

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

RECEIVED

MAR 27 2014

S.C. Supreme Court

ANTONIO HAIR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001734

APPENDIX

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1 PLEA: ANTONIO HAIR

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NO EXHIBITS WERE MARKED TO THIS PROCEEDING

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1 THE COURT: Okay.

2 MR. SORENSON: State calls Antonio Hair.

3 Please the Court, Your Honor?

4 THE COURT: Okay.

5 MR. SORENSON: Before you is Antonio Hair. He is
6 pleading guilty on two true billed indictments,
7 2010-GS-38-708 and 709, charging him with one count of
8 kidnaping, one count of armed robbery. We have agreed to a
9 negotiated 15 years sentence.

10 THE COURT: All right. You're Antonio D. Hair?

11 MR. HAIR: Yes, sir.

12 THE COURT: All right. Mr. Hair, you're here
13 today indicted on two charges. 2010-GS-38-0709 for armed
14 robbery. You can get 10 to 30 years on that. Do you want to
15 plead guilty to that?

16 MR. HAIR: Yes, sir.

17 THE COURT: And then indictment 2010-GS-38-0708 is
18 for kidnaping. That carries zero to 30 years. Do you want
19 to plead guilty to that?

20 MR. HAIR: Yes, sir.

21 THE COURT: All right. Let me explain some rights
22 that you have that you waive when you plead guilty. They
23 include the right to remain silent, the right to a jury
24 trial. If you want a jury trial stop me at any time in this
25 process and we will raise that for you. State then has to

1 present enough evidence to convince 12 jurors that you are
2 guilty beyond a reasonable doubt. All 12 would have to
3 agree that you're guilty in order to convict you and if
4 convicted, you have the right to an appeal. You can
5 challenge the amount of the -- you can challenge the
6 admissibility of the state's evidence, put up evidence of
7 your own. You can testify if you want and if you don't want
8 to testify the judge will tell the jury they're not to hold
9 that against you while they're deliberating. Do you
10 understand all of those rights?

11 MR. HAIR: Yes, sir.

12 THE COURT: Do you still wish to plead guilty?

13 MR. HAIR: Yes, sir.

14 THE COURT: And are you pleading guilty to each of
15 these charges because you're guilty of each of these
16 charges?

17 MR. HAIR: Actually, yes and no, but I'm going to

18 plead. THE COURT: Yes and no? Well, what is the no part
19 about?

20 MR. HAIR: (No response.)

21 THE COURT: I mean, let's -- this one here,
22 kidnaping. It says on or about October 31, 2009, you
23 unlawfully did seize, confine, inveigle, decoy, kidnap,
24 abduct, and carry away the victim Cory Glover without law or
25 authority of law. Did you do that?

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1 MR. HAIR: Yes, sir.

2 THE COURT: Okay. And indictment 2010-GS-38-0709,
3 armed robbery says on or about October 31, 2009, you did by
4 use of force, threats or intimidation and while armed with a
5 deadly weapon or while alleging either by words or action
6 that you were armed while using a representation of a deadly
7 weapon or any object which a person present during the
8 commission of a robbery reasonably believed to be a deadly
9 weapon, did take and carry away the goods and or monies from
10 the person or presence of the victim, Cory Glover with the
11 intent to permanently deprive the victim of the alleged
12 monies. Your weapon was allegedly described as a rifle.
13 Did you do that?

14 MR. HAIR: Well, my intentions was to take some
15 things from Cory Glover, but --

16 THE COURT: Well, okay. Did you take --

17 MR. HAIR: -- but one of my sister -- well, one of
18 the co-defendants pulled out a gun, which is a gun -- I
19 thought the gun was still in the car, but the gun was -- and
20 I'm saying one thing led to another. That's my being -- you
21 know, armed robbery.

22 THE COURT: Okay.

23 MR. HAIR: I mean, my intentions was just taking
24 some merchandise, but unfortunately it ain't worked that
25 way, so I'm here pleading to armed robbery and kidnaping.

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1 THE COURT: All right.

2 MR. SORENSON: The co-defendant, it was a
3 co-defendant that was armed. He was not -- never been an
4 allegation that he actually had the weapon. It was the
5 co-defendant that had an assault rifle.

