a part of the second
18 plea?

19 A Yes, there was.

20 Q And that hadn't been brought this first time, so
21 there was some additional charge brought that wasn't
22 discussed at the first plea?

23 A And I believe that charge didn't come up until after
24 the first plea.

25 Q Right.

ASHLEY THOMAS -- CROSS BY MR. CORNEY:

22

1 A When he was in the Department of Correction. So it
2 wouldn't have been an issue at that point.

3 Q Right, it didn't even exist at the time. But that
4 was encompassed in the second plea negotiations?

5 A It was.

6 Q Okay. Did you ever discuss with Mr. Porterfield,
7 heading into the motion -- well, I guess you
8 represented Mr. Porterfield at the -- at the motion
9 to enforce the plea or Mr. Collins?

10 A Mr. Collins did.

11 Q Okay and you had no part ---

12 A I think I was in the courtroom at the time but...

13 Q Okay. And heading into the plea negotiations and --
14 were you able to relay that -- that plea negotiation
15 sentencing range that was offered by the State ---

16 A I believe we had -- I believe I told him what they
17 were going to be asking for.

18 Q Okay. Mr. Porterfield was aware it was 12 to 15
19 years?

20 A Yes.

21 Q Okay.

22 A I believe -- I mean, I can't speak for him but I
23 believe we had that conversation.

24 Q Based on your discussions, you would -- it would seem
25 that he appeared to understand that?

1 A Yes.

2 Q Okay.

3 A But again, he didn't really have a whole lot of
4 choice.

5 Q But he knew he wasn't getting 10 years?

6 A No, he didn't know that. That was still on the table
7 because I was going to be asking for. As far as I
8 knew, it was up to the Judge to sentence so there was
9 no -- at that point, it wasn't off the table.

10 Q Okay. But as far as the negotiations went, if he
11 pled under the negotiations and the Judge accepted
12 it, he would not be getting 10 years?

13 A Well, again, the sentence wasn't negotiated. They
14 were just asking for a range between 12 and 15 years.

15 Q So ---

16 A They were going to ask for 15 and we asked for less.

17 Q ~~So it was a recommended 12 to 15, not a negotiated?~~

18 A I don't recall it being negotiated, no.

19 MR. CORNEY: And, Judge, I think the record will
20 speak for itself in that regard.

21 THE COURT: I hope so.

22 MR. CORNEY: I would think so.

23 THE COURT: Okay.

24 MR. CORNEY: Beg the Court's indulgence for
25 just one minute, Your Honor?

JONATHAN PORTERFIELD -- DIRECT BY MR. ALSTON:

24

1 THE COURT: Yes, sir:

2 (Pause.)

3 MR. ALSTON: I believe that's all I have..

4 THE COURT: All right, anything further of this
5 witness?

6 MR. ALSTON: No, sir, Your Honor.

7 THE COURT: You may step down, Ms. Thomas.

8 (The witness leaves the witness stand.)

9 THE COURT: Ready to call your next witness?

10 MR. ALSTON: Yes, sir, Your Honor. I would like
11 to call my client, Jonathan Porterfield, please.

12 (Pause.)

13 (JONATHAN PORTERFIELD, having first been duly
14 sworn, testified as follows:)

15 THE COURT: Please take a seat. Tell us your
16 full name and spell your last name for the record.

17 THE WITNESS: Jonathan Porterfield, P-o-r-t-e-r-
18 f-i-e-l-d.

19 DIRECT EXAMINATION

20 BY MR. ALSTON:

21 Q Mr. Porterfield.

22 A Yes, sir.

23 Q Are we here today for your post conviction relief
24 application that you filed?

25 A (Affirmative response.)

PORTERFIELD V. THE STATE

1 Q You have to respond verbally.

2 A Yes, sir.

3 Q Okay. And have -- as your lawyer, have we met and
4 discussed your case on more than one occasion?

5 A Yes, sir.

6 Q Okay. And the supplemental application that I filled
7 out and filed for you, does it contain your
8 understanding of all your grounds for relief?

9 A Yes, sir.

10 Q Okay. Your initial plea on May 20th, 2008, you
11 remember that day?

12 A Yes, sir.

13 Q Okay. Was it your understanding that you were
14 pleading to all outstanding charges against you?

15 A Yes, sir.

16 Q Okay. Was it your understanding that you would
17 receive a 10 year sentence for all outstanding
18 charges against you?

19 A Yes, sir.

20 Q Okay. And are you seeking relief in this action in
21 the form of a resentencing, either being your
22 original 10 year agreement that you understood or 12
23 and a half years as corrected from Judge Childs's
24 Order?

25 A Yes, sir.

JONATHAN PORTERFIELD -- CROSS BY MR. CORNEY:

1 Q Is there any other relief you are seeking?

2 A No, sir.

3 Q Okay.

4 MR. ALSTON: That's all I have.

5 THE COURT: All right, Mr. Corney.

6 CROSS-EXAMINATION

7 BY MR. CORNEY:

8 Q Mr. Porterfield, you said a minute ago that you
9 entered the plea under the assumption that all the
10 charges would be taken care of through that plea, is
11 that correct?

12 A Yes, sir.

13 Q But you didn't know about these -- these other
14 outstanding warrants at the time, did you?

15 A At the time of my original plea?

16 Q Your original plea, yes, sir.

17 A 2008?

18 Q Yes, sir.

19 A Did I know about it?

20 Q Yes, sir.

21 A Yes, sir.

22 Q You knew about the charges at that point in time?
23 Your attorney didn't know about them but you knew
24 about them, you knew that there had been warrants
25 sworn out on those charges?

1 A I thought I was pleading to everything at that time
2 -- at the time in 2008 in May. My understanding was
3 I was pleading to all the charges.

4 Q Okay. And you knew that there was six armed
5 robberies on the table not four? Or, yeah, I believe
6 it's four. You knew that there was six at that
7 point?

8 A Did I know that there was six?

9 Q Right.

10 A Yes, sir.

11 Q You did?

12 A Yes, sir.

13 Q Okay. Did you ever tell your attorney that you knew
14 there were six warrants sworn out on you?

15 A I mean, I didn't at the time. At the time I wasn't
16 really looking for that because I thought everything

17 was already handled, sir.

18 Q Okay. The assault on a Correctional Officer, that
19 happened after you were in the Department of
20 Corrections, that wasn't even charged at the time of
21 your first plea, was it?

22 A No, sir.

23 Q Okay. So that was -- that was -- couldn't have been
24 something else encompassed in the first plea -- plea
25 negotiations and entering the first plea?

JONATHAN PORTERFIELD -- CROSS BY MR. CORNEY:

1 A No, sir.

2 Q Okay.

3 MR. CORNEY: Beg the Court's indulgence?

4 THE COURT: Yes, sir.

5 (Pause.)

6 Q You're not contesting today that you entered your
7 second plea, the second time you came around with Ms.
8 Thomas, you're not contesting that you entered that
9 -- that it was involuntary, coerced, for whatever
10 reason that plea wasn't voluntary?

