

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Richland County

R. Knox McMahon, Circuit Court Judge

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**S.C. Supreme Court**

RODDREGUS WELLS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212848

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APPENDIX

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STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF RICHLAND ) 2006-GS-40-2257, 2258, 2259,  
2260, 2261

State of South Carolina, )  
Plaintiff, )  
vs. ) TRANSCRIPT OF RECORD  
Roddregus A. Wells, )  
Defendant. )

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November 30, 2006  
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:

VANESSA SHIPLEY, ASSISTANT SOLICITOR  
Attorney for the State

KANA R. JOHNSON, ESQUIRE  
Attorney for the Defendant

Crystal Roach  
Official Court Reporter



1 NOVEMBER 30, 2006

2 THE CLERK: Please raise your right hand.

3 (WHEREUPON, Roddregus A. Wells, was first  
4 duly sworn.)

5 MS. SHIPLEY: Your Honor, may it please the  
6 Court. Standing before you is Roddregus Wells. He is  
7 represented by Kana Rahman Johnson from the private  
8 bar.

9 Mr. Wells is pleading guilty to burglary in  
10 the second degree, two counts of kidnapping, one count  
11 of armed robbery and one count of assault and battery  
12 with intent to kill.

13 With me, for the record, Your Honor, is the  
14 victim in this case, Alan McClain and he would like to  
15 address the court at the appropriate time. The State  
16 is recommending a cap of 20 years, running all charges  
17 concurrent in this matter.

18 THE COURT: Ms. Johnson, you represent  
19 Roddregus Wells?

20 MS. JOHNSON: I do, Your Honor.

21 THE COURT: Have you explained to Mr. Wells  
22 the charges contained in these five indictments, the  
23 possible punishments and his rights, including his  
24 Constitutional right to a jury trial?

25 MS. JOHNSON: I have, Your Honor.

1 THE COURT: And your opinion is Mr. Wells  
2 understands the charges, the punishments and his  
3 rights?

4 MS. JOHNSON: He does, Your Honor.

5 THE COURT: How does he indicate to you he  
6 wishes to plead, guilty or not guilty?

7 MS. JOHNSON: Guilty, Your Honor.

8 THE COURT: Do you agree with his decision to  
9 plead guilty?

10 MS. JOHNSON: I do, Your Honor.

11 THE COURT: From your investigation of the  
12 facts and circumstances surrounding these cases, do  
13 you feel that the State could produce sufficient  
14 evidence to convince a jury here in Richland County of  
15 Mr. Wells' guilt beyond a reasonable doubt, and if he  
16 were to stand trial on these charges, his convictions  
17 would be probable?

18 MS. JOHNSON: Yes, Your Honor.

19 THE COURT: Now has Mr. Wells been ordered to  
20 submit to a mental examination to determine his  
21 competency to stand trial?

22 MS. JOHNSON: He has not, Your Honor.

23 THE COURT: Any question in your mind, Ms.  
24 Johnson, that Mr. Wells is in fact competent to enter  
25 this guilty plea?

1 MS. JOHNSON: None, Your Honor.

2 THE COURT: You are Roddregus Wells, is that  
3 correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Wells, before I can accept  
6 your plea of guilty, it's necessary for me to make  
7 sure that you're making this plea freely and  
8 voluntarily. To do that, sir, I need to ask you a  
9 series of questions. At any point during my  
10 questioning of you, if you do not understand anything  
11 I say or any words I use, please stop me and I will be  
12 more than happy to repeat or explain anything I say,  
13 Mr. Wells.

14 Additionally, I will be more than happy to  
15 stop this plea and allow you as much time as you feel  
16 you may need to consult with your lawyer, Ms. Johnson.

17 Do you understand, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: How old are you, Mr. Wells?

20 THE DEFENDANT: 22.

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

22 THE DEFENDANT: I got my GED.

23 THE COURT: What kind of work do you do?

24 THE DEFENDANT: I was always in construction.

25 THE COURT: All right. Mr. Wells, have you

1 ever been treated for the abuse of alcohol or drugs or  
2 for mental illness?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you taken any medications,  
5 drugs or alcohol in the past 24 hours?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you today aware of any  
8 physical, nervous or emotional problem that might keep  
9 you from understanding what you're doing?

10 THE DEFENDANT: No, sir.

11 THE COURT: You know what you're doing, Mr.  
12 Wells, is that correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you agree, Ms. Johnson, that  
15 Mr. Wells knows, understands and appreciates what he's  
16 doing here this morning?

17 MS. JOHNSON: Yes, Your Honor.

18 THE COURT: Now, Mr. Wells, you heard your  
19 lawyer, Ms. Johnson, tell me that she has explained to  
20 you the charges contained in these five indictments,  
21 the possible punishments and your rights, including  
22 your Constitutional right to a jury trial, and that  
23 you understand these things, is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Mr. Wells, you're first before me

1 on indictment number 2006-2860 -- I'm 'sorry, 2260, The  
2 State versus Roddregus Wells, this is an indictment  
3 for armed robbery.

4 Do you understand this charge?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: This indictment, Mr. Wells,  
7 alleges that you did here in Richland County on or  
8 about December 23rd of 2005, commit robbery by  
9 feloniously taking from the person or presence of Alan  
10 McClain, by means of force or intimidation, goods or  
11 monies of Alan McClain, such goods or monies being  
12 described as United States currency, with the intent  
13 to deprive the owner permanently of such property  
14 while you were armed.

15 THE DEFENDANT: No, sir, a rifle.

16 THE COURT: You had a rifle, okay, while you  
17 were armed with a rifle.

18 Do you understand this allegation then?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You want to plead guilty to armed  
21 robbery, is that correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Wells, you realize that by  
24 pleading guilty to armed robbery, sir, you can go to  
25 jail for 30 years?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Knowing then, Mr. Wells, that you  
3 can go to prison for 30 years by pleading guilty to  
4 armed robbery, do you still wish to plead guilty to  
5 it?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, I'm sure your lawyer  
8 explained to you, Mr. Wells, armed robbery is one of  
9 those serious offenses where there's a mandatory  
10 minimum of 10 years, do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, whatever sentence that's  
13 imposed upon you, you've got to do 85 percent of it  
14 before you're eligible for parole, do you understand  
15 that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Knowing then, sir, for the  
18 offense of armed robbery there's a mandatory minimum  
19 of 10 years and whatever sentence that's imposed upon  
20 you, you've got to do 85 percent of it before you're  
21 eligible for parole, knowing all that, sir, you still  
22 want to plead guilty to armed robbery, is that  
23 correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Next, Mr. Wells, I

1 have before me indictment number 2006-2258, The State  
2 versus Roddregus Wells. This is an indictment for  
3 assault and battery with intent to kill.

4 Do you understand this charge, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: This indictment, Mr. Wells,  
7 alleges that you did here in Richland County on or  
8 about December the 23rd of 2005, with malice  
9 aforethought, commit an assault and battery upon one  
10 Alan McClain with the intent to kill the said victim.

11 Do you understand this allegation?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You want to plead guilty to  
14 assault and battery with intent to kill, is that  
15 correct, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You realize, Mr. Wells, that by  
18 doing so you can go to jail for 20 years?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Knowing then, Mr. Wells, that you  
21 can go to prison for 20 years by pleading guilty to  
22 assault and battery with intent to kill, do you still  
23 wish to plead guilty to it?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Next, Mr. Wells, I have before me

1 indictment number 2006-2257, The State versus  
2 Roddregus Wells. This is an indictment for  
3 kidnapping.

4 Do you understand this charge, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: This indictment, Mr. Wells,  
7 alleges that you did here in Richland County on or  
8 about December 23rd of 2005, unlawfully seize, confine  
9 or kidnap or abduct one Alberta Powell by any means  
10 whatsoever without the authority of law.

11 Do you understand ---

12 THE DEFENDANT: Yes, sir.

13 THE COURT: --- kidnapping is, do you not?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you want to plead guilty to  
16 it, is that correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Wells, do you realize that by  
19 pleading guilty to kidnapping, sir, you can go to jail  
20 for 30 years?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Knowing this, sir, that you can  
23 go to prison for 30 years by pleading guilty to  
24 kidnapping, do you still wish to plead guilty to it?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Next, Mr. Wells, I have before me  
2 indictment 2006-2259, The State versus Roddregus  
3 Wells. This is an indictment for burglary in the  
4 second degree.

5 Do you understand this charge, sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: This indictment, Mr. Wells,  
8 alleges that you did here in Richland County on or  
9 about December the 23rd of 2005, unlawfully enter the  
10 dwelling of Alan McClain without consent and with the  
11 intent to commit a crime therein during the hours of  
12 darkness. And of course you did all those other  
13 things to the house you broke in. But you want to  
14 plead guilty to breaking into the house essentially,  
15 you understand ---

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You realize, Mr. Wells, that by  
18 pleading guilty to burglary in the second degree, that  
19 you can go to jail for 15 years?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Knowing this, sir, that you can  
22 go to prison -- is this violent or not? I guess it's  
23 violent?

24 MS. JOHNSON: Non-violent.

25 THE COURT: Non-violent.

1 MS. JOHNSON: Uh-huh.

2 THE COURT: Knowing then, Mr. Wells, that you  
3 can go to prison for 15 years by pleading guilty to  
4 burglary in the second degree, do you still wish to  
5 plead guilty to it?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Next, Mr. Wells, I have before me  
8 indictment number 2006-2261. Once again, this is an  
9 indictment for kidnapping. And once again, Mr. Wells,  
10 I would assume you understand the charge?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: The allegations are, sir, that  
13 you did here in Richland County, on or about December  
14 the 23rd of 2005, unlawfully cease, confine or kidnap  
15 one Alan McClain.

16 Do you understand the allegation, Mr. Wells?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You want to plead guilty to this  
19 additional account of kidnapping, is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You realize, once again, that by  
22 doing so, Mr. Wells, you can go to jail for 30 years?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Knowing that, sir, you still want  
25 to plead guilty, is that correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, Mr. Wells, are you currently  
3 on probation or parole for any prior offenses?