6 THE COURT: Did the lawyers explain to you what the
7 hand of one is the hand of all?

8 MR. HAIR: Yes, sir.

9 THE COURT: All right. So you were involved in a
10 robbery. Turns out somebody else puts in a gun. Under the
11 law you're just as guilty as if you had the gun in your
12 hand. Do you understand that?

13 MR. HAIR: Yes, sir.

14 THE COURT: Might not like it, but that's what the
15 law is. That's the problem with getting involved with
16 something -- unless you go by yourself, somebody else comes
17 along and does something even dumber than what you're doing
18 you get responsible for it. A lot of people are up the road
19 for murder, too.

20 All right. So you want to plead guilty to armed robbery
21 then?

22 MR. HAIR: Yes, sir.

23 THE COURT: Okay. Are you under the influence of
24 any drugs or alcohol today?

25 MR. HAIR: No, sir.

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1 THE COURT: Do you have any mental, physical or
2 emotional conditions that would keep you from understanding
3 what you're doing today?

4 MR. HAIR: No, sir.

5 THE COURT: Do you need more time with your
6 lawyer?

7 MR. HAIR: No, sir.

8 THE COURT: You've discussed this case with them?

9 MR. HAIR: Yes, sir.

10 THE COURT: And you talked about what evidence the
11 state has against you?

12 MR. HAIR: Yes, sir.

13 THE COURT: And he's told you what the law is for
14 armed robbery?

15 MR. HAIR: Yes, sir.

16 THE COURT: And he's told you what the law is for
17 kidnaping?

18 MR. HAIR:

19 THE COURT: Based on those discussions you've
20 decided you want to waive all your rights that I told you
21 about earlier and plead guilty to both these charges?

22 MR. HAIR: Yes, sir.

23 THE COURT: This is your decision and your
24 decision alone?

25 MR. HAIR: Yes, sir.

1 THE COURT: All right. Are you satisfied with
2 your lawyer's representation?

3 MR. HAIR: Yes, sir.

4 THE COURT: Now, you've worked out a negotiated
5 plea. If I accept it your sentence will be 15 years; do you
6 understand that?

7 MR. HAIR: Yes, sir.

8 THE COURT: Now, other than that negotiated
9 sentence, has anyone promised you anything or threatened you
10 to get you to plead guilty?

11 MR. HAIR: No, sir.

12 THE COURT: Now, has your lawyer talked to you
13 about what strike offenses are?

14 MR. HAIR: Yes, sir.

15 THE COURT: Okay. Let's go over that and make
16 sure you understand it.

17 In South Carolina we have two types of strike offenses.
18 If you're familiar with baseball you know about three
19 strikes and you're out. Well, we have two strike offenses,
20 and three strike offenses. Two strike offenses are called
21 most serious offenses. If you get two of those you go to
22 jail for the rest of your life. If you get two of those
23 there's no possibility of ever getting out of prison. Three
24 strike offenses are called serious offenses. If you get
25 three of those you go to jail for the rest of your life with

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1 no possibility of parole.

2 These that you're pleading to today are most serious
3 offenses, or two strike offenses. So technically you would
4 have two, but the law says that if you commit an offense at
5 the same time, one of these at the same time as the other,
6 they are treated as one. So after today you've got one
7 strike against you. If you ever get convicted of another
8 strike offense during the rest of your life the sentence of
9 the court will be life without possibility of parole. Do
10 you understand that?

11 MR. HAIR: Yes, sir.

12 THE COURT: And you still want to plead guilty?

13 MR. HAIR: Yes, sir.

14 THE COURT: And your lawyer's told you that these
15 are no parole offenses?

16 MR. HAIR: Yes, sir.

17 THE COURT: You've got to do 85 percent of these
18 15 years. Do you understand that?

19 MR. HAIR: Yes, sir.

20 THE COURT: Okay. How old are you?

21 MR. HAIR: Twenty-nine.

22 THE COURT: How far did you get in school?

23 MR. HAIR: Tenth. Tenth grade.

24 THE COURT: All right. Did you have a job before
25 you got arrested?

1 MR. HAIR: Yes, sir.

2 THE COURT: Doing what?

3 MR. HAIR: Well, I was on a press machine and
4 driving a fork lift.

5 THE COURT: Okay. Are you married?

6 MR. HAIR: No, sir.

7 THE COURT: Got children?

8 MR. HAIR: One.

9 THE COURT: And how old is your child?

10 MR. HAIR: Six months.

11 THE COURT: All right. Well, Mr. Mellard, does he
12 understand what he's doing waiving his right to a jury trial
13 and pleading guilty?