11 A No, sir.

12 Q Okay. So you agree the second time you came in, you
13 were pleading under the -- under -- and you knew that
14 you were getting between 12 and 15 years the second
15 time around?

16 A Well, I didn't absolute know that. It was brought to
17 my attention that the recommendation or the
18 negotiation or whatever it was, was they was offering
19 me from 12 to 15 for the same charges that I had
20 already pled to in 2008. But she did say, it's a
21 possibility that I can get my 10 years, she would
22 bring it to the Judge's attention and it all would be
23 up to the Judge. I mean I really didn't have --
24 really didn't have a choice because if I didn't, I
25 would have to go back to trial on all my charges so I

1 was in a no win situation.

2 Q You didn't want to go back to trial, right?

3 A No, sir.

4 Q You wanted to take the benefit of a plea bargain?

5 A Yes, sir.

6 Q Which is why you entered that second plea also,
7 right?

8 A I had to.

9 Q Okay. Do you remember whether it was a negotiated or
10 recommended 12 to 15 year range that the Solicitor
11 offered to you on the second plea?

12 A No, sir.

13 Q You don't. This is part of the record, I just want
14 to point it out. Take a look at this and tell me if
15 this is something you've seen before. There's a
16 couple of them in there.

17 A My sentencing sheet.

18 Q Your sentencing -- is that your sentencing sheet from
19 your plea?

20 A Yes, sir.

21 Q Okay. And negotiated sentence is checked on that
22 sheet, correct?

23 A Yes, sir.

24 Q Okay. So it was part of a negotiated sentence based
25 on the sentencing sheet? It was a negotiated

JONATHAN PORTERFIELD -- REDIRECT BY MR. ALSTON:

30

1 sentence?

2 A Yes, sir.

3 Q Okay. So you knew that if the Judge accepted that
4 plea and accepted the negotiations, you would get at
5 least 12 years, 10 years is not going to happen if
6 you accepted that, if you entered that second plea,
7 right?

8 A No, sir, I did not know that.

9 Q You did not know that, okay.

10 MR. CORNEY: I believe that's all the questions
11 I have.

12 THE COURT: Mr. Porterfield -- no, no, no, I
13 insist, you go first.

14 REDIRECT EXAMINATION

15 BY MR. CORNEY:

16 Q There was -- in his cross-examination, he brought up
17 the fact of how many charges you were aware of.

18 A Uh-huh.

19 Q But you were relying on your counsel to present you
20 to plea on all outstanding charges, right?

21 A Yes, sir.

22 Q Okay. And it was your understanding that you were
23 pleading to everything, it was a one-shot deal,
24 correct?

25 A Yes, sir.

1 MR. ALSTON: Nothing further.

2 THE COURT: Mr. Porterfield, on the sentencing
3 sheets, you signed all of them, did you not?

4 THE WITNESS: Yes, sir.

5 THE COURT: Did you check any boxes on any of
6 those sheets?

7 THE WITNESS: Did I check any boxes?

8 THE COURT: Yeah, did you?

9 THE WITNESS: I really can't remember, sir.

10 THE COURT: All right, that's fine. Thank you,
11 sir, you may step down.

12 (The witness leaves the witness stand.)

13 THE COURT: Call your next witness, Mr. Alston.

14 MR. ALSTON: Your Honor, that concludes the case
15 in chief.

16 THE COURT: All right. Thank you, sir.

17 Mr. Corney, anything from ---

18 MR. CORNEY: Very briefly, Your Honor. I just
19 call Anna Good from the Solicitor's -- formerly from the
20 Solicitor's office on the State's behalf.

21 THE COURT: Formerly from the Solicitor's
22 office?

23 MR. CORNEY: I believe so, if I'm saying that
24 correctly.

25 (ANNA GOOD, having first been duly sworn,

ANNA GOOD -- DIRECT BY MR. CORNEY:

1 testified as follows:)

2 THE COURT: All right. Please take a seat,
3 tell us your full name and spell your last name for the
4 record.

5 THE WITNESS: Anna Good, last name spelled G-o-
6 o-d.

7 THE COURT: Yes, sir.

8 DIRECT EXAMINATION

9 BY MR. CORNEY:

10 Q Ms. Good, do you remember being involved in
11 Mr. Porterfield's case in the Solicitor's office?

12 A Yes, sir.

13 Q Okay. And you've been in the courtroom today and
14 listened to the testimony that was brought regarding
15 this plea negotiation, correct?

16 A Yes, sir.

17 Q Okay. If you would, just tell the Court a little bit
18 about the plea negotiations, what you remember and
19 the results of those plea negotiations.

20 A I remember originally when we were going through plea
21 negotiations, there were warrants that we had in our
22 office and we decided that it would be a 10 year
23 offer and he would plead to 10 years. It was our
24 understanding that was for all the warrants and it
25 was going to be a global plea and take care of

1 everything.

2 After we pled, it was brought to my attention
3 from Mr. Collins that there were two other warrants
4 out there that was apparently not sent to the
5 Solicitor's office and we were not aware they were
6 there. So they moved to have his sentence
7 reconsidered or withdrawn or to enforce the plea
8 agreement in front of Judge Childs.

9 Q Okay. And in your time as an Assistant Solicitor
10 here in Richland County, is it fair to say you
11 entered into a good amount of plea negotiations on
12 the State's behalf?

13 A Yes.

14 Q Okay. And in your experience in that regard and your
15 knowledge of the Richland County Solicitor's office's
16 policies on those plea negotiations, do you think the

17 same offer would have been extended to Mr.

18 Porterfield had you know of all the outstanding
19 warrants at that point in time?

20 A No. At the time when we did it, we had, I think,
21 four warrants and in my experience, if we had known
22 that there was more at that time it might not have
23 been 10 years, it may have been 12, it may have been
24 11, it may have been something else. But the offer
25 of 10 years was based on the four warrants that we

ANNA GOOD -- DIRECT BY MR. CORNEY:

1 knew about.

2 Q And that was something that you stressed at the
3 motion hearing to enforce the plea in front of Judge
4 Childs?

5 A Yes. And I believe I had given up e-mails between me
6 and Mr. Collins listing exactly which warrants we
7 were discussing during negotiations.

8 Q Okay. And in your recollection, were any of these
9 outstanding charges ever mentioned in those
10 negotiations and those e-mails you turned over?

11 A Not in the e-mails. I do remember from the plea,
12 because we had actually gotten the transcript, some
13 of the facts that were actually put on the record
14 during one of the warrants, when I was giving the
15 facts of the case, was actually one of the warrants
16 that we weren't aware of but somehow the facts were
17 put into the record about those warrants.

18 Q Okay. And as part of your plea negotiations, did Mr.
19 Porterfield offer to provide any testimony, did he
20 give that confession based on -- in reliance on the
21 plea offers that you were extending? Is any of that
22 involved in the plea negotiations?

23 A From my understanding, the confessions were given
24 before the Solicitor's office ever got involved.

25 Q And he didn't provide testimony or anything along

ANNA GOOD -- CROSS BY MR. ALSTON:

35

1 that line, to his detriment, in the plea
2 negotiations?