4 THE DEFENDANT: No, sir.

5 THE COURT: Mr. Wells, I can run these  
6 sentences consecutively on these five indictments. If  
7 I do so, sir, you're facing 125 years in the  
8 penitentiary.

9 Do you understand that, sir?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Knowing again, Mr. Wells, that  
12 you could go to prison for 125 years by pleading  
13 guilty to these five indictments, do you still wish to  
14 plead guilty to them?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. Wells, when you plead guilty  
17 you have to give up certain basic rights, first of all  
18 your right to remain silent which is your right  
19 against self-incrimination, Mr. Wells, which is your  
20 right to say nothing at all. No one can compel you to  
21 come into court to provide evidence or to testify  
22 against yourself.

23 Do you understand this, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Secondly, Mr. Wells, when you

1 plead guilty, you have to give up your right to a jury  
2 trial, that is your right for a jury here in Richland  
3 County to decide whether or not you are guilty of  
4 these five indictments, beyond a reasonable doubt. A  
5 jury would base its decision on whatever evidence the  
6 State would introduce at trial against you and also on  
7 whatever evidence you and your lawyer, Ms. Johnson,  
8 may wish to introduce.

9           And I emphasize, may wish to introduce, Mr.  
10 Wells, because in a trial you would be presumed  
11 innocent, would not have to prove anything and you  
12 could not be convicted unless the State convinced all  
13 12 jurors of your guilt beyond a reasonable doubt. The  
14 jury's decision would have to be unanimous, all 12  
15 would have to agree that you're guilty on all five of  
16 these indictments.

17           Do you understand that, sir?

18           THE DEFENDANT: Yes, sir.

19           THE COURT: Now, Mr. Wells, thirdly when you  
20 plead guilty, you give up your right to confront and  
21 to be confronted by the witnesses against you. That  
22 is your right to see, hear and cross-examine any  
23 witnesses the State may call to testify against you  
24 during the trial.

25           And additionally, Mr. Wells, by pleading

1 guilty, you give up your right to subpoena and call  
2 witnesses on your own behalf, that is someone may  
3 testify for you.

4 Do you understand this, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, Mr. Wells, do you understand  
7 these rights I just mentioned to you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand, sir, that when  
10 you plead guilty you have to give up these  
11 Constitutional rights?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And is that what you want to do?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You want to give up your  
16 Constitution rights?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now you realize you will not  
19 receive a jury trial on any of these five charges by  
20 pleading guilty to them?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Once again, Mr. Wells, you're  
23 pleading guilty to two counts of kidnapping and they  
24 carry 30 years in the penitentiary a piece. You're  
25 pleading guilty to burglary in the second degree, a 15

1 year sentence. You're pleading guilty to assault and  
2 battery with intent to kill that carries 20 years.  
3 And you're pleading guilty to armed robbery which  
4 carries 30 years.

5 I've explained to you already, sir, that  
6 you're facing a total of 125 years on all five of  
7 these indictments if I run the sentences  
8 consecutively.

9 Now, in giving up all your Constitutional  
10 rights, Mr. Wells, considering what I just said to  
11 you, sir, I'll ask you once again. How do you wish to  
12 plead to the charges, guilty or not guilty?

13 THE DEFENDANT: Guilty, sir.

14 THE COURT: You realize, Mr. Wells, that when  
15 you plead guilty you admit the truth of the  
16 allegations contained in these five indictments  
17 against you.

18 Do you understand that, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I tell you that, Mr. Wells,  
21 because you may have some defenses to these charges.  
22 Of course, I have no way of knowing that but you need  
23 to realize that by pleading guilty here today you give  
24 up any defenses you might have.

25 Do you understand that, sir?

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THE DEFENDANT: Yes, sir.

THE COURT: In addition, Mr. Wells, I tell you that because when you were arrested by the Richland County Sheriff's Department, you may have given some type of incriminating statement, that is made some admission or confession about your guilt. And you need to realize that by pleading guilty here today, you waive your right to later on challenge or contest, if you gave any statements, whether or not they were taken or obtained from you freely and voluntarily in accordance with your Constitutional rights.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Now, Mr. Wells, I'll ask you once again, did you commit these offenses?

THE DEFENDANT: Yes, sir.

THE COURT: So once again, Mr. Wells, you're telling me you're pleading guilty to indictment 2006-2259, burglary in the second degree, sir, because you did in fact here in Richland County, on or about December the 23rd of 2005, break into the home occupied by Alan McClain?

THE DEFENDANT: Yes, sir.

THE COURT: You're pleading guilty to

1 burglary because you broke into the house, is that  
2 correct?

3 THE DEFENDANT: I didn't break into the house  
4 but I entered the dwelling with the intent to doing a  
5 crime.

6 THE COURT: Well, you went through the  
7 doorway?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You were in the house. You  
10 weren't supposed to be in there?

11 THE DEFENDANT: I mean, he offered me in but  
12 I had an intention to do a crime.

13 MS. SHIPLEY: Your Honor, if I may explain.  
14 It was -- it's under the inveigle premise.

15 THE COURT: All right. So you knew Mr.  
16 McClain?

17 THE DEFENDANT: My little brother knew him.

18 THE COURT: All right. So you go to the  
19 door, they invite you in but you go in with the intent  
20 to commit a crime while you're in there?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay, okay. I have to ask these  
23 questions, you understand. I'm glad you explained it  
24 that way but that's why you're pleading guilty to  
25 burglary in the second degree, is that right?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And once again, Mr. Wells, in  
3 connection with indictment number 2006-2261, that's  
4 kidnapping, after you got into the house you held Mr.  
5 Alan McClain against his will, is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you're pleading guilty also  
8 to another count of kidnapping because you held, I  
9 assume, Alberta Powell, his wife or girlfriend ---

10 MS. SHIPLEY: Girlfriend.

11 THE COURT: --- also against her will after  
12 you were in the house?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And additionally, I don't know,  
15 did he hit him with a gun? What did he do ---

16 MS. SHIPLEY: He shot him in the stomach.

17 THE COURT: You shot Mr. McClain?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay, okay. So after you're in  
20 the house, you shoot him. That's where the assault and  
21 battery with intent to kill came about?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And that's why you're pleading  
24 guilty to that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And finally on the armed robbery  
2 charge, while you were in there you kidnapped him and  
3 shot him, then you robbed him?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And that's why you're pleading  
6 guilty to armed robbery?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. The plea negotiations  
9 have a recommendation of a cap of 20 years. Anything  
10 additional, Ms. Johnson, that needs to be added to the  
11 record in connection with the plea negotiations or any  
12 recommendation?

13 MS. JOHNSON: No, Your Honor.

14 THE COURT: That covers it all, Solicitor?

15 MS. SHIPLEY: Yes, sir.

16 THE COURT: Has anything been dropped or  
17 anything like that?

18 MS. SHIPLEY: No, sir.

19 THE COURT: Okay. You still want to continue  
20 and plead guilty, Mr. Wells?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, sir, has anyone promised you  
23 anything or has anyone held out any hope of reward in  
24 order to get you to plead guilty?

25 THE DEFENDANT: No, sir.

1 THE COURT: Has anyone threatened you or used  
2 force to get you to plead guilty?

3 THE DEFENDANT: No, sir.

4 THE COURT: And anyone used any pressure or  
5 intimidation to cause you to plead guilty?

6 THE DEFENDANT: No, sir.

7 THE COURT: Have you had enough time to make  
8 up your mind as to whether or not you want to plead  
9 guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you pleading guilty of your  
12 own free will and accord?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, Mr. Wells, are you satisfied  
15 with the manner in which your lawyer here, Ms.  
16 Johnson, has advised and represented you on these  
17 charges?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have you talked with her for as  
20 long or for as often as you feel it necessary for her  
21 to properly represent you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you need anymore time to talk  
24 to her?

25 THE DEFENDANT: No, sir.

1 THE COURT: Have you understood your talks  
2 with her?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Wells, has Ms. Johnson done  
5 everything for you you feel she should do or could do  
6 on your behalf in advising and representing you on  
7 these charges?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Has she done anything you feel  
10 she should not have done?

11 THE DEFENDANT: Sir?

12 THE COURT: Has she done anything you feel  
13 she should not have done?

14 THE DEFENDANT: Oh, no, sir.

15 THE COURT: Okay. Are you completely  
16 satisfied with her services?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, Mr. Wells, do you have any  
19 complaints against anyone at the Richland County  
20 Sheriff's Department?

21 THE DEFENDANT: No, sir.

22 THE COURT: Any complaints against anyone  
23 working here in the Solicitor's office?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you understood my questions?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Is there anything you want to ask  
3 me about what I just went over with you, anything at  
4 all?

5 THE DEFENDANT: No, sir.

6 THE COURT: Mr. Wells, you realize that you  
7 have a right to appeal this guilty plea and whatever  
8 sentence I may impose upon you. But if you're going  
9 to appeal, you need to file a Notice of Intent to  
10 Appeal within 10 days of today's date.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Listen, Mr. Wells, it may not  
14 mean much to you now but it could later on. Once  
15 you're in the Department of Corrections, if you later  
16 on find out or feel or think that you have some  
17 complaints against your lawyer, Ms. Johnson, against  
18 the Solicitor's office, against the Sheriff's  
19 Department or anybody else involved in your case, you  
20 need to make those complaints known by filing a Post  
21 Conviction Relief Application within one year of  
22 today's date.

23 Do you understand that, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Very well, Solicitor, I'll be

1 happy to hear about it.

2 MS. SHIPLEY: Thank you, Your Honor. May it  
3 please the court.

4 This incident happened on December 23rd of  
5 2005, at [REDACTED] That is the residence of  
6 Mr. Alan McClain. Earlier in the evening around 7:00,  
7 Mr. McClain received a page from an acquaintance that  
8 he knew as Brandon Wells. Mr. Wells, Brandon Wells,  
9 asked him if he had any marijuana. Mr. McClain  
10 indicated, no, I don't have any but let's go in  
11 together and get some to smoke.

12 So they went -- left the house together, went  
13 and found some marijuana, came back to Mr. McClain's  
14 house. And when he returned to his residence, Mr.  
15 Brandon Wells showed up a few minutes later, around  
16 9:15, with an individual that was introduced to Mr.  
17 McClain at "T", the letter "T". And that was the  
18 Defendant standing before you, Mr. Roddregus Wells.