14 MR. MELLARD: He does, Your Honor.

15 THE COURT: You agree with his decision?

16 MR. MELLARD: Yes, sir.

17 THE COURT: I find that his plea is freely,
18 voluntarily, and intelligently made.

19 What would the state like to tell me?

20 MR. SORENSON: May it please the Court, Your
21 Honor. This occurred on the evening of October 31, 2009,
22 about 9:15 to 9:30 or so that evening on Old Edisto Drive, a
23 car wash -- a kind of self-serve car wash. The victim in
24 this case, Mr. Glover is a 24-year-old young man was there
25 washing his 1984 Oldsmobile Cutlass at the car wash. He was

1 approached. The vehicle pulled up. Two individuals
2 approached him. One of them had an AK-47 assault rifle.
3 They ultimately forcing Mr. Glover into his vehicle. The
4 co-defendant got in the backseat with him with the assault
5 rifle while this defendant got in and drove his vehicle. A
6 third co-defendant was driving the other vehicle they
7 arrived in. They had initially gone to a gas station. We
8 got the video from the gas station showing the third
9 co-defendant pumping gas into his vehicle and actually going
10 into the gas station. While there an acquaintance of the
11 victim saw his vehicle, actually saw the victim in the back
12 seat and thought it kind of odd that he was sitting in the
13 back seat and he wouldn't acknowledge him. They ultimately
14 ended up leaving the gas station, driving to basically the
15 end of a road, where they forced Mr. Glover out of the
16 vehicle while holding the gun pointed at him. At that time
17 they also took his cell phone and also took his speakers out
18 of his vehicle. They got back into the vehicle they came in
19 and took off. Mr. Glover was ultimately able to get a hold
20 of law enforcement, gave them a description of the
21 individuals and also the vehicle that they were in. That
22 vehicle was stopped later that night with an individual
23 named Michael Butler in it. Mr. Butler was picked out of a
24 line-up by the victim as being kind of the third
25 co-defendant. He gave a statement that ultimately lead to

1 this defendant's arrest. He was also identified in the
2 line-up by Mr. Glover. Mr. Hair then gave a statement
3 essentially admitting to his involvement in this, and
4 provided information that lead to the third co-defendant who
5 had the rifle, Mr. Spigner being arrested and also being
6 identified in the line-up by the victim. Mr. Spigner pled
7 guilty a month or so ago. He got a 15 year sentence. He
8 essentially had no prior record.

9 Again, I've met with Mr. Glover multiple times. He was
10 up here yesterday. He was unable to be here today, but
11 knows the plea is going on. He is in agreement with the 15
12 year sentence. He basically says that Mr. Hair was the one
13 that was doing most of the talking, appeared to be kind of
14 the ring-leader of the group. He also is the one who has a
15 pretty significant prior record dating back to 1998. He's
16 had a conviction for burglary second, grand larceny, and
17 malicious injury. 2002 for burglary third, grand larceny,
18 resisting arrest, failure to stop for blue light, malicious
19 injury and a weapon -- unlawful carrying of a weapon
20 conviction. 2006, he's got a PWID cocaine conviction.
21 State of Georgia in '06, he's got a receiving stolen goods,
22 possession of a fire arm during the commission of a felony.
23 Possession of stolen property. In 2008, he's got a burglary
24 second conviction from back here in South Carolina. Looks
25 like he had a revocation in Georgia, also, in 2009. So due

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1 to his involvement in all this and his prior record is the
2 reason why we've negotiated the 15 year sentence. That
3 would be the same sentence for the co-defendants.

4 THE COURT: Okay. What would you like to say?

5 MR. MELLARD: It's negotiated, Your Honor. Our
6 one request is that you allow him to stay in the county jail
7 until June 28 so he can see his child before he does his
8 time, Your Honor.

9 THE COURT: Anything else you want to tell me?

10 MR. MELLARD: No, sir.

11 THE COURT: Do you want to say anything, Mr. Hair?

12 MR. HAIR: No, sir.

13 MR. SORENSON: One other thing, Your Honor, I'd
14 just ask you to note on the sentencing sheet. The kidnaping
15 offense would not be a -- would not be a second offense. So
16 we would not be asking for him to be -- otherwise they're
17 going to put him on the sex offender registry when he gets
18 out of the Department of Corrections, if that's not noted on
19 there.