3 A Not that I recall but I don't remember.

4 MR. CORNEY: I believe that's all.

5 THE COURT: All right.

6 CROSS-EXAMINATION

7 BY MR. ALSTON:

8 Q Ms. Good, how long -- are you still with the
9 Solicitor's office?

10 A No, sir.

11 Q Okay. How long were you with the Solicitor's office?

12 A Almost four years.

13 Q Okay. During your time there, was there ever any
14 other incident where warrants were misplaced and were
15 not part of a plea?

16 A Not that I'm aware of but I don't know about any of

17 the other solicitors. Not with any that I dealt
18 with.

19 Q Okay.

20 MR. ALSTON: Thank you, that's all I have.

21 THE COURT: All right. Anything further of this
22 witness?

23 MR. CORNEY: Nothing further.

24 THE COURT: You may step down, Ms. Good.

25 (The witness leaves the witness stand.)

1 THE COURT: Anything further?

2 MR. CORNEY: Just a brief closing. I don't know
3 if you want me to go ahead on that.

4 THE COURT: Oh, yeah, y'all proceed.

5 MR. ALSTON: I get to go first?

6 THE COURT: Sure.

7 MR. ALSTON: Your Honor, like I said, I think --
8 I believe we're in agreement on one of the forms of
9 relief, the 12 and a half years is appropriate given the
10 Order was not -- didn't have the right indictment number
11 on it for the Department of Corrections to get entered in
12 their system and have the right sentence. But I do
13 believe that Defense counsel had an obligation at the
14 initial plea to ensure that all outstanding charges were
15 being pled to. And as a result, my client found himself
16 in a situation that he couldn't get himself out of. So I
17 think he's entitled to the original 10 years.

18 And so we would ask for that and if you decline
19 that or deny that relief, we would ask for the 12 and a
20 half years to be corrected. ---

21 THE COURT: That -- I think the State concedes
22 that probably should be the situation, not the 10 years
23 but the 12 and a half years.

24 MR. CORNEY: And, Your Honor ---

25 THE COURT: And I'm not arguing for you but it

1 saves a little bit of time.

2 MR. CORNEY: And that's fine, we do consent to
3 the reduction to the Court, even if it's not a PCR issue,
4 I think it would be appropriate for this Court, in the
5 interest of justice, to enter some kind of Order to SCDC
6 to let them know that the Order should reflect 12 years
7 on all the charges with six months consecutive for the
8 assault on a Correctional Officer.

9 THE COURT: All right.

10 MR. CORNEY: And, Your Honor, if I may.

11 THE COURT: Yes, sir.

12 MR. CORNEY: Under Missouri v. Frye, the recent
13 United States Supreme court decided -- it was heard
14 October 31st, 2011 and decided March 21st, 2012, for a
15 complete showing of prejudice under Strickland v.
16 Washington ---

17 ~~THE COURT: Who wrote this, was it Scalia?~~

18 MR. CORNEY: I believe that there was a dissent
19 by -- I do think it was a dissent ---

20 THE COURT: So you're reading the dissent to me?

21 MR. CORNEY: No, no, sir. I'm not reading you
22 -- I'm reading ---

23 THE COURT: Okay. Who authored the opinion?

24 MR. CORNEY: Your Honor, I don't have it right
25 in front of me, I've just got a note on it at the bottom

1 of my page. I can ---

2 THE COURT: It doesn't matter, go ahead.

3 MR. CORNEY: Okay.

4 THE COURT: That's all right.

5 MR. CORNEY: The Court found a showing of
6 prejudice under Strickland v. Washington, in plea
7 agreements scenarios, the Defendant must show that there
8 is not only a reasonable probability that he or she would
9 have accepted a plea offer under the terms given but also
10 that there's a reasonable probability the prosecution
11 wouldn't have canceled or withdrawn the plea offer and
12 the Circuit Court would have accepted the plea offer.

13 Your Honor, I think it's pretty clear from Ms.
14 Good's testimony a minute ago, that was not what they
15 intended. Had this been brought forward to take care of
16 all the -- all of the charges, the State would have
17 withdrawn the plea offer, he would not have been allowed
18 to go forward on 10 years, that wasn't what the State
19 intended in the negotiations.

20 In addition to that, Your Honor, the State would
21 submit that Mr. Porterfield has already been given the
22 remedy for this -- for the error of his missing warrants.

23 THE COURT: The 12 and half years that y'all
24 concede ---

25 MR. CORNEY: On the 10 year plea, Your Honor,

1 the 10 year plea offer. Mr. Porterfield, his plea offer,
2 he was allowed to withdraw his plea which is the exact
3 remedy he would get through PCR, withdraw his plea, go
4 back and start from square one and start over with plea
5 negotiations.

6 THE COURT: Well, perhaps the PCR issue Judge
7 Childs' abuse of discretion in not granting the motion to
8 enforce rather than letting him withdraw?

9 MR. CORNEY: Well, Your Honor, I think that
10 would be a question for the Court of Appeals to bring up
11 on appeal ---

12 THE COURT: Well, they might very well get it.

13 MR. CORNEY: And it may, Your Honor, but that
14 was -- that was raised -- I mean, Mr. Collins did a great
15 job raising this motion to Judge Childs when it came to
16 his attention, to enforce the original plea agreement.

17 ~~Judge Childs heard the entirety of the argument from both~~
18 sides and already made a ruling that she denied ---

19 THE COURT: Mr. Corney, that was just an
20 observation.

21 MR. CORNEY: She -- and that's just part of what
22 I wanted to present regardless, Your Honor, that Judge
23 Childs denied that motion and said, you can withdraw the
24 plea offer. At that point in time, he should have
25 appealed that if he wanted to enforce the plea agreement.

1 Now with the PCR is not the appropriate to time to bring
2 this forward

3 THE COURT: Well, let me ask you this one
4 question. Do you have any authority to suggest that the
5 Judge made the correct decision in allowing the
6 withdrawal rather than the enforcement? Is there any
7 case on point?

8 MR. CORNEY: I don't think there's a case on
9 point on that. I think that throughout the plea
10 transcript -- or throughout the transcript of the
11 hearing, if you read it, I think both sides consent --
12 essentially consent to allow him to do that. Nobody
13 contested it. Even he -- even his attorney said, that's
14 fine, let's go back and start over with negotiations at
15 the end of that transcript.

16 THE COURT: All right.

17 MR. CORNEY: So the time to change this and get
18 that 10 year agreement would have been in the Court of
19 Appeals from appeal on Judge Childs' decision. Bring it
20 up there, let the Court decide whether or not Judge
21 Childs abused her discretion in denying the motion to
22 enforce the plea agreement on specific performance.

23 Your Honor, thereafter Mr. Porterfield made a
24 voluntary intelligent decision that he himself, on the
25 stand said, he was not challenged to enter a plea under a

1 negotiated term of 12 ---

2 THE COURT: I think his exact words were he felt
3 he had no choice.

4 MR. CORNEY: Well, Your Honor, I don't think
5 he's presented any evidence that he was coerced or how it
6 was involuntarily entered though. I mean, he is very
7 certain that he had no choice, I don't think he's
8 presented any evidence to the Court as to how it was
9 involuntary.