19 Mr. McClain was an acquaintance with Brandon  
20 Wells, had never met Roddregus Wells before this. He  
21 invited both of them in and they sat down in his  
22 living room and smoked some marijuana, just a  
23 marijuana cigarette.

24 At that point, the Defendant asked to use the  
25 restroom. And so Mr. McClain told him where the

1 bathroom was and the Defendant went to the bathroom.

2           Shortly thereafter, the Defendant returned --  
3 and I forgot to mention, Alberta Powell was sitting on  
4 the couch with Mr. McClain and Brandon Wells when the  
5 Defendant returned and drew a rifle. I believe it was  
6 a 22 caliber rifle.

7           He ordered everybody to the kitchen, to lay  
8 down on the ground. And at that point, Mr. McClain --  
9 everyone was obeying his demands. Mr. McClain had  
10 some cash on him and so he hid it by the stove in the  
11 kitchen.

12           And at that point, the Defendant, while armed  
13 with the rifle, was asking everybody for their  
14 personal belongings, and asking Mr. McClain in  
15 particular, where his money was. And at that point,  
16 Mr. McClain told him it was in a cupboard. And the  
17 Defendant went to look at the cupboard, didn't find  
18 it, and that's when Mr. McClain was able to throw his  
19 money under -- near the stove.

20           During the robbery, when Mr. Roddregus Wells  
21 realized that he was being, you know, lied to by the  
22 -- by the victim about where the money was, he then  
23 asked -- you know, said, you're lying to me, where is  
24 the money.

25           And at that point, Roddregus -- I'm sorry,

1 Mr. McClain notices Brandon Wells pointing to where he  
2 had just thrown the money. And so that caused Mr.  
3 McClain to be very suspicious of his friend, Brandon,  
4 for pointing out where the money was.

5 At that point, the Defendant grabbed the  
6 money and told the victim, I ought to shoot you for  
7 lying to me. And he began to proceed as if he was  
8 leaving. And so at that point everyone thought it was  
9 over, that the robbery was over, and Mr. McClain stood  
10 up.

11 At that point, Mr. McClain -- Mr. Roddregus  
12 Wells then pointed the rifle in a very close distance  
13 to Mr. McClain and pulled the trigger, shooting into  
14 his stomach. I do have one photograph of Mr. McClain,  
15 if I may hand it up.

16 THE COURT: You can.

17 MS. SHIPLEY: It's post-surgery. It just  
18 shows the location of his injury and it was a life  
19 threatening injury, Your Honor.

20 As soon as Mr. McClain was shot, the  
21 Defendant then fled from the residence. The police  
22 resp -- were called to the scene. They did arrive on  
23 the scene and Mr. McClain obviously had to go  
24 immediately to the hospital, lost a lot of blood. It  
25 was very life threatening. He almost lost his life.

1           When he was questioned by the -- Investigator  
2 Eisenhower (phonetic) with the Richland County  
3 Sheriff's Department after surgery, Mr. McClain  
4 explained that he suspected that Brandon Wells, his  
5 friend, was involved.

6           And so at that point, Investigator Eisenhower  
7 went to interview Brandon Wells. And at first, that  
8 individual gave three different statements. First he  
9 claimed that he was a victim just like Mr. McClain and  
10 in fact, the incident report lists Brandon Wells as a  
11 witness and victim because when officers arrived,  
12 that's what everyone thought.

13           Then he was then asked more questions in a  
14 second statement and he then admitted that not only  
15 did -- initially he had said, I only just met this guy  
16 at the Mall. Then he said, well, I do know him, he is  
17 my cousin, but I didn't see him with a gun.

18           And then a third statement came up and it was  
19 finally a forthright full confession admitted to  
20 everything. That he knew that his cousin, Roddregus  
21 Wells, was going to rob the victim. That this was  
22 planned. He was in on the planning and that he knew  
23 he was bringing a riffle into the residence. I'm  
24 still unclear how they were able to hide the riffle  
25 from the victim.

1           And then he also knew -- he also fully  
2 admitted that he told Roddregus Wells where the money  
3 was thrown by the stove and that he pointed it out to  
4 Roddregus Wells. And so at that point, Your Honor,  
5 Brandon Wells was arrested as a hand of one-hand of  
6 all, participant of this crime.

7           Your Honor, collaterally this crime not only  
8 caused Mr. McClain to almost lose his life. He ended  
9 up losing custody of his daughter. He had a four year  
10 old daughter by the name of Brandy who during this  
11 entire incident was in a back bedroom. And I just  
12 bring that to your attention to show that there was  
13 more collateral effects that did happen as a result of  
14 this incident. Because Mr. McClain fully admitted to  
15 the police that he was smoking marijuana in his house,  
16 custody was taken away from him and given to the  
17 mother of the child.

18           But at the appropriate time, Mr. McClain  
19 would like to relay his feelings about this crime and  
20 how it's impacted him.

21           THE COURT: All right, thank you, ma'am.

22           MS. SHIPLEY: He does have one prior  
23 conviction, Your Honor, and it's just possession of  
24 marijuana from, I believe, Georgia, and he got three  
25 years probation.

1 THE COURT: All right. Now, Ms. Johnson, and  
2 particularly you, Mr. Wells, you heard what the  
3 Solicitor told me. Except for the things externally  
4 you can't know about like what happened at the  
5 hospital, but that's how the incident went down at Mr.  
6 McClain's house?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You agree, Ms. Johnson?

9 MS. JOHNSON: Yes, Your Honor.

10 THE COURT: Very well, sir. I find that  
11 there's a substantial factual basis for your plea.  
12 Mr. Wells, I further find your decision to plead  
13 guilty to be freely and voluntarily, knowingly and  
14 intelligently made, that you had the advice of  
15 competent counsel whom you indicated to me you're  
16 completely satisfied with. Therefore, I will accept  
17 this plea.

18 Let's see, I'm trying to think, is it Shipley  
19 now? What is it?

20 MS. SHIPLEY: Shipley.

21 THE COURT: Okay. Well, Ms. Shipley, I'll be  
22 glad to hear anything additional from the State.

23 MS. SHIPLEY: Thank you, Your Honor,  
24 Mr. McClain would now like to address the court.  
25 Also, for the record, standing with him is his mother

1 here for moral support.

2 THE COURT: Okay. I thought she was Ms.  
3 Powell.

4 MS. SHIPLEY: No, sir, no. Ms. Powell ---

5 THE COURT: Oh, that's all right. Mr.  
6 McClain, I'll be happy to hear you, sir.

7 MR. McCLAIN: Yes, Your Honor. I learned a  
8 very hard lesson by, you know, doing drugs with, you  
9 know, people I don't really know. I've been through a  
10 lot of pain and suffering. I realize what I done, you  
11 know, is broke the law and it wasn't the right thing  
12 to do. And now, you know, I wake up every morning. I  
13 look at my scars. It reminds me every day. I hurt  
14 every day, you know. I lost something very special,  
15 you know. It's not the same like it was, you know.  
16 It will never be the same, you know. Every morning  
17 I'll wake up hurting always. And this, you know, is  
18 just something I'll have to deal with the rest of my  
19 life.

20 THE COURT: All right, thank you, sir.  
21 Anything further?

22 MS. SHIPLEY: Yes, sir, we would respectfully  
23 request that you give him the 20 years.

24 THE COURT: All right. Thank you, ma'am.

25 MS. SHIPLEY: Thank you.

1 THE COURT: Ms. Johnson, I'll be happy to  
2 hear from you.

3 MS. JOHNSON: Thank you, Your Honor. May it  
4 please the court.

5 It's one of those cases that make you wonder  
6 how the party before Your Honor could get to this  
7 point, especially knowing that his prior record ---

8 THE COURT: It's unfortunate, Ms. Johnson.  
9 He looks like a nice kid. I hate to say that but he  
10 does but, you know, good people do bad things ---

11 MS. JOHNSON: Yes, Your Honor, and I offer no  
12 excuse for what he did that day. Clearly he's here  
13 accepting responsibility for it. I merely ask that  
14 the court take into account the fact that he's 22  
15 years of age. He is a construction worker by trade.  
16 He's good with his hands. I believe that one day,  
17 once his punishment is served, that he could be a  
18 productive member of society.

19 I reviewed the South Carolina sentencing  
20 guidelines that were proposed, they're not in effect,  
21 just for some advice for myself to try and figure out  
22 as counseling him what would be an appropriate  
23 sentence.

24 One thing that was compelling to me was  
25 someone that has a prior misdemeanor that is guilty of

1 these crimes should be sentenced somewhere in a range  
2 of 7 to 11 years for each one. I don't know if Your  
3 Honor would deem it appropriate to run them  
4 concurrent. I would ask that Your Honor would. It  
5 all stemmed from the same incident and he is filling  
6 the same volume of guilt from it.

7 THE DEFENDANT: Your Honor, I would just like  
8 to apologize to the victim. I was kind of gone then.  
9 I mean, it wasn't really intentionally. I didn't mean  
10 to really mean to shoot. I ain't going to sit here  
11 and lie. I ain't even like that. But I know things  
12 happened and I apologize. I'm sorry about your  
13 daughter. I've got a little boy too. I never want to  
14 lose him. I'm sorry for bringing that pain into your  
15 life, man.

16 MS. JOHNSON: And that was the final thing I  
17 wanted to add, that he does have a little boy and he  
18 has been incarcerated since March.

19 THE COURT: All right, thank you, ma'am.  
20 Anything you want to tell me, Mr. Wells?

21 THE DEFENDANT: Like I said, I was -- I know  
22 that I'm wrong and I know that I can't sit here and  
23 wouldn't even ask you to -- I want you to be lenient  
24 but I know that I deserve punishment for what I did.  
25 But if you could be lenient, I would appreciate it

1 because I'm not a bad person.

2 THE COURT: All right, thank you, sir.

3 On indictments number 2006-2260, 2261, armed  
4 robbery, kidnapping, 2257, kidnapping, 2256, assault  
5 and battery with intent to kill, sentenced to 18 years  
6 concurrently to one another.