20 THE COURT: Okay. All right. Sentence of the
21 Court is 15 years on each of the charges. They will run
22 concurrently, and you'll get credit for any time you've
23 already served. I'm putting on here that they're not to
24 transport you to SCDC until after June 28. And you're not
25 required to register as a sex offender on the kidnaping

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charge.

Good luck to you.

MR. MELLARD: Thank Your Honor.

MR. SORENSON: Thank Your Honor:

(This proceeding was concluded.)

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CERTIFICATE

1
2 I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT
3 REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF
7 THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF
8 GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON
9 THE 16H DAY OF JUNE, 2010.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
11 NOR INTEREST IN ANY PARTY HERETO.

12
13
14
15 _____
16 HILDA M. JORDAN, CVR

17
18 COLUMBIA, SOUTH CAROLINA

19 AUGUST 18, 2010
20
21
22
23
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FORM 5

2011-CP-38-00059

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Orangeburg)
)
 Full name and prison number (if any) of Applicant.)
 Mr. Antonio D Hair #248402)
 v.)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR POST-CONVICTION RELIEF

2011 JAN 11 11:36
 FILED IN RECORDED
 CLERK OF COURT
 ORANGEBURG, SC

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached 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 the applicant was convicted.

1. Place of detention LIEBEL CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence COURTHOUSE OFFICE, 190 GIBSON ST
P.O. Box 1112 Orangeburg, S.C. 29116
3. Name(s) of co-defendant(s) (if any) Michael J Butler SR / Patrick Spiguel
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) AR M-212848/AR. 2010-65-38-0708
 - (b) Kidnapping - M-212845
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) DATE OF SENTENCE 6-16-10 (15 YEARS.)
 - (b) _____

DRU

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty YES
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
Have not
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (c) the date of each such result:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. N/A
 - iii. N/A
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____ Plea of guilty
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: INEFFECTIVE ASSISTANCE OF COUNSEL

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 CLERK OF COURT
 ORANGEBURG, SC

- (a) LACK OF EVIDENCE
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL
- (c) _____

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

- (a) NO PHYSICAL EVIDENCE TO PLACE DEFENDANT AT CRIME SCENE.
- (b) COUNSEL FAILED TO PRESENT EVIDENCE IN DEFENDANT CASE
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? None
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? None
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? None
- (d) any other petitions, motions or applications in this or any other Court? None

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

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

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iv. N/A
(d) the date of each such disposition:

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

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

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

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

None set

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

(a) which grounds have been presented:

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

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

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

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

- (a) N/A
- (b) N/A
- (c) N/A

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

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 CLERK OF COURT
 ORANGEBURG, SC
 2011 JAN 14 A 11:36

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

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

- (a) the name and address of each attorney who represented you:
 - i. Douglas Mclard. 190 Gibson St Rm 110
 - ii. P.O. Box 1112 Orangeburg S.C. 29116-1112
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. arraignment and plea
 - ii. sentencing
 - iii. _____

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

To have charges dropped and sentence vacated

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

I am not

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 CLERK OF COURT
 ORANGEBURG, SC

STATE OF SOUTH CAROLINA)
)
County of Orangeburg)

VERIFICATION

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

Mr. Antonio D Blair #248402

SWORN to and subscribed before me this 12
day of January, 2011.

Lucheen Bayard (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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WINIFEA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

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

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

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

Mr. Antonio D Hair #248402
Applicant

SWORN or affirmed to and subscribed before me this
12 day of January, 2011.

Ludrean Bryant
Notary Public

My Commission Expires: May 26, 2011

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG)	
)	
)	2011-CP-38-0059
)	
Antonio Hair, #248402,)	
)	
Applicant,)	
)	
v.)	RETURN
)	(Appointment of Counsel Requested)
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 14, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted for Kidnapping (2010-GS-38-0708) and Armed Robbery (2010-GS-38-0709). Applicant was represented by Doug Mellard, Esquire. On June 16, 2010, the Applicant pled guilty before the Honorable Roger Young. Applicant was sentenced to the negotiated term of fifteen (15) years for each count, sentences to be served concurrently.