10 THE COURT: All right.

11 MR. CORNEY: Just because he doesn't like the
12 outcome of it, it doesn't mean that it was involuntary.
13 Of course, no one wants to go to the Department of
14 Corrections. I don't think that renders the whole plea
15 involuntary, Your Honor.

16 THE COURT: Okay.

17 MR. CORNEY: He entered it under a 12 to 15 year
18 sentencing range that was negotiated. He knew 12 years
19 was the very bottom he was going to get. He says he
20 doesn't know that. We don't have a transcript in front
21 of us at this point in time. I haven't -- I ordered it
22 and Court Administration has advised me that transcript
23 is non-existent on the second plea hearing. Somewhere it
24 fell through the cracks. I've got a letter that actually
25 I was going to submit to the Court. ---

1 THE COURT: That's fine.

2 MR. CORNEY: --- if I may, showing that the --
3 that that transcript does not exist. I've got a letter
4 from Court Administration to that effect.

5 Your Honor, I don't believe Mr. Porterfield had
6 any detrimental reliance on this plea offer. He didn't
7 offer testimony against anyone, he didn't write these
8 confessions based on the fact that he was going to get a
9 10 year plea deal. I don't think there was any reason
10 that that original 10 year plea deal should come back
11 into play.

12 We've consented to get him down to 12 years and
13 I think that that's the appropriate remedy and would ask
14 the Court to ---

15 THE COURT: Let me ask you one other question.
16 If -- obviously they had warrants that I assume the
17 Sheriff's Department -- was it the Sheriff's Department?
18 They had the warrants and apparently would not have had
19 the warrants but for his confession.

20 So the police have all the warrants, the six
21 apparently armed robberies, and what did Mr. Porterfield
22 do -- what did he do wrong, what did his lawyer do wrong,
23 I mean?

24 MR. CORNEY: Your Honor ---

25 THE COURT: They have all the facts, they have

1 all the warrants but for the police not submitting those
2 two warrants, we wouldn't be talking about this.

3 MR. CORNEY: I don't think there was any
4 ineffectiveness on Mr. Collins' part in not discovering
5 these warrants that the State themselves didn't even know
6 about. I don't think there was any deficiency in that.
7 It's every Defense attorney's ---

8 THE COURT: But the question then becomes, since
9 the police knew about it, the Solicitor should have known
10 about it. When they first negotiated a deal, they had
11 all the facts. It's a matter of, I guess, you can always
12 have additional warrants or take them away, so. The
13 Solicitor had available -- the State had available to it
14 all the facts that encompassed all the charges against
15 this man. They had all that information before them,
16 they offered him a deal.

17 MR. CORNEY: Yes, Your Honor.

18 THE COURT: He accepted the deal. And then the
19 State, I guess, felt it had a right to withdraw that deal
20 based on their own mistake in not realizing that they had
21 all the information and not acted on all of it, that is
22 the six warrants rather than four warrants.

23 MR. CORNEY: And I don't think all six of these
24 armed robberies are obviously not the same incident. I
25 don't see any reason the State couldn't pursue them one

1 by one anyway.

2 THE COURT: They could have. But the question
3 is, they knew about all the warrants, they knew about all
4 the facts when they extended him the deal in the first
5 place.

6 MR. CORNEY: They didn't know about the warrants
7 when they extended ---

8 THE COURT: No, no, no, the police knew about
9 the warrants.

10 MR. CORNEY: The Sheriff's Department, I assume,
11 they did. I haven't ---

12 THE COURT: So the State knew about the
13 warrants.

14 MR. CORNEY: I would assume they did. I didn't
15 have any testimony to that end or any evidence entered to
16 show that they ---

17 THE COURT: Well, if the police have the
18 warrants then they know about the warrants.

19 MR. CORNEY: If they ---

20 THE COURT: We can agree with that.

21 MR. CORNEY: If they issued them all at one
22 time, that's been ---

23 THE COURT: If they have all the warrants, they
24 knew about all the warrants, then they should have given
25 them to the Solicitor's office.

1 MR. CORNEY: They probably should have. I don't
2 think Mr. Collins is ineffective for not discovering
3 them.

4 THE COURT: Okay.

5 MR. CORNEY: But you're right, they should have
6 all been turned over at once, even once they have them, I
7 don't see anything stopping the State from pursuing them
8 one by one if they're all different instances.

9 THE COURT: There's nothing that does.

10 MR. CORNEY: So I don't think there's anything
11 stopping them from bringing those two after the fact to
12 say -- whatever they want -- however they want to pursue
13 them. So I don't think there's any issue with that
14 anyway. Mr. Collins made the right call and handled it
15 diligently, bringing to the Court's attention, saying,
16 you know, this isn't -- it wasn't a meeting of the minds
17 so to speak and I don't want to get too much into
18 contract of law.

19 But they didn't come into the Court under the
20 same assumption as to what that plea offer -- under what
21 it was encompassing to take care of. So he made the
22 right call to say, hey, this is what we agreed to, it's
23 been before the Court. It was all presented to the
24 Court, ruled upon, denied, and that's a direct appeal
25 issue, Your Honor

1 THE COURT: All right.

2 MR. CORNEY: And that's all the State has.

3 THE COURT: Thank you, Mr. Corney.

4 MR. CORNEY: If you want me to present the
5 letter from ---

6 THE COURT: Yeah, sure, you can make it part of
7 the record, that's fine.

8 Anything -- excuse me, anything further on this
9 case?

10 MR. CORNEY: If I can make copies of it and
11 submit it?

12 THE COURT: Sure. Help Mr. Corney out, go make
13 copies.

14 MR. CORNEY: I apologize, I just realized I have
15 ---

16 THE COURT: I know they're trying to save money
17 at the AG's office.

18 MR. CORNEY: That's all State has.

19 THE COURT: Anything further on this case?

20 MR. ALSTON: No, sir, Your Honor.

21 THE COURT: Thank you all for your lively
22 presentation. I'll let you know my decision in due
23 course.

24 ----- END OF TRANSCRIPT OF RECORD -----
25

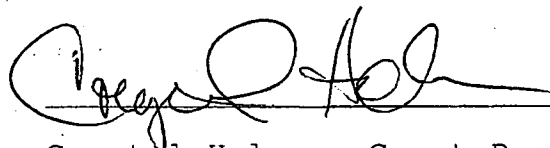
1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF RICHLAND)
5

6 I, Crystal Holmes, Official Court Reporter for the
7 Fifth Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true,
9 accurate and Complete Transcript of Record of the
10 proceedings had and evidence introduced in the hearing
11 of the captioned case, relative to appeal, in the
12 Court of Common Pleas for Richland County, South
13 Carolina, on the 23rd day of May, 2012.