7 On indictment number 2006-2259, 15 years, all  
8 concurrent with one another on these sentences.

9 Good luck to you, Mr. Wells.

10 ----- END OF TRANSCRIPT OF RECORD -----

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CERTIFICATE OF REPORTER

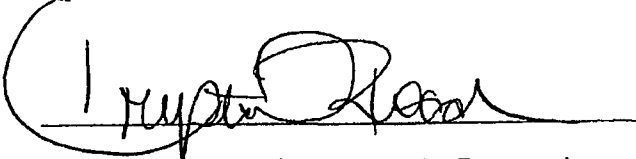
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STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

I, Crystal Roach, 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 guilty plea in the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 30th day of November, 2006.

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

August 11, 2007



Crystal Roach, Court Reporter

2007 (P) 1500 - 3192

STATE OF SOUTH CAROLINA

County of Richmond/Dentville

# 319086

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

vs.

State of South Carolina  
Name of Respondent.

In the Court of Common Pleas

FILED  
07 JUN 20 AM 8:30  
BARBARA A. SCOTT  
BARB.C.C. & G.S.

APPLICATION FOR  
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

- Place of detention Lee Correctional Institution  
990 Wiscoky Highway Bishopville SC 29010
- Name and location of Court which imposed sentence Richland County General Session Court  
1701 Main Street Columbia S.C. 29201
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - 06-2559 Burg 2nd (2) 06-2258 (ABWIK) (3) 06-2260 ARM Robbery
  - (4) 06-2261 Kidnapping
  - (5) 06-2257- Kidnapping
- The date upon which sentence was imposed and the terms of the sentence:
  - 11-27-06 2 Counts Kidnapping 18 yrs
  - 11-27-06 ARM Robbery 18 yrs Burg 2nd 15 yrs
  - 11-27-06 Assault and Battery w/intent to kill 18 yrs

\* All sentences ran concurrent.



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?  
no

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. \_\_\_\_\_
- ii. NA
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

- i. \_\_\_\_\_
- ii. NA
- 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 (1) identify:

(a) which grounds have been presented:

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

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

- i. \_\_\_\_\_
- ii. NA
- 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) Because of the lack of knowledge on the proper
- (b) redress guaranteed by the 1st Amendment and the
- (c) due process when there is a controversy between a state and  
and that citizen.

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? yes trial of the Plea
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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. K. Rahman Johnson 2113 Park Street PO Box 1452  
The Rutherford Law Firm Columbia SC 29202
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. trial and sentencing phase of commitment
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

The petitioner wishes that the court in a proper redress  
deliver the proper due process of law in the conviction and  
the sentencing phase guaranteed by law as a matter of law.

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, Rodriguez Antonio Wells, 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.

# 319086

Rodriguez Antonio Wells

SWORN to and subscribed before me this 14

day of June, 2007

Debra Sikes (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

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

I, Rodriguez Antonio Wells, 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.

# 319086

Rodriguez Antonio Wells  
Rodriguez Wells Applicant

SWORN or affirmed to and subscribed before me this

14 day of June, 2007

Debra Sikes  
Notary Public

My Commission Expires 11-4-2015



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. Any of the above not so attached will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

*Reason for not appealing:*

1. "MY LAWYER DID NOT ADVISE ME ABOUT THE APPEAL PROCESS."
2. "MY KNOWLEDGE OF THE LAW WAS INCOHERENT."
3. "I DIDN'T KNOW ABOUT THE DUE PROCESS OF LAW."

*Held in custody unlawfully because:*

1. "INEFFECTIVE ASSISTANCE OF COUNSEL"
2. "VIOLATION OF THE DUE PROCESS OF LAW"
3. "THE DISCREPANCY IN THE SENTENCE OF DUE PROCESS OF CO-DEFENDANT AND MY SENTENCE"
4. "VIOLATION OF THE EIGHT AMENDMENT"

*Supporting Facts:*

1. "LAWYER WAS DEFICIENT AND INCOMPETENT IN ALL PHASES OF DUE PROCESS"
2. "CO-DEFENDANT WAS GIVEN A LESSER SENTENCE AND PLACED ON THE YOA"
3. "WHEN I WAS ELIGIBLE FOR THE YOA AS WELL"
4. "HANDS OF ONE HANDS OF ALL THEORY STATING THE GILT AS THE SAME FOR BOTH DEFENDANT AND CO-DEFENDANT THEREFORE MY SENTENCE SHOULD HAVE BEEN UNDER THE YOA AND NOT 18 YEARS COMPARED TO MY CO-DEFENDANT"

*Other Grounds:*

"BECAUSE OF THE LACK OF KNOWLEDGE ON THE PROPER REDRESS GUARANTEE BY THE 1ST AMENDMENT AND THE DUE PROCESS WHEN THERE IS A CONTROVERSY BETWEEN A STATE GOAL AND THAT CITIZEN."

## III.

The Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective 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.

The Applicant alleges a denial of due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act.

The Applicant complains that his co-defendants received shorter sentences. This allegation must be dismissed as a matter of law, as the sentence the Applicant received was within the statutory limitations. Co-defendants may properly be sentenced to disparate sentences. Dozier v. State, 263 S.C. 267, 210 S.E.2d 225 (1974). The sentencing judge is vested with broad discretion to mete out the sentence that he or she thinks appropriate after all the facts are before him. State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 (1974). The record does not show that the sentencing Judge(s) failed to review the degree of participation of each co-defendant as well as the Applicant's prior criminal record.

Alternatively, the Respondent construes the issue of disparate sentencing between co-defendants as an allegation that the Applicant's sentence was too harsh. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no jurisdiction to correct a sentence given within statutory limits. To be entitled to relief, the Applicant must prove that the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. Clark, Id.; State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979). The allegation is therefore without merit and should be denied and dismissed.

The Applicant also raises the issue of eligibility regarding the Youthful Offender Act. The trial judge has the complete discretion to grant or deny a sentence under the Youthful Offender Act. Creel v. State, 262 S.C. 558, 206 S.E.2d 825 (1974); Powell v. State, 262 S.C. 592, 206 S.E.2d 883 (1974). No specific findings of fact are required in granting or denying a Youthful Offender sentence. Bethea v. State, 262 S.C. 255, 204 S.E.2d 12 (1974). The absence of a request for a Youthful Offender sentence does not affect the validity of a defendant's sentence. The Act only requires the trial judge to consider a Youthful Offender sentence for a defendant who falls within the required age range. Creel, Id.

The trial judge is not required to state his reasons to sentence the defendant as an adult or make an explicit finding thereabout. Powell, Id. The sentencing under adult penalty provisions constitutes an implicit finding that the defendant would not benefit from a Youthful Offender sentence. Powell, Id. This allegation lacks merit and should be summarily dismissed.

## V.

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.

VI.

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

Respectfully submitted,

HENRY DARGAN McMASTER  
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

August 24, 2007

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

)  
) IN THE COURT OF COMMON PLEAS

2007-CP-40-3792

Rodregus Wells, 319086

Applicant,

vs

State of South Carolina,

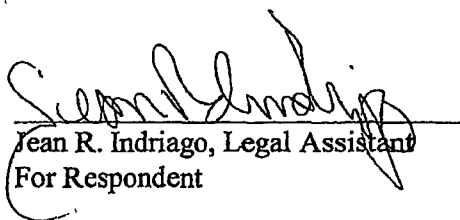
Respondent.

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) AFFIDAVIT OF SERVICE BY MAIL  
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)

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

Russell O. Brown, Esquire  
907 Calhoun Street  
Post Office Box 134  
Columbia, South Carolina 29201

DATED this 27<sup>th</sup> day of August, 2007.

  
Jean R. Indriago, Legal Assistant  
For Respondent

ORIGINAL

|                         |   |                       |
|-------------------------|---|-----------------------|
| STATE OF SOUTH CAROLINA | ) | COURT OF COMMON PLEAS |
| COUNTY OF RICHLAND      | ) | 2007-CP-40-03792      |

|                          |   |                          |
|--------------------------|---|--------------------------|
| Roddregus A. Wells,      | ) |                          |
|                          | ) |                          |
| Applicant                | ) |                          |
| vs.                      | ) | TRANSCRIPT OF RECORD     |
|                          | ) | (Post Conviction Relief) |
| State of South Carolina, | ) |                          |
|                          | ) |                          |
| Respondent.              | ) |                          |

August 5, 2008  
Columbia, South Carolina

BEFORE:

THE HONORABLE J. MICHELLE CHILDS, JUDGE.

APPEARANCES:

Russell Brown, Attorney at Law  
Attorney for the Applicant

Brian Petrano, Assistant Attorney General  
Attorney for the Respondent

JENNIFER H. WILLIAMS  
U.S. District Court Court Reporter  
(803) 351-9742  
Jenny\_Williams@scd.uscourts.gov

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KANA JOHNSON

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- NO EXHIBITS WERE INTRODUCED -

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August 5, 2008

MR. PETRANO: Your Honor, we're going to do Mr. Wells next. May I bring you the packet?

THE COURT: Yes.

(Documents handed to the Court)

THE COURT: You may proceed.

MR. PETRANO: Thank you, Your Honor. This is 2007-CP-40-3792, Mr. Roddregus Wells. This was a PCR application filed June 20, 2007. The Applicant was indicted by the Richland County Grand Jury in June of 2006. Excuse me. The first we have is kidnapping. That's 2006-GS-40-2257. Another kidnapping, 2006-GS-40-2261; an armed robbery, 2006-GS-40-2260; and a burglary second degree, 2006-GS-40-2259; and an ABWIK, 2006-GS-40-2258. The ultimate aggregate sentence was 18 years. There was no direct appeal.

And on that, I'll turn it over to Mr. Russell Brown, the Applicant's current counsel of record. Thank you, Your Honor.

THE COURT: Okay.

MR. BROWN: May it please the Court, Your Honor. The Applicant would call Mr. Roddregus Wells to the stand.

RODDREGUS A. WELLS, after being duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BROWN

Roddrigues A. Wells - Direct by Mr. Brown

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1 Q Mr. Wells, would you state your full name for the  
2 record, please?