A notice of appeal was filed. The appeal was dismissed by written order of the South Carolina Court of Appeals dated August 13, 2010, finding the issue of whether his plea was invalid was not raised to or ruled upon by the trial judge. The Remittitur was sent on August 31, 2010.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the relevant appellate documents, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Lack of evidence."
 - a. "No physical evidence to place defendant at crime scene."
2. Ineffective assistance of counsel.
 - a. "Counsel failed to present evidence in defendant case."

Applicant has failed to set forth with specificity the grounds upon which the application is based and facts in support thereof. S.C. Code §17-27-50. Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

[Emphasis supplied.] S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Sufficiency of evidence may not be challenged through collateral review. Therefore, the Court should summarily dismiss this application for post-conviction relief.

IV.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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).

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

May 3, 2011.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 Antonio Hair, 248402)
)
 Applicant)
)
)
 State of South Carolina)
)
 Respondent,)
)

IN THE COMMON PLEAS COURT

 DOCKET NO.: 2011-CP-38-0059

 AMENDMENT TO
 POST CONVICTION RELIEF
 APPLICATION

The Applicant through undersigned Counsel wishes to Amend his Application for Post Conviction Relief filed on January 14, 2011 as follows:

INEFFECTIVE ASSISTANCE OF COUNSEL

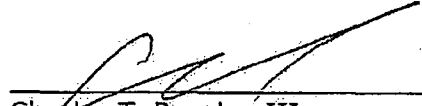
Applicant feels that his case should be overturned as trial counsel did not review his case thoroughly.

Applicant was placed in a "hand of one, hand of all" case with reference to the strong arm robbery and Judge stated he was guilty by association. Applicant feels he was treated unfairly.

Applicant also informed counsel that he wanted to go to trial, however counsel was only concerned with a plea. Counsel took it upon himself to have other attorneys talk to Applicant as well as contact his Mother in order to persuade him into taking a guilty plea

FILED FOR RECORD
 WINDYFA B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC
 2013 MAY 13 PM 12:47

RESPECTFULLY SUBMITTED ON BEHALF OF
 APPLICANT, Antonio Hair



Charles T. Brooks, III
 Attorney for Applicant
 309 Broad Street
 Post office Box 3512
 Sumter, South Carolina, 29150
 (803) 418-5708

ATTEST: TRUE COPY
 B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

May 9, 2013

1 STATE OF SOUTH CAROLINA

2 COUNTY OF ORANGEBURG

CIRCUIT COURT
2011-CP-38-00059

3

4 ANTONIO HAIR,
5 Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
8 Respondent.

8

9 Post Conviction Relief Hearing

10 Heard on Tuesday, May 21, 2013

11 Orangeburg, South Carolina

12

BEFORE:

13

THE HONORABLE EDGAR W. DICKSON

14

15

16 APPEARANCES:

17 Counsel on Behalf of the Applicant:
18 Charles T. Brooks, III, Esq.

18

19 Counsel on Behalf of the Respondent, State of SC:
20 Megan E. Harrigan, Esq.

20

21

22

Cheri L. Young, RPR
Circuit Court Reporter
P O Box 5232
Aiken, SC 29804-5232

23

24

25

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1 ON TUESDAY, MAY 21, 2013 AT 11:56 A.M.:

2 MS. HARRIGAN: May it please the Court.

3 THE COURT: Yes, ma'am.

4 MS. HARRIGAN: Your Honor, the next matter is Antonio
5 Hair versus the State of South Carolina, Docket Number
6 2011-CP-38-00059.

7 The Applicant was indicted by the Orangeburg County
8 Grand Jury during the May, 2010 term for kidnapping and
9 armed robbery. The Applicant was represented by Doug
10 Mellard.

11 On June 16th, 2010 the Applicant pled guilty as
12 indicted before the Honorable Roger Young. Judge Young
13 sentenced Applicant to 15 years imprisonment on each
14 charge to be served concurrently pursuant to a negotiated
15 sentence between Applicant and the State.

16 A direct appeal was filed but was dismissed by the
17 court of appeals on August 13th, 2010. The remittitur was
18 sent on August 31st, 2010.

19 He thereafter filed a timely post conviction relief
20 application on January 14th, 2011. The State made its
21 return on May 3rd, 2011. Applicant is represented today
22 by Charles T. Brooks the Third.