14 I do further certify that I am neither of kin,
15 counsel nor interest to any party hereto.
16

17 September 18, 2013

18
19 
20 Crystal Holmes, Court Reporter
21
22
23
24
25

PORTERFIELD V. THE STATE

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jonathan Porterfield, #328448,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-08477

ORDER OF DISMISSAL
(With Consent to Sentence Modification)

2013 MAR 27 PM 3:33
JANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed December 2, 2010. An evidentiary hearing into the matter was convened before this Court on Wednesday, May 23, 2012, at the Richland County Courthouse. Applicant was present at the hearing with counsel, Rowland P. Alston, III, Esquire. Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former plea attorney, Greg Collins, Esquire; former attorney on the motion to reconsider, Ashley Thomas, Esquire; and the prosecuting solicitor in the matter, Anna Good, Esquire. This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the March and April 2008 terms of the Richland County Grand Jury for two (2) counts of Armed Robbery (2008-GS-40-011925, -

12450). On May 20, 2008, Applicant appeared with counsel, Greg Collins, Esquire, before the Honorable J. Michelle Childs, where he waived presentment to the Grand Jury of two (2) additional counts of Armed Robbery and one (1) count of Attempted Armed Robbery (2008-GS-40-11804, -11805, -11807). Applicant pled guilty at that time to the Attempted Armed Robbery and three (3) counts of Armed Robbery as indicted, as well as one count of the lesser included Strong Arm Robbery. Judge Childs sentenced Applicant, in accordance with the state's recommendation, to ten (10) years imprisonment on each Armed Robbery and Attempted Armed Robbery, as well as five (5) years imprisonment for the Strong Arm Robbery, to run concurrently. No direct appeal was filed.

On September 25, 2008, Applicant appeared again before Judge Childs with counsel, Greg Collins, for a hearing on Applicant's motion to enforce the plea agreement. In particular, Applicant alleged there were two (2) outstanding warrants (Armed Robbery and Possession of a Weapon During the Commission of a Violent Crime) which had not been disposed of with him May 2008 guilty plea, which he understood at the time to be to for *all* outstanding charges. Judge Childs denied Applicant's request to enforce the plea agreement, but allowed Applicant to ~~withdraw the May 20, 2008, plea to allow he and the state to re-enter plea negotiations for~~ disposal of all outstanding charges.

On March 15, 2010, Applicant appeared once more before Judge Childs with counsel, Greg Collins, where he pled guilty to four (4) counts of Armed Robbery, one (1) count of Strong Arm Robbery, one (1) count of Attempted Armed Robbery and one (1) count of Assault on a Correctional Officer pursuant to a state negotiated plea offer for a sentencing range between twelve (12) and fifteen (15) years imprisonment. The plea negotiations were to dispose of *all* outstanding charges against Applicant. Judge Childs accepted the plea with the negotiations, and

testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." 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.

Modification of Sentence by Consent

As a preliminary note, it appears both parties have agreed Applicant is entitled to modification of his sentence as it is currently being calculated by the South Carolina Department of Corrections based upon Judge Childs's August 12, 2010, order reconsidering Applicant's sentences. Specifically, in the order issued following the hearing on Applicant's motion to reconsider, Judge Childs ordered Applicant's "sentences shall be amended to twelve (12) year for the Armed Robbery charges", for Applicant to "be incarcerated in the South Carolina Department of Corrections for twelve (12) years, plus six (6) months to be served consecutively for the charge of Assault on a Correctional Officer".

Based upon the correspondence with the Department of Corrections introduced to this Court, it appears only three (3) of Applicant's four (4) Armed Robbery sentences have been changed from the original fourteen-and-a-half (14 ½) year sentence to the amended twelve (12) year term of imprisonment. In the Department's June 10, 2011, letter to PCR counsel, it noted Judge Childs's August 12, 2010, order does *not* specifically reference modification of the sentence on Armed Robbery indictment number 2010-GS-40-00152 and, therefore, the sentence ~~on that conviction has not been altered.~~

In reviewing the order in its entirety, it is clear to this Court and both parties to the action that it was Judge Childs's intent to modify the sentences of **all four** Armed Robbery charges to twelve (12) years. However, the final Armed Robbery is erroneously cited as "2008-GS-40-04246, Warrant No. I-898710". While the warrant number set forth in the order is, in fact, the correct warrant related to the final Armed Robbery charge, the indictment number listed is that of Applicant's Assault on a Correctional Officer charge. Therefore, the correct indictment number for Armed Robbery (2010-GS-40-00152, Warrant No. I-898710) is never referenced in the order

sentenced Applicant to concurrent terms of fourteen and-a-half (14 ½) years imprisonment on each Armed Robbery, ten (10) years imprisonment of Attempted Armed Robbery, and five (5) years imprisonment for Strong Arm Robbery, all to be followed consecutively by six (6) months imprisonment for the Assault on a Correctional Officer, for an aggregate fifteen (15) year sentence.

A motion to reconsider sentence was filed and a hearing was held before Judge Childs on March 19, 2010. Applicant was present at the hearing with reconsideration counsel, Ashley Thomas, Esquire. By order filed August 12, 2010, Judge Childs ordered Applicant's sentences be amended to twelve (12) years imprisonment "for the Armed Robbery charges".

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

a. That public defender for Applicant did not properly monitor the charges that the Applicant pled guilty to on May 20, 2008, and ensure that Applicant was pleading to all outstanding charges with the correct warrant and indictment numbers.

b. That, as a result, Applicant had to re-plea, and was sentenced to more time than agreed to on May 20, 2008.

c. That public defender did not properly review the Order of August 12, 2010, to ensure that all contained therein was accurate and correct, and would not prejudice Applicant.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

modifying the sentences. It is apparent to this Court and both parties when taken in light of the entirety of the August 12, 2010, order, this was a mere scrivener's error.

Therefore, Respondent and Applicant have consented to modification of Applicant's sentence on his final Armed Robbery charge (2010-GS-40-00152, Warrant No. I-898710) from the currently imposed fourteen-and-a-half (14 ½) year term of imprisonment to a twelve (12) year term of imprisonment to run concurrently with the remaining three Armed Robbery sentences, all of which are to be followed consecutively by a six (6) month term of imprisonment for the Assault on a Correctional Officer conviction (2008-GS-40-04246). The intention of this Court is to modify Applicant's sentence to comply with the clear meaning of Judge Childs's order, thereby imposing an aggregate twelve-and-a-half (12 ½) year sentence. This modification is in no way intended to otherwise affect Applicant's sentences or the remainder of Judge Childs's August 12, 2010, order.

Specific Performance of Plea Agreement

Applicant further requests this Court grant relief in the form of specific performance of the previous plea agreement entered May 20, 2008, for the imposition of an aggregate ten (10) ~~year term of imprisonment to dispose of all of Applicant's 2008 and 2010 charges. For the~~ reasons set forth below, this Court declines to order such specific performance and, rather, grants Applicant's relief solely through modification of his final Armed Robbery sentence as set forth above.