3 A Roddrigues Antonio Wells.

4 Q And you were charged with assault and battery with  
5 intent to kill, armed robbery, burglary first, and  
6 kidnapping, two counts, in an incident that occurred on or  
7 about December 23rd, 2005?

8 A Yes, sir.

9 Q In Richland County?

10 A Yes, sir.

11 Q And you were represented by Attorney Kana Johnson in  
12 that matter, correct?

13 A Yes, sir.

14 Q To your knowledge, did you have an opportunity -- were  
15 there any statements given regarding this matter?

16 A Well, it took like six or seven months to get my motion  
17 of discovery, and I read the statements myself, but I also  
18 saw that the statements conflicted with each other from the  
19 two victims.

20 Q Could you repeat that last part again, please?

21 A The statements that I saw, they conflicted with each  
22 other, that the two victims wrote.

23 Q And in that discovery, were there any co-defendants in  
24 this particular matter?

25 A Yes, sir.

1 Q Did the co-defendants make any statements?

2 A Yes, sir. He wrote two or three statements I believe,  
3 but they keep having some kind of discrepancy about his  
4 credibility.

5 Q Did you make any statements?

6 A No, sir.

7 Q And you said you did have an opportunity to review  
8 discovery?

9 A Yes, sir.

10 Q And in this particular matter you pled, or did you have  
11 a trial?

12 A No. I pled.

13 Q Do you feel that Ms. Johnson was prepared to go to trial  
14 in this particular matter?

15 A No, sir. Because I believe we would have went to trial  
16 if she was.

17 Q You believe had she been prepared that you would have  
18 gone to trial?

19 A Well, see, when I went over the discovery, I went over  
20 discovery on my own. I saw her probably two hours out of my  
21 whole nine months at the County. So we never really had a  
22 chance to discuss my whole motion. So, I mean, if she had  
23 went over it with me and I understood the evidence that was  
24 supposed to have been there, I believe I would have went to  
25 trial.

Roddrigus A. Wells - Direct by Mr. Brown

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1 Q Mr. Wells, everybody only gets one PCR opportunity. All  
2 right?

3 A Yes, sir.

4 Q You understand that?

5 A Mm-hmm (affirmative).

6 Q There is a possibility if you are successful today, if  
7 you get what we call a new trial, there's a possibility that  
8 you could get a sentence greater than you're currently  
9 serving. Do you understand that?

10 A Yes, sir.

11 Q Are there any other issues other than the fact that the  
12 time that you and Ms. Johnson spent together that you felt  
13 that were inadequate in your opinion and that you'd like to  
14 discuss or have the judge know about?

15 A I mean, I don't know if I'm supposed to like go into my  
16 case or whatever, but the evidence --

17 Q Only as it relates to how Ms. Johnson represented you.

18 A That's what I'm saying. I mean, we was never -- we  
19 never sat down and discussed like how the case could go.  
20 Because there's such a lack of evidence that ain't no way I  
21 went with the trial. And I feel if we would have went to  
22 trial, I believe we would have beat it at trial.

23 Q Anything else you'd like to add?

24 A No, sir.

25 MR. BROWN: No further questions.

## 1 CROSS EXAMINATION

2 BY MR. PETRANO

3 Q Good morning, sir. Do you recall your guilty plea?

4 A Yes, sir.

5 Q And I'm going to jump around a little. I hope you don't  
6 mind. You apologized at the end. I think maybe the victim  
7 had lost custody of his daughter. You commented that you had  
8 a little boy yourself and you felt awful about the thing?

9 A That's what my attorney advised me to do, apologize.

10 Q So did she tell you to lie?

11 A No, she didn't tell me to lie. She told me to  
12 apologize.

13 Q So what you said was truthful though?

14 A I don't want nobody to lose their kids.

15 Q And you meant shooting him in the stomach?

16 A I don't recall mentioning shooting him in the stomach.  
17 So -- but I pled guilty, so that probably does conclude that  
18 I admit to it.19 Q That was my next question, that you did admit the fact  
20 before the plea judge?

21 A Yes, sir.

22 Q She advised you to do that?

23 A Yes, sir.

24 Q She advised you to lie?

25 A No. She advised me that I was probably going to get 125

Rodregus A. Wells - Cross by Mr. Petrano

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1 years in a trial, so I pled to the 0 to 20 cap.

2 Q But you did tell the truth though just based on the fact  
3 that you were facing 125 years?

4 A No. I pled guilty because that's what my attorney  
5 advised me to do.

6 Q Based on the fact that you were facing 125 years?

7 A Yes, sir.

8 Q And she advised you that in her opinion that the  
9 evidence was enough to convict you and that you were facing  
10 125 years?

11 A We never discussed the evidence.

12 Q You never went over the evidence with her?

13 A No, sir.

14 Q All right. I don't understand. Pardon me if you said  
15 it and I just didn't get it. She went over the fact that you  
16 were facing 125 years but she didn't go over any of the  
17 evidence on that?

18 A I talked to her on the phone, and that's when she first  
19 told me that they offered a 0 to 20 cap. I was telling her I  
20 don't think that even sounds right. She said, well,  
21 Mr. Wells, you'll probably get -- it's a possibility they'll  
22 give you 125 years in trial, so I believe it would be best to  
23 go ahead and take the 0 to 20 cap.

24 Q Did she go over how the 125 added up with -- did she say  
25 it was 20 for this, 20 for this, or just 20 for the burglary?

1 A I had five charges. They said each charge she could  
2 give me 25 years for.

3 Q So she did go over each charge she said the State is  
4 charging and the potential penalty?

5 A Yes, sir. I knew all my charges from the warrants.

6 Q So she didn't tell you about any of the elements or  
7 anything like that? You didn't go over with her any of the  
8 defenses? You didn't tell her, well, I can't plead guilty to  
9 that?

10 A No.

11 Q You didn't? I have nothing further.

12 MR. PETRANO: Thank you, Your Honor.

13 THE COURT: Okay. Redirect?

14 MR. BROWN: Nothing further from the Applicant,  
15 Your Honor, at this time.

16 THE COURT: Okay. You can step down.

17 MR. PETRANO: Your Honor, the State is going to  
18 call Ms. Kana Johnson.

19 THE COURT: Okay.

20 KANA JOHNSON, after being duly sworn, testifies as  
21 follows:

22 DIRECT EXAMINATION

23 BY MR. PETRANO

24 Q Good morning, Ms. Johnson. Thank you for coming. Do  
25 you recall your representation of the Applicant?

1 A I do.

2 Q And did you meet with him?

3 A I did.

4 Q And you said you met by telephone. You discussed  
5 different charges by telephone. Is that accurate?

6 A In addition to me actually meeting with him at the jail,  
7 yes; at the time I was accepting collect calls from the  
8 prison.

9 Q About how many times did you meet with him at the prison  
10 as opposed to a telephone call?

11 A I know on at least I believe two occasions, one where I  
12 delivered the discovery and one when I came back to follow up  
13 with the discovery to explain that we were going forward, the  
14 second visit, that was when Mr. Wells explained to me that he  
15 was guilty, he wanted to plead guilty.

16 What he asked me to do was to determine when we were  
17 going to get a good judge, because the solicitor was not  
18 providing any type of offer other than the cap of 20 years.  
19 I read through his motion, and he wanted a YOA sentence. I  
20 remember asking Ms. Shipley whether she would recommend that  
21 in Mr. Wells' case because he was only 22 years of age, but  
22 she wouldn't because he was the primary aggressor in these  
23 facts.

24 Q Let me stop right there. Is YOA available for armed  
25 robbery to your knowledge?

1 A No, it's not. What I was trying to get her to do was to  
2 reduce it to a strong arm robbery so that he could qualify  
3 for a YOA, but she wouldn't do it.

4 Q And that was something you were attempting to do with  
5 the activity with the solicitor?

6 A Yes. But it was never offered, so I was never able to  
7 convey it to him.

8 Q I'm going to back up to what you said before. You said  
9 you met with him and you said you showed him the discovery or  
10 provided the discovery. Which one was it?

11 A I -- what I did was I went to see him. I had the packet  
12 of discovery with me. I gave him his own copy and he looked  
13 at it. I came back and followed up on any questions, because  
14 in between he had been calling my office and the whole time  
15 he indicated he wished to plead guilty. He was remorseful;  
16 he just wanted it over with; and what judges were coming.  
17 And then he had heard that Judge Manning was a good judge.  
18 And so we scheduled it that week.

19 You know, I actually did an additional step. Once I  
20 realized that I was not going to get the YOA recommendation,  
21 I called the Prosecution Commission on Sentencing. They had  
22 guidelines that they formulate that have not been adopted by  
23 this state. But usually when I have a straight up plea, what  
24 I do is I contact that agency for them to give me a memo on  
25 what they would recommend if guidelines were ever adopted by

1 our state.

2 That memo came back that Mr. Wells with his one prior  
3 conviction of marijuana I believe out of Georgia should have  
4 been sentenced in a range between 7 and 11 years. And that  
5 is what I presented to His Honor, hoping that was the range.

6 And I remember advising Mr. Wells that that's what my  
7 research had indicated. Unfortunately for Mr. Wells, the  
8 victim appeared in court and told a very compelling story;  
9 particularly the fact that he had lost custody of his  
10 daughter and also the fact that he wakes up every morning  
11 looking down at his stomach where he was shot with the rifle.  
12 And I remember Judge Manning feeling like he needed to  
13 sentence him higher than that.

14 Q And it's a cold reading; but, in fact, the transcript  
15 indicates, I'm just going to characterize it that the  
16 sentencing judge, plea judge, did kind of seem shocked that  
17 there was a shooting, that he did shoot him in the stomach.  
18 He just thought it was an ABWIK type thing. Is that what  
19 occurred I mean?

20 A There is no denying the facts. There was very little I  
21 could do to mitigate the fact that the victim was shot in the  
22 stomach with a rifle. The facts indicated that at some point  
23 the robbery had actually occurred and both Mr. Wells and the  
24 co-defendant had attempted to -- indicated that they were  
25 attempting to leave or the victim believed that they were

1 going to leave, and then the victim then testified that Mr.  
2 Wells then turned around and shot him.