Plea counsel, Greg Collins, Esquire, testified that Applicant first pled guilty in May of 2008 to "several" armed robberies for a negotiated¹ ten (10) year term of imprisonment. After the plea was entered, counsel said, it came to he and the state's attention that there were still two (2) outstanding warrants for Armed Robbery against Applicant which were not disposed of as part of

¹ The plea transcript reflects the plea offer was a ten (10) year "recommendation" by the State.

the May plea, so he requested Applicant be allowed to withdraw the plea. He stated he did recall the September 2008 hearing at which he requested specific performance of the ten year plea agreement to cover all of the charges including the two "new" warrants, but said Judge Childs declined to do so, instead allowing Applicant to withdraw his plea to renegotiate a plea offer with the state. Counsel said he was aware of the facts relating to the two outstanding warrants as Applicant had confessed to all of the charges he pled to, plus some additional crimes. Counsel agreed the facts of the additional two robberies were discussed during the course of the May 2008 plea hearing, but noted it was never said that the plea was "global" or was intended to dispose of *all* outstanding charges.

Ashley Thomas, Esquire, testified thereafter that she served as counsel for Applicant and was the attorney who entered into plea negotiations for Applicant *after* the original plea was withdrawn. She stated she asked the state to re-offer the original ten (10) year plea deal, but said that offer was "never on the table" after the original plea was withdrawn. She noted the state said it would not re-offer that ten year plea deal because this time they were disposing of more charges than the first time around in May of 2008. She went on to say the Assault on a Correctional Officer charge was new during this set of negotiations as that incident was not indicted until after the May 2008 plea was entered. Thomas stated Applicant re-entered his plea in March of 2010 with full understanding that it was for a negotiated sentencing range of 12 to 15 years, and he was well aware there was no way he could receive the original ten year sentence if the Court accepted those plea negotiations. Thomas finished by agreeing the ten year plea offer in May of 2008 is referred to in the plea transcript as having been a "recommended" plea offer, not a negotiated one; however, she said, the "records" refer to it as having been negotiated.

Applicant testified he believed he was pleading to *all* outstanding charges at the time he pled in May of 2008 and said he is seeking relief from this Court in the form of specific performance of the ten year plea deal. Applicant alleged he was aware of all six (6) Armed Robbery warrants at the time of his May 2008 plea, even though counsel testified previously that even he wasn't aware of the remaining two warrants at that time. Applicant agreed the Assault on a Correctional Officer charge did not surface until after his May 2008 plea, so there was no way that could have been included as part of the plea package in May of 2008. Applicant noted he never wanted to go to trial to challenge the charges, and stated he believed the March 2010 plea was for a recommended term of imprisonment, not a negotiated one, so he believed he could still get the ten year term at that time.

Finally, the prosecuting solicitor in the matter, Anna Good, Esquire, testified as to her involvement in the matter. Good said the solicitor's office was unaware of the two (2) outstanding warrants at the time of the May 2008 plea and certainly did not intend for those charges to be disposed of through the 2008 plea offer. She explicitly stated that had she known of those charges at the time or intended for them to be disposed of through the May 2008 plea deal, ~~she would have never extended a the plea offer for ten years. Rather, she said, the term of~~ imprisonment agreed to in negotiations would have been much higher, namely because six (6) counts of Armed Robbery would have been disposed of as a result. Further, Good said, any plea deal negotiated for the May 2008 hearing would not have included the Assault on a Correctional Officer charge since that charge had not yet surfaced in May of 2008.

Based on a thorough review of the record and the testimony presented, this Court must deny Applicant's request for specific performance of a ten (10) year plea deal as extended by the state prior to the May 2008 plea.

As a preliminary matter, this Court finds this issue is improperly raised through the current action and, therefore, must be summarily dismissed without turning to the merits of the claim. Specifically, Applicant is requesting this Court re-examine his entitlement to specific performance of the May 2008 plea deal, a matter that was previously raised and ruled upon by the circuit court. A motion for specific performance of the plea deal was raised by counsel at the September 25, 2008, hearing before Judge Childs, at which the judge denied the request and allowed Applicant to withdraw his previously entered plea to re-enter plea negotiations. Accordingly, any alleged error in denying the request is a direct appeal issue improperly raised through this action. Under S.C. Code § 17-27-20(b), a claim of trial court error is improper for post-conviction relief as PCR is not a substitute for direct review. Further, a post-conviction relief application cannot assert any issue that *could have been* raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973) (emphasis added). Whether Judge Childs erred in denying Applicant's request for specific performance of the plea deal is a direct appeal issue improperly raised herein. Therefore, this allegation must be summarily dismissed.

Further, assuming *arguendo* the issue was properly raised herein as a claim of ineffective assistance of counsel, this Court finds Applicant's request for specific performance to be without merit. Counsel was not deficient in his performance in attempting to enforce the plea agreement, nor did any alleged deficiency on his part result in prejudice to Applicant's case. In Missouri v. Frye, 132 S.Ct. 1399 (2012), the United States Supreme Court outlined the standard for a proving ineffective assistance of counsel in plea bargaining situations in accordance with the two-prong analysis of Strickland v. Washington. The Court opined that to satisfy the prejudice prong of Strickland v. Washington in plea circumstances, Applicants "must...demonstrate a reasonable probability the plea would have been entered into without the prosecution

cancelling...or the trial court refusing to accept" the plea deal extended. The prosecuting solicitor responsible for developing the plea offers in Applicant's case provided extremely credible testimony at the PCR hearing that firmly convinces this Court there is no reasonable probability the state would have allowed the plea to be entered for a ten year term of imprisonment to dispose of all six (6) of Applicant's outstanding Armed Robbery charges. Good's credible testimony plainly reflects it was never her intention to extend the ten year plea offer in May of 2008 to dispose of all six (6) of Applicant's Armed Robbery charges, and she plainly and credibly testified she would have never extended a ten year plea offer to dispose of those charges. With the credible testimony, it is clear Applicant cannot prove resulting prejudice resulting from any of counsel's alleged deficient performance as there is no reasonable probability that, but-for counsel's alleged deficiency, Applicant would have been able to enter the ten year plea to dispose of all six outstanding Armed Robbery charges without the state stepping in and cancelling the plea offer extended. Accordingly, even if this issue is properly raised through the current action, Applicant cannot meet his burden in proving counsel was ineffective in his representation in this regard.

Additionally, even if Applicant were entitled to relief based upon the allegations set forth in the current action, specific performance would not be the proper remedy. "[A] defendant does not have a constitutional right to plea bargain, a trial judge is not required to accept a plea bargain, and...ordinarily a plea offer is nothing more than an offer until it is accepted by the defendant by entering a court-approved plea of guilty." Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007), citing Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999). The general exception to the rule is based upon detrimental reliance where "a defendant may enforce an oral plea agreement only upon a showing of detrimental reliance on a prosecutorial promise in plea

bargaining.” *Id.* at 10, 644 S.E.2d 39. Applicant here has failed to set forth any claim of, or evidence to support a claim of, detrimental reliance. Rather, Applicant has alleged he entered his plea with the understanding that it would dispose of all outstanding charges, regardless of whether they were specifically mentioned at the plea hearing.² This Court would interpret such a claim to be one of an involuntary guilty plea, for which the proper remedy would be vacation of the underlying plea in its entirety. That is the *precise* relief previously granted to Applicant by Judge Childs in September of 2008 following the hearing on the motion to enforce the plea agreement. Accordingly, Applicant cannot prove resulting prejudice as he has already been afforded the precise relief available under such a PCR allegation. Further, as set forth above, Applicant has failed to present any credible evidence to convince this Court his plea was entered involuntarily or unintelligently.

It is also important to note that according to the transcript of the May 2008 plea hearing, the plea offer extended to Applicant was merely a state “recommendation” for a ten year term of imprisonment. Such a plea offer would not be binding on the plea judge upon entry of Applicant’s plea. Therefore, any claim that Applicant relied upon a ten (10) year sentence is unpersuasive to this Court as it is clear Applicant pled guilty with the knowledge that the plea court would make the ultimate decision whether to follow or deviate from the state recommended plea offer.

Finally, the testimony before this Court is clear in showing the Assault on a Correctional Officer charge was not part of the May 2008 plea negotiations. Therefore, even if Applicant was able to enforce the May 2008 plea agreement and have the ten (10) year term of imprisonment enforced to dispose of the six (6) Armed Robbery charges, the Assault charge would still be

² As a side note, this Court finds Applicant’s testimony about his “understanding “of the terms of the May 2008 plea offer and his knowledge of the two additional Armed Robbery warrants to be entirely not credible.

outstanding. Under the relevant law at the time, Assault on a Correctional Officer carried a potential sentence of six (6) months to five (5) years imprisonment, with the mandatory requirement that any sentence be run consecutively to any other sentence(s) being served. See S.C. Code Ann. § 16-3-430 (2003). With that in mind, Applicant certainly cannot prove that had the original ten (10) year plea agreement been enforced, there is a "reasonable probability" of a different outcome on the charges as he still would have been facing a potential five (5) year consecutive sentence on the Assault charge, amounting to an aggregate fifteen (15) year term of imprisonment. Regardless of this final analysis, this Court finds Applicant's request for relief to be improperly raised through this action, as well as wholly without merit.

For all of these reasons, this Court finds Applicant's request for specific performance of the May 2008 plea offer must be denied and dismissed with prejudice.

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 his application, aside from the modification of his sentence based upon the consent of both parties.

~~Therefore, notwithstanding that one portion reached by consent, the remainder of this application~~
for post-conviction relief must be denied and with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably

inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

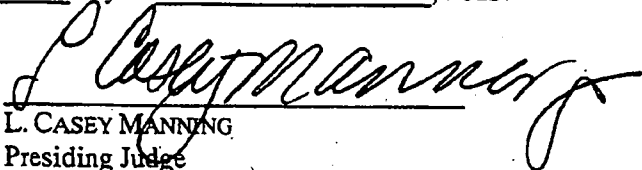
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an 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.

IT IS THEREFORE ORDERED:

1. That the South Carolina Department of Corrections (SCDC) take the appropriate steps necessary to amend Applicant's final Armed Robbery sentence (2010-GS-40-00152; Warrant No. I-898710) to impose a twelve (12) year term of imprisonment; this twelve (12) year term of imprisonment is to run concurrently with the other twelve (12) year sentences on Applicant's other Armed Robbery convictions, all of which are followed consecutively by a six (6) month term of imprisonment for Assault on a Correctional Officer (2008-GS-40-04246). The intention of this Court is to modify Applicant's sentence to comply with the unambiguous intention of Judge Childs's August 12, 2010, order, thereby imposing an **aggregate** twelve-and-a-half (12 ½) year term of imprisonment for the charges presented at the March 15, 2010, guilty plea;

2. The remainder of the application for Post-Conviction Relief must be denied and dismissed with prejudice; and
3. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 26 day of March, 2013.


L. CASEY MANNING
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jonathan S. Porterfield, #328448,

Applicant,

vs.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-40-8477

**NOTICE OF MOTION AND MOTION TO
ALTER OR AMEND A JUDGMENT**

2013 APR -2 AM 10:14
J. BETTIE W. MCBRIDE
C.C.P. & G.S.

PLEASE TAKE NOTICE that the Applicant, by and through his undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas, Fifth Judicial Circuit, on the tenth (10th) day after service hereof or at such time and place as is convenient to the Court and counsel for an Order granting the Applicant's Motion to Alter or Amend a Judgment of the Order of Dismissal, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, as to the within action. The Court entered an Order of Dismissal, filed on March 27, 2013, denying and dismissing with prejudice the Applicant's application for post-conviction relief. This Order was received by the undersigned on April 1, 2013 (less than ten (10) days from the filing of this motion).

The undersigned asks this Court to rule upon/reconsider the argument made that the applicant's public defender failed to ensure that Applicant was pleading to all outstanding charges against him on May 20, 2008, and, that applicant's public defender failed to raise due process and double jeopardy when the State notified applicant that he was going to be prosecuted for a July 7, 2007 armed robbery that he had already pled to on May 20, 2008, all of which was deficient performance and prejudicial.

The undersigned also asks this court to reconsider all rulings contained in the Order, with the exception of the sentencing modification.

This motion is based upon the pleadings, any memorandum previously or subsequently submitted, the common and statutory laws of the State of South Carolina, and any other matter considered by the Court.

Respectfully submitted,



Rowland P. Alston III
The Law Office of Rowland P. Alston III, LLC
1314 Lincoln Street, Suite 214
Columbia, SC 29201
(803) 708-0460

April 2, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Jonathan S. Porterfield, #328448,
Applicant,

Case No. 2010-CP-40-8477

v.

**ORDER DISMISSING APPLICANT'S
MOTION TO ALTER OR AMEND**

State of South Carolina,

Respondent.

RICHLAND COUNTY
FILED
JUN 17 PM 1:33
CLERK OF COURT
C.C.P. & G.S.

This matter comes before the Court by way of Applicant's "Motion to Alter or Amend A Judgment" this Court's Order of Dismissal, denying and dismissing his application for post-conviction relief. On March 26, 2013, this Court issued an Order denying and dismissing Applicant's application for post-conviction relief with prejudice. This Order was filed on March 27, 2013 and was received by Applicant's counsel on April 1, 2013.

On March 2, 2013, Applicant filed a "Motion to Alter or Amend a Judgment" in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction relief. Respondent made its Return to this motion on or about April 25, 2013, asking that the motion be denied. This Court has reviewed Applicant's motion, Respondent's return and the record in this matter and finds the following:

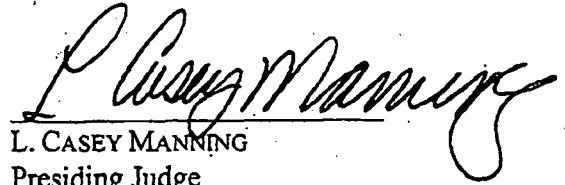
The Order of Dismissal dated March 26, 2013, and filed March 27, 2013, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRPC. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of the Applicant's motion and supporting testimony, this Court is not persuaded to

alter, amend, or reconsider the judgment.

IT IS THEREFORE ORDERED that the Applicant's Motion to Alter or Amend is **DENIED**.

AND IT IS SO ORDERED this 7 day of June, 2013.