3 Q And that's basically as it's portrayed by the State in  
4 the transcript?

5 A Yes.

6 Q When you went over discovery, did you go over all the  
7 charges and all the elements of the case?

8 A Yes. He knew he was facing 125 years if they were to be  
9 run consecutively. I dispute his testimony that I told him  
10 he would probably face -- he would probably get a sentence of  
11 125 years if he went to trial. We didn't discuss trial,  
12 because from the beginning he was indicating to me that he  
13 was remorseful and he just wanted to get it over with.

14 Q Did he try to articulate any defenses?

15 A No. One thing, we did discuss Mr. Wells' credibility.  
16 Brandon Wells, his co-defendant, gave three statements. The  
17 first statement indicated that he was -- well, I explained to  
18 him that the State's theory would be that because Brandon was  
19 his cousin that the first statement would appear as a  
20 protective statement. The second one was: Okay, they're  
21 onto me, but I still don't want to put myself into this. And  
22 then the third statement is: I'm coming clean. I'm going  
23 for broke, essentially. And I went through that issue with  
24 him.

25 Certainly Mr. Wells' credibility could have been

1 attacked. But you find when someone is initially untrue and  
2 then they come through with the same set of facts that the  
3 victim is saying that they have cured themselves of the  
4 credibility issue.

5 Q And basically any intricacies, that would basically be  
6 credibility as opposed to weight?

7 A Correct.

8 Q And you explained that to him?

9 A I don't have an independent recollection of explaining  
10 that to him. No. I'm sorry. I assume that I did, but I  
11 don't know. And he had mentioned in his testimony and in his  
12 application that there was conflicting statements. That's  
13 what he's referring to, as far as I understand it.

14 I think he also might be referring to Ms. Powell's  
15 statement and Mr. McLean's statement, the two victims, the  
16 boyfriend and girlfriend. But I don't -- I'm not sure what  
17 discrepancy he is referring to though because the identity  
18 was clear.

19 Q Okay. Thank you.

20 MR. PETRANO: Nothing further on direct.

21 MR. BROWN: May it please the Court.

22 CROSS EXAMINATION

23 BY MR. BROWN

24 Q Ms. Johnson, other than the statements given by the  
25 co-defendant, was there any other physical evidence tying Mr.

1 Wells to this particular incident in your review of the  
2 discovery?

3 A No.

4 Q Did Mr. Wells ever deny his involvement in any of these  
5 incidents?

6 A Not to me.

7 Q And I believe that you did go over the maximums and  
8 minimums with Mr. Wells as far as possible sentencing under  
9 each individual charge?

10 A I did.

11 Q I'm pretty sure I asked this question. If not, I  
12 apologize. There is no physical evidence tying him, the  
13 statement of the victim and the co-defendant, placing him  
14 there?

15 A That's what I remember. That's correct.

16 MR. BROWN: Beg the Court's indulgence. No further  
17 questions.

18 THE COURT: Thank you. You may step down.

19 MR. PETRANO: Thank you, Your Honor. May the  
20 witness be excused?

21 THE COURT: Yes.

22 MR. PETRANO: That's the State's case, Your Honor.

23 THE COURT: All right. Okay. Thank you. Anything  
24 further?

25 MR. BROWN: The Applicant rests, Your Honor.

1           THE COURT: All right. Thank you all. That will  
2 conclude the proceeding. And the Court will read the packet  
3 along with today's testimony and take it under advisement.

4           MR. PETRANO: Thank you, Your Honor.

5           MR. BROWN: Thank you, Your Honor.

6           (Whereupon, the proceedings are concluded.)  
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|-----------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA     | ) |                              |
|                             | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF RICHLAND          | ) |                              |
|                             | ) |                              |
|                             | ) | 2007-CP-40-3792              |
|                             | ) |                              |
| WELLS, RODDREGUS, # 319086, | ) |                              |
|                             | ) |                              |
| Applicant,                  | ) |                              |
|                             | ) |                              |
| v.                          | ) | ORDER OF DISMISSAL           |
|                             | ) |                              |
| State of South Carolina,    | ) |                              |
|                             | ) |                              |
| Respondent.                 | ) |                              |

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 20, 2007 . The Respondent made its Return on August 31, 2007. An evidentiary hearing into the matter was convened on August 5, 2008 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Russell Brown, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Kana R. Johnson, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. KANA R. JOHNSON, ESQUIRE, represented the Applicant. The Applicant was indicted with, plead guilty and sentenced by The Honorable L. CASEY MANNING, to the following:

*18 JMC*

| TERM: | INDICTMENT #:    | CONVICTED OF:       | SENTENCE RECEIVED | CONC/CONS |
|-------|------------------|---------------------|-------------------|-----------|
| 06-06 | 2006-GS-40-2257. | KIDNAPPING          | 18                | CONC      |
| 06-06 | 2006-GS-40-2261. | KIDNAPPING          | 18                | CONC      |
| 06-06 | 2006-GS-40-2260. | ARMED ROBBERY       | 18                | CONC      |
| 06-06 | 2006-GS-40-2259. | BURGLARY 2ND DEGREE | 15                | CONC      |
| 06-06 | 2006-GS-40-2258. | ABWIK               | 18                | CONC      |

The Applicant did not appeal his guilty plea or sentence.

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

*Reason for not appealing:*

1. "MY LAWYER DID NOT ADVISE ME ABOUT THE APPEAL PROCESS."
2. "MY KNOWLEDGE OF THE LAW WAS INCOHERENT."
3. "I DIDN'T KNOW ABOUT THE DUE PROCESS OF LAW."

*Held in custody unlawfully because:*

1. "INEFFECTIVE ASSISTANCE OF COUNSEL"
2. "VIOLATION OF THE DUE PROCESS OF LAW"
3. "THE DISCREPANCY IN THE SENTENCE OF DUE PROCESS OF CO-DEFENDANT AND MY SENTENCE"
4. "VIOLATION OF THE EIGHT AMENDMENT"

*Supporting Facts:*

1. "LAWYER WAS DEFICIENT AND INCOMPETENT IN ALL PHASES OF DUE PROCESS"
2. "CO-DEFENDANT WAS GIVEN A LESSER SENTENCE AND PLACED ON THE YOA"
3. "WHEN I WAS ELIGIBLE FOR THE YOA AS WELL"
4. "HANDS OF ONE HANDS OF ALL THEORY STATING THE GILT AS THE SAME FOR BOTH DEFENDANT AND CO-DEFENDANT THEREFORE MY SENTENCE SHOULD HAVE BEEN UNDER THE YOA AND NOT 18 YEARS COMPARED TO MY CO-DEFENDANT"

*Other Grounds:*

"BECAUSE OF THE LACK OF KNOWLEDGE ON THE PROPER REDRESS GUARANTEE BY THE 1ST AMENDMENT AND THE DUE PROCESS WHEN

2 JMC

THERE IS A CONTROVERSY BETWEEN A STATE  
GOAL AND THAT CITIZEN."

At the evidentiary hearing, Applicant abandoned some of the allegations originally listed in his application and proceeding on others.

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### 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 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).

The Applicant testified that there were some conflicting statements from the victims, that the discovery was delayed and that trial counsel was unprepared to go to trial because she failed to review the discovery with him. The Applicant <sup>testified</sup> that he pled guilty because he was facing one hundred and twenty-five years (125) if found guilty at trial. The Applicant testified that he never met with his attorney, but that they only spoke on the phone and never went over the evidence. The Applicant testified that counsel did go over every charge and discuss the potential penalties. The Applicant testified that if he had seen the evidence he would have gone to trial.

Trial counsel testified that she met with the Applicant at the jail, that she went over the discovery. Trial counsel testified that she met the Applicant at the jail, at least twice, and on the second visit he indicated he wanted to plead. Trial counsel testified that there was no offer except the twenty (20) year cap. Trial counsel testified that she obtained and presented a report from the Prosecution Committee on Sentencing which indicated, considering all the factors, that the Applicant fell into the seven (7) to eleven (11) year range. Trial counsel testified that at the guilty plea the victim gave <sup>gave</sup> a very compelling statement that ultimately affected the sentence the Applicant received. Trial counsel testified that she went over the discovery and all elements of the charges. Trial counsel testified that she never discussed a trial strategy with the Applicant because he indicated he did not want to go to trial. Trial counsel testified that she and the

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Applicant discussed the Applicant's credibility if he were to take the stand. Trial counsel testified that she does not understand what "discrepancy" the Applicant is referring to regarding the statement(s) made by the victim(s) and/or the co-defendant(s). Trial counsel testified that the Applicant was not eligible for YOA because he was charged with armed robbery, because he was not eligible for YOA, trial counsel testified that the Applicant wanted to plead. Trial counsel testified that the Applicant shot the clerk just before fleeing and that would eliminate any mitigating factors. Trial counsel testified that the Applicant acknowledged his guilt and indicated he just wanted to "get it over with" and plead. Trial counsel testified that other than the statements, there was no physical evidence involved but that the Applicant never denied his involvement/role in the robbery and ABWIK.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; 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). When there has been a guilty plea, the applicant must prove that counsel's representation

5 JMC

was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

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. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

This Court finds Applicant's testimony is not credible, while also finding Applicant's counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

This Court finds that the Applicant never developed his originally vague claim regarding a direct appeal and it is therefore abandoned. This Court finds that the Applicant lacks credibility regarding the allegations that trial counsel never went over the discovery, and therefore there is no merit to the Applicant's assertion that if he had seen the evidence he would not have plead, but would have gone to trial. The Applicant complains that his co-defendants received shorter

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sentences. This allegation must be dismissed as a matter of law, as the sentence the Applicant received was within the statutory limitations. Co-defendants may properly be sentenced to disparate sentences. Dozier v. State, 263 S.C. 267, 210 S.E.2d 225 (1974). The sentencing judge is vested with broad discretion to mete out the sentence that he or she thinks appropriate after all the facts are before him. State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 (1974). A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no jurisdiction to correct a sentence given within statutory limits. To be entitled to relief, the Applicant must prove that the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. Clark, Id.; State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979). The allegation is therefore without merit and is denied and dismissed.