L. CASEY MANNING
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

WITNESSES

(s) Spears - RCSD

✓ Robinson, Donald

DOCKET NO. 2008-GS-40-4246

The State of South Carolina

County of Richland

ARREST WARRANT NUMBER

J-561344

141

AUGUST TERM 2008

COURT OF GENERAL SESSIONS

THE STATE

VS.

Jonathan Porterfield

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury
Date:

MAC 14 2008

VERDICT

Foreperson of Petit Jury
Date:

Indictment for

ASSAULT ON A CORRECTIONAL
OFFICER

SC Code: 16-3-0630
CDR Code: 2525
Class: UNC

After being fully advised as to my legal rights, I hereby waive presence to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

CERTIFIED TRUE
OF ORIGINAL FILED
Donald Robinson
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

SOUTH CAROLINA
RICHLAND COUNTY
CLERK OF COURT
JULY 14 2008
OFFICE OF THE CLERK
COURT HOUSE
COLUMBIA, SC 29201

At a Court of General Sessions, convened on August 13, 2008 the Grand Jurors of Richland County present upon their oath:

ASSAULT ON A CORRECTIONAL OFFICER

That Jonathan Porterfield did in Richland County on or about April 20, 2008, knowingly and willfully commit an assault and battery on the person of Detention Officer D. Smith, a correctional officer of the Alvin S. Glenn Detention Center, while attempting to perform job related duties, to wit: the defendant spit at him, in violation of §16-3-630, 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.

W. Dany

Warren B. Giese, SOLICITOR

WITNESSES

v(s) Inv. Note Dow--CPD

DOCKET NO. 2008-GS-40-12450

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2008

141

ARREST WARRANT NUMBER

K-291582

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: APR 17 2008

VERDICT

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A(V)

Jonathan S. Porterfield

THE STATE

vs.

Defendant

Witness:

C.C.C. PLS. AND G.S.

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to the

FILED TRUE COPY
ORIGINAL FILED
C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

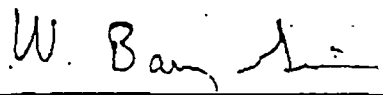
INDICTMENT

At a Court of General Sessions, convened on April 16, 2008 the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Jonathan S. Porterfield did in Richland County on or about August 11, 2007, commit robbery by feloniously taking from the person or presence of Susan Campbell and/or another employee of Burnette's Cleaners by means of force or intimidation goods or monies of Burnette's Cleaners, such goods or monies describes as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

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


WARREN B. GIESE, SOLICITOR

WITNESSES

(S) Inv. Kevin Reese-CPD

ARREST WARRANT NUMBER

K-291302

ACTION OF GRAND JURY

TRUE BILL

Penelope B. ...
Foreperson of Grand Jury
Date: MAR 13 2008

VERDICT

Foreperson of Petit Jury
Date

DOCKET NO. 2008-GS-40-11925

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2008

141

THE STATE
VS

Jonathan Porterfield

Indictment for

ARMED ROBBERY
SC Code 16-11-330(A)
CDR Code 0139
Class FEL-AW

After being fully advised as to my

legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Strong arm robbery

Jonathan Porterfield
Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED TRUE COPY
OF ORIGINAL FILED
JAN 14 2008
C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

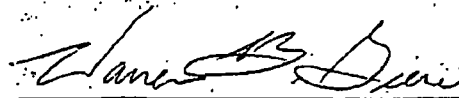
INDICTMENT

At a Court of General Sessions, convened on March 12, 2008, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Jonathan Porterfield did in Richland County on or about November 5, 2007, commit robbery by feloniously taking from the person or presence of Brianne Hald, an employee of Pantry Express, by means of force or intimidation goods or monies of Pantry Express, such goods or monies describes as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

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


WARREN B. GIESE, SOLICITOR

WITNESSES

DOCKET NO. 2008-GS-40-11807

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MAY TERM 2008

141

ARREST WARRANT NUMBER

J-559349

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury.

Jonathan Porterfield
Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment or to

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 21 2009
C.C.F. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on _____, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Jonathan Porterfield did in Richland County on or about November 2, 2007, commit robbery by feloniously taking from the person or presence of Thomas Allen, and/or another employee of Arnold's Cleaners by means of force or intimidation goods or monies of Arnold's Cleaners, such goods or monies describes as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

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

W. B. Giese

 WARREN B. GIESE, SOLICITOR

DOCKET NO. 2008-GS-40-11804

WITNESSES

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MAY TERM 2008

141

ARREST WARRANT NUMBER

J-559346

ACTION OF GRAND JURY

Jonathan Porterfield

THE STATE
vs.

Foreperson of Grand Jury
Date:

VERDICT

Indictment for

ATTEMPTED ARMED
ROBBERY

SC Code: 16-11-330(B)

CDR Code: 0026

Class FEL-C(V)

Foreperson of Petit Jury

Date:

148

legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment of

CELESTINE TRUE COPY
OF ORIGINAL FILED
Jesse W. W. W. W. W.
C.C.C. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND.)

INDICTMENT

At a Court of General Sessions, convened on _____, the Grand
Jurors of Richland County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Jonathan Porterfield did in Richland County on or about November 2, 2007, attempt to commit robbery by feloniously taking from the person or presence of Olympia Air Market at 1163 Olympia Avenue by means of force or intimidation goods or monies of Olympia Air Market, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-325.

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

W. B. Giese

WARREN B. GIESE, SOLICITOR

DOCKET NO. 2010-GS-40-11805

WITNESSES

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2010

91

ARREST WARRANT NUMBER

J559347

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

THE STATE
vs.

Jonathan Porterfield

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

CERTIFIED TRUE COPY
ORIGINAL FILED
JAN 20 2011
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

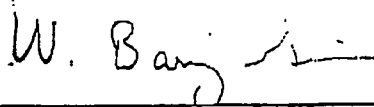
INDICTMENT

At a Court of General Sessions, convened on _____, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Jonathan Porterfield did in Richland County on or about November 2, 2007, commit a robbery by feloniously taking from the person or presence of Craig Anthony McCall by means of force or intimidation goods or monies belonging to Kangaroo, being described as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, rifle, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

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



WARREN B. GIESE, SOLICITOR

WITNESSES

DOCKET NO. 2010-GS-40-152

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2010

91

ARREST WARRANT NUMBER

1898710

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

Jonathan Porterfield

THE STATE
VS.

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A(V)

After being fully advised as to my legal rights, I hereby waive present to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

CERTIFIED TRUE COPY
OF ORIGINAL FILED
J. H. W. M. S. B. S. B. S.
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF RICHLAND)

At a Court of General Sessions, convened on _____, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Jonathan Porterfield did in Richland County on or about July 7, 2007, commit a robbery by feloniously taking from the person or presence of Thomas Allen and/or another employee of Arnold's Cleaners by means of force or intimidation goods or monies belonging to Arnold's Cleaners; being described as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, rifle, dirk, slingshot, metal knuckles, razor, or other deadly weapon; or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

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

W. B. Giese
WARREN B. GIESE, SOLICITOR