YOA is not available for armed robbery. See also, S.C. Code § 24-19-10. Even if YOA was a possibility for the Applicant, the trial judge has the complete discretion to grant or deny a sentence under the Youthful Offender Act. Creel v. State, 262 S.C. 558, 206 S.E.2d 825 (1974); Powell v. State, 262 S.C. 592, 206 S.E.2d 883 (1974). No specific findings of fact are required in granting or denying a Youthful Offender sentence. Bethea v. State, 262 S.C. 255, 204 S.E.2d 12 (1974). The absence of a request for a Youthful Offender sentence does not affect the validity of a defendant's sentence. The Act only requires the trial judge to consider a Youthful Offender sentence for a defendant who falls within the required age range. Creel, Id.

The trial judge is not required to state his reasons to sentence the defendant as an adult or make an explicit finding thereabout. Powell, Id. The sentencing under adult penalty provisions

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constitutes an implicit finding that the defendant would not benefit from a Youthful Offender sentence. Powell, Id. This allegation lacks merit and should be summarily dismissed.

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### 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. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. 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 <sup>at</sup> 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 advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453

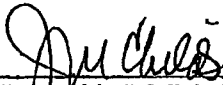
*9 JMD*

(1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, 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. Applicant and counsel are directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 28<sup>th</sup> day of September, 2008.

  
\_\_\_\_\_  
The Honorable J. Michelle Childs  
Presiding Judge  
Fifth Judicial Circuit

Columbia South Carolina.

2009C P40578

576B

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

RODRIEGUS ANTONIO WELLS 310086  
Full name and prison number (if any) of Applicant,

vs.

STATE OF SOUTH CAROLINA  
Name of Respondent.

APPLICATION FOR  
POST-CONVICTION RELIEF

JEANETTE W. McBRIDE  
CLERK  
& G.S.  
2009 AUG 11 PM 3:32

RICHLAND COUNTY  
FILED

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 LEE COLLECTIONAL INSTITUTION  
990 WISACKY HWY, BISHOPVILLE SC 29010

2. Name and location of Court which imposed sentence RICHLAND COUNTY GENERAL  
SESSIONS COURT, 1201 MAIN STREET, COLUMBIA SC 29201

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) 06-2259 BURG. 2ND (2) 06-2258 ARMS (3) 06-2260 ARMED
- (b) ROBBERY (4) 06-2261 KIDNAPPING (5) 06-2257 KIDNAPPING
- (c) \_\_\_\_\_

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

- (a) 11-27-06 2 COUNTS OF KIDNAPPING - 18 YEARS
- (b) 11-27-06 ARMED ROBBERY 18 YEARS, BURG 2ND 15 YEARS
- (c) 11-27-06 ARMS 18 YEARS ALL SENTENCES RAN CONCURRENT.

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?

\_\_\_\_\_

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) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL (IAC)
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) After my "PCR" HEARING HE DENIED ME A RIGHT TO AN APPEAL.
- (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? \_\_\_\_\_
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? \_\_\_\_\_
- (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (d) the date of each such disposition:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

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?

\_\_\_\_\_

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) THIS IS MY ATTEMPT TO BRING THIS ISSUE TO COURT.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

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

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. RUSSELL O. BROWN 907 CAITHAN ST. COLA, SC 29901
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. PCR HEARING
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

I'M ASKING FOR A NEW PCR, AS IN AUSTIN VS. STATE.  
I REQUESTED AN APPEAL AND WAS DENIED BY PCR COUNSEL.

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

\_\_\_\_\_

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, RODOLFO ANTONIO WELLS, 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.

Rodolfo Wells

JEANETTE W. McBRIDE  
C.C.P. & G.S.

2009 AUG 11 PM 3:32

RICHLAND COUNTY  
FILED

SWORN to and subscribed before me this 23  
day of July, 2009  
[Signature] (L.S.)  
Notary Public

My Commission Expires: 5-16-17

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

I, RODOLFO ANTONIO WELLS, 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.

Rodolfo Wells  
Applicant

SWORN or affirmed to and subscribed before me this  
23 day of July, 2009  
[Signature]  
Notary Public

My Commission Expires 5-16-17

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                              |
|                          | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF RICHLAND       | ) |                              |
|                          | ) |                              |
| WELLS Roddregus A -      | ) | 2009CP4005718                |
| # 00319086,              | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) |                              |
| v.                       | ) | RETURN AND                   |
|                          | ) | MOTION TO DISMISS            |
| State of South Carolina, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |

---

In response to the post-conviction relief application filed August 11, 2009 the Respondent would show the following.<sup>1</sup>

I.

The Applicant is presently confined at Lee Correctional Institution. The PCR application is based on orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted and/or convicted of the following: Kidnaping, Assault and Battery With Intent to Kill, Burglary (After 6/20/85) 1st Degree, Armed Robbery and Kidnaping - 06-GS-40-2258;57;59;60;61. The Applicant was represented by attorney Russell O Brown. The Applicant was sentenced on November 30, 2006 by The Honorable L. Casey Manning. The Remittitur date for

<sup>1</sup>

<http://www4.rcgov.us/publicindex/PCCaseDetails.aspx?County=40+&Casenum=2009CP4005718&CourtType=G&CaseType=Civil&CourtAgency=40002>

WELLS Roddregus A - State's Return and Motion to Dismiss - (2009CP4005718)

the Applicant's direct appeal was N/A.<sup>2</sup>

Attached herewith and/or incorporated via the readily available Clerk of Court records are the records of the Richland County Clerk of Court regarding the subject convictions, and/or the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

According to the South Carolina Department of Corrections, the Applicant is serving the following sentence:

Offender Type Adult-straight Sentence Offense Kidnapping Sentence Start Date 03/14/2006 Sentence Length 18 YRS, 0 MOS, 0 DYS Admission Date 12/07/2006  
Committing County Richland Location Lee Projected Release Date 12/10/2022  
Projected Parole Date Not Eligible Supervised Furlough Eligibility Not Eligible Sex  
Offender Registry Yes

<https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00319086>

## II.

### Timeliness – S.C. Code §17-27-45(a)

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

<sup>2</sup> The Respondent reserves the right to amend the motion if additional relevant procedural history is found, such as more specific direct appeal information

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). It appears that this Application was filed beyond the statutory time period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act. *See also*, Rule 243(c), SCACR:

(c) Explanation Required. If the lower court has determined that the post-conviction relief action is barred as successive or being untimely under the statute of limitations, the petitioner must, at the time the notice of appeal is filed, provide an explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court

was improper. If the petitioner fails to make a sufficient showing, the notice of appeal may be dismissed.

### SUCCESSIVE

The Respondent submits that it appears that this PCR application is also possibly successive. Successive applications for post-conviction relief are disfavored.

Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90

(1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The

Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel. (Aice v. State, 409 S.E.2d 392 (1991). Even a belated direct appeal claim is subject to limitations. Graham v. State, 378 S.C. 1, 661 S.E.2d 337 (2008)(Petitioner was barred from raising in successive post-conviction relief (PCR) application claim that he was denied the right to direct appeal due to the ineffective assistance of counsel, where claim could have been raised in first PCR application).

## III.

As a general matter, the Respondent notes that a high bar exists to obtain post-conviction relief.

The writ of habeas corpus stands as a safeguard against imprisonment of those held in violation of the law. Judges must be vigilant and independent in reviewing petitions for the writ, a commitment that entails substantial judicial resources. Those resources are diminished and misspent, however, and confidence in the writ and the law it vindicates undermined, if there is judicial disregard for the sound and established principles that inform its proper issuance.

Harrington v. Richter, 09-587, 2011 WL 148587 (U.S. Jan. 19, 2011)

*See also*, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

The State must overcome many hurdles before an accused person is punished:

- (1) the magistrate may refuse to issue a warrant;
- (2) the magistrate may dismiss a case after a preliminary hearing;
- (3) a grand jury may refuse to indict;
- (4) the solicitor may nolle pross;
- (5) the trial judge may direct a verdict;

(6) a petit jury may refuse to convict if only one juror has a reasonable doubt;

(7) the judge may set the verdict aside notwithstanding a verdict of the jury;

(8) the appellate court may reverse the conviction.

If the accused person can prevail at any one of these stages of a proceeding, he goes free and is unpunished. On the other hand, the State must prevail at each of the eight stages before punishment is inflicted.

In addition to these many protections, the accused now has the right of application for post-conviction relief upon a proper showing. In almost any case a convicted person, given time for research, can come up with some sort of theory ostensibly warranting a new trial.

.....

Most of what Mr. Justice Harlan said in his separate opinion in *Mackey v. United States*, 401 U.S. 667, 91 S.Ct. 1160, 1179, 28 L.Ed.2d 404 (1971), with respect to collateral relief from a criminal conviction, is applicable here:

"Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to

jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved.

A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process. While men languish in jail, not uncommonly for over a year, awaiting a first trial on their guilt or innocence, it is not easy to justify expending substantial quantities of the time and energies of judges, prosecutors, and defense lawyers litigating the validity under present law of criminal convictions that were perfectly free from error when made final. (citation omitted) This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first."

Anderson v. Leeke, 271 S.C. 435, 440-42, 248 S.E.2d 120, 123 (1978).

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

## IV.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired and for any other reasons as explained above.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY ELLIOTT  
Assistant Deputy Attorney General

BRIAN T. PETRANO  
Assistant Attorney General

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

By: 

Attorneys for the Respondents

September 22, 2011

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 Roddregus A. Wells, #319086, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT

2009-CP-40-05718

CONSENT ORDER GRANTING  
 BELATED PCR APPEAL PURSUANT  
 TO AUSTIN V. STATE

ANNETTE W. McRIBB  
 C.C.P. & G.S.  
 AUG 17 11 26 AM '12  
 RICHLAND COUNTY  
 FILED

This matter comes before the Court by way of application for post-conviction relief (PCR) filed August 11, 2009. Respondent made a Return and Motion to Dismiss on September 22, 2011, requesting the application be summarily dismissed as untimely filed under S.C. Code Ann. § 17-27-45(a) (2003) and successive to Applicant's previous PCR action. Thereafter, Respondent submitted an Amended Return and Motion to Dismiss in Part on April 13, 2012, requesting the action be dismissed in part as untimely filed and successive in nature, but requesting a hearing be set solely on the issue of whether Applicant was entitled to a belated appeal of his previous 2007 PCR application. The matter was set for evidentiary hearing on Wednesday, August 15, 2012, in Richland County; however, it has come to this Court's attention that both parties consent to the granting of Applicant's request for belated PCR appeal, thereby eliminating the need for an evidentiary hearing.

In reviewing the issues set forth, this Court had before it the records of the Richland County Clerk of Court, the guilty plea transcript, the prior PCR records, and the Applicant's records from the South Carolina Department of Corrections



### Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland County Clerk of Court. The Applicant was true bill indicted at the June 2006 term of the Richland County Grand Jury for Armed Robbery, Burglary – First Degree, Assault and Battery with Intent to Kill (“ABWIK”) and two (2) counts of Kidnapping. He was represented by Kana R. Johnson, Esquire, on the charges. On November 30, 2006, Applicant appeared before the Honorable L. Casey Manning where he pled guilty to Armed Robbery, ABWIK and the two Kidnapping charges as indicted, as well as the lesser included Burglary – Second Degree. Applicant was sentenced to eighteen (18) years imprisonment for each ABWIK, Armed Robbery and Kidnapping, as well as fifteen (15) years imprisonment for Burglary – Second Degree, with all sentences to run concurrently. The Applicant did not appeal his conviction or sentence.

### 2007-CP-40-03792

The Applicant filed his first PCR application on June 20, 2007 (2007-CP-40-03792). In it, he raised the following issues:

1. Ineffective Assistance of Counsel
2. Violation of Due Process
3. Discrepancy in the Sentence and Due Process of Co-Defendant and My Sentence
4. Violation of the Eighth Amendment

An evidentiary hearing into the matter was convened on August 5, 2008, before the Honorable J. Michelle Childs. The Applicant was present with counsel, Russell O. Brown, Esquire. By order dated September 28, 2008, and filed October 6, 2008, Judge Childs denied and dismissed the application with prejudice on the merits. No appeal was filed.

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

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL (PCRS)  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_

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

- (a) AT THE MY "PCR" HEARING HE DENIED ME A TIMELY APPEAL.  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_

#### Findings of Fact and Conclusions of Law

In the Applicant's current PCR application, he argues that prior PCR Counsel, Russell Brown, failed to file a timely notice of appeal from Judge Childs' October 6, 2008, order denying Applicant's 2007 post-conviction relief action. It appears both parties consent to this Court granting Applicant a belated appeal of the previous PCR as Applicant's former PCR counsel has conceded that he did in fact overlook a timely letter received from Applicant requesting counsel appeal the PCR court's decision. Attached and incorporated herein is a copy of Mr. Brown's letter notifying Applicant the PCR court's entry of its order, and a copy of Applicant's subsequent letter requesting an appeal taken from counsel's file in the matter. Based on a review of the file and the above-mentioned letters, this Court agrees with Applicant's contention that he was denied the right to appeal despite making a timely, written request for former PCR counsel to do so. The denial of this right can be remedied by a petition for belated review being filed by Applicant's current PCR attorney pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) with regard to C.A. No. 2007-CP-40-03792.

This Court hereby summarily dismisses with prejudice any other allegations set forth in the current action.

**IT IS THEREFORE ORDERED:**

1. The Application for Post-Conviction Relief is **DENIED AND DISMISSED WITH PREJUDICE** on all allegations **EXCEPT** for Applicant's request for a belated appeal of his 2007 PCR application. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate appellate review of the Applicant's first post-conviction relief action (2007-CP-40-03792). Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243, SCACR, for the appropriate procedure for a belated appeal.
2. The Applicant is remanded to the custody of the Respondent.


AND IT IS SO ORDERED this 15 day of August, 2012.




\_\_\_\_\_  
R. KNOX MCMAHON  
Presiding Judge  
Fifth Judicial Circuit

Columbia, South Carolina

I CONSENT:

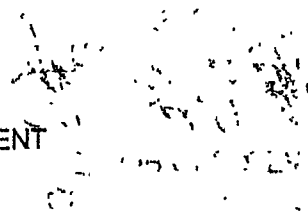
  
 BENJAMIN E. GRIMSELY  
 Attorney for Applicant  
 Grimsley Law Firm  
 1703 Laurel Street  
 Columbia, South Carolina 29201  
 (803) 233-1177

I CONSENT:

  
 ROBERT D. CORNEY  
 Attorney for State of South Carolina  
 Attorney General's Office  
 P.O. Box 11549  
 Columbia, South Carolina 29211  
 (803) 734-5178

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

INDICTMENT



At a Court of General Sessions, convened on June 21, 2006, the Grand Jurors of Richland County present upon their oath:

**KIDNAPPING**

That Roddregus Wells did in Richland County on or about December 23, 2005, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Alberta Powell, by any means whatsoever without authority of law. All in violation of § 16-3-910, 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.

Warren B. Giese  
Warren B. Giese, SOLICITOR

WITNESSES

*KW*  
⑤ Kevin Isenhoward - RCSD

ARREST WARRANT NUMBER

1915873

ACTION OF GRAND JURY

**TRUE BILL**

*[Signature]*  
Foreperson of Grand Jury

JUN 21 2006

Date

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS40-2257

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2006

91

THE STATE

vs.

Roddrigus Wells

Indictment for

KIDNAPPING

SC Code: 16-3-910

CDR Code:0095

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 of to

Defendant

Witness:

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

CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
*Roddrigus Wells*  
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 June 21, 2006, the Grand Jurors of Richland County present upon their oath:

**ASSAULT AND BATTERY WITH INTENT TO KILL**

That Roddregus Wells did in Richland County on or about December 23, 2005, with malice aforethought commit an assault and battery upon one Allen McClain with intent to kill the said victim. All in violation of §16-03-620 of the Code of Laws of South Carolina, (1976, as amended).

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

  
 Warren B. Giese, SOLICITOR

WITNESSES

*[Signature]*  
Kevin Isenhoward

ARREST WARRANT NUMBER

1915871

ACTION OF GRAND JURY

**TRUE BILL**

*[Signature]*  
Foreperson of Grand Jury JUN 21 2006  
Date:

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2006-GS40-2258

The State of South Carolina  
County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2006

91

THE STATE  
vs.

Rodddregus Wells

Indictment for  
ASSAULT AND BATTERY  
WITH INTENT TO KILL

SC Code: 16-3-620  
CDR Code: 0014  
Class FEL-C(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 of to

Defendant

Witness:

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

NOTIFIED TRUE COPY  
ORIGINAL FILED  
*[Signature]*  
RICHLAND COUNTY  
SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

INDICTMENT

*[Handwritten signatures and stamps]*

At a Court of General Sessions, convened on June 21, 2006, the Grand Jurors of Richland County present upon their oath:

**BURGLARY/(AFTER 6/20/85) - 1ST DEG**

That Roddregus Wells did in Richland County on or about December 23, 2005, willfully and unlawfully enter the dwelling of Allen McClain, without consent and with the intent to commit a crime therein and the defendant entered during the hours of darkness and/or was armed with a deadly weapon while therein and/or caused physical injury to the victim, Allen McClain and/or used or threatened to use a dangerous instrument, all in violation of Code Section §16-11-311, 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.

*Warren B. Glese*  
Warren B. Glese, SOLICITOR

WITNESSES

(S) Kevin Isenhoward

ARREST WARRANT NUMBER

1915870

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury  
Date:

JUN 21 2006

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2006-GS40-2259

The State of South Carolina  
County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2006

91

THE STATE  
vs.

Rodregus Wells

Indictment for  
BURGLARY(AFTER 6/20/85)  
1<sup>ST</sup> DEGREE

SC Code: 16-11-311  
CDR Code: 079  
Class FEL-EXM(V)

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

Defendant

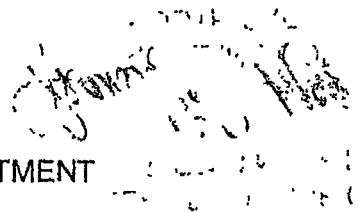
I hereby appear in my own proper person and plead guilty to the within indictment of

Defendant

Witness:

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

CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
JUNE 21 2006  
RICHLAND COUNTY  
SOUTH CAROLINA



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

INDICTMENT

At a Court of General Sessions, convened on June 21, 2006, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Roddregus Wells did in Richland County on or about December 23, 2006, commit robbery by feloniously taking from the person or presence of Allen McClain by means of force or intimidation goods or monies of Allen McClain, 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  
WARREN B. GIESE, SOLICITOR

WITNESSES

(S) K. Isenhoward - RSCD

ARREST WARRANT NUMBER

915872

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury JUN 21 2006  
Date:

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2006-GS40-2260

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2006

91

THE STATE

vs.

Rodregus Wells

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

Defendant

Witness:

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

CERTIFIED TRUE COPY  
ORIGINAL FILED  
SEARCHED  
SERIALIZED  
JUN 21 2006  
C.C.C.P. & G.S.  
RICHLAND COUNTY

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )

INDICTMENT

At a Court of General Sessions, convened on June 21, 2006, the Grand Jurors of Richland County present upon their oath:

**KIDNAPPING**

That Roddregus Wells did in Richland County on or about December 23, 2005, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Allen McClain, by any means whatsoever without authority of law. All in violation of § 16-3-910, 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.

*Warren B. Giese*  
 Warren B. Giese, SOLICITOR

WITNESSES

*(S)* K. Isenhoward - RCSD

ARREST WARRANT NUMBER

1915869

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury *Jai Phillips*  
Date: JUN 21 2006

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2006-GS40-2261

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2006

91

THE STATE  
vs.

Roddrigues Wells

Indictment for  
KIDNAPPING

SC Code: 16-3-910  
CDR Code:0095  
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

Defendant

Witness:

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

CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
*Roddrigues Wells*  
RICHLAND COUNTY  
SOUTH CAROLINA