23 And the allegations the Applicant has set forth in his
24 application are: A lack of evidence; no physical evidence
25 put forth to put Defendant at the scene of the crime; and

1 ineffective assistance of counsel for failure to present
2 evidence; as well as in his amendment that Applicant feels
3 that his case should have been overturned as trial counsel
4 did not review his case thoroughly; Applicant was placed
5 in a hand of one, hand of all case in reference to strong
6 arm robbery; the judge said he was guilty by association;
7 Applicant feels he was treated unfairly; Applicant was
8 also informed by counsel (sic) that he wanted to go to
9 trial, however counsel was only concerned with taking a
10 guilty plea.

11 And these are set forth in an amendment that
12 Mr. Brooks filed last week which is in Your Honor's
13 packet.

14 At this time the State would move to dismiss the first
15 ground as to a lack of evidence as this is a direct appeal
16 issue.

17 THE COURT: All right. Mr. Brooks?

18 MR. BROOKS: Ready to proceed, Judge?

19 THE COURT: Sir?

20 MR. BROOKS: Ready to proceed?

21 THE COURT: Yes, sir. I'm glad you're making two days
22 in Orangeburg.

23 MR. BROOKS: Judge, I'll spend a lot more time with
24 you tomorrow.

25 THE COURT: Sir?

ANTONIO HAIR - DIRECT

1 MR. BROOKS: I'll spend a lot more time with you
2 tomorrow.

3 THE COURT: That's the way it looks from my schedule.

4 MR. BROOKS: At this time we would call Mr. Hair to
5 the stand.

6 THE COURT: Mr. Hair.

7 ANTONIO HAIR, having been duly sworn, was examined and
8 testified as follows:

9 THE COURT: Have a seat and get comfortable, sir. Now,
10 Mr. Hair, I know you can talk loud, more loudly than you
11 have so far. Okay?

12 THE APPLICANT: Yes, sir.

13 THE COURT: A little bit louder.

14 THE APPLICANT: Yes, sir.

15 THE COURT: Very good. Very good. Thank you, sir.

16 MR. BROOKS: Ready, Judge?

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION

19 BY MR. BROOKS:

20 Q. Mr. Hair, now the reason the Judge was asking you that
21 is this lady sitting right here, she's got to take down
22 this stuff. And she can't take it down if you say huh-uh
23 and uh-huh. She got to hear yes and no, and you got to
24 talk like we talked back there.

25 A. Yes, sir.

ANTONIO HAIR - DIRECT

1 Q. Okay. All right. Now you want your PCR; is that
2 right?

3 A. Yes, sir.

4 Q. Now, I do have to put this on the record. You do
5 understand that the only remedy that Judge Dickson can
6 give you is to give you a new trial?

7 A. Yes, sir.

8 Q. To start over?

9 A. Yes, sir.

10 Q. And you understand that you can expose yourself to
11 about 45 years?

12 A. Yes, sir.

13 Q. Okay. And you told me, knowing that, you still want
14 to go forward in your PCR; is that correct?

15 A. Yes, sir.

16 Q. Okay. Now, you had Mr. Mellard representing you; is
17 that right?

18 A. Yes, sir.

19 Q. And he was court appointed; is that right?

20 A. Yes, sir.

21 Q. And you ended up pleading guilty?

22 A. Yes, sir.

23 Q. Why did you plead guilty?

24 A. Because, sir, at the time I wanted to go to trial, he
25 didn't want to go to trial because he felt like I didn't

ANTONIO HAIR - DIRECT

1 have issues and a strong case to go to trial.

2 So, he took me back to the jail and told me that, you
3 know what I'm saying, we would go to court on the 3rd and,
4 you know what I'm saying, he called me back over here and
5 contact my mother. So, you know what I'm saying, my
6 mother felt like the best thing for me to do was go to
7 trial, you know what I'm saying.

8 I didn't want to plead guilty because I felt like the
9 armed robbery/kidnapping charge really wasn't on my
10 behalf. And my intentions and what I was doing in the
11 case was really, like a strong arm robbery, you know what
12 I'm saying, basically taking stuff from somebody, you know
13 what I'm saying.

14 So whereas I'm in a case where one guy pulls out a gun
15 or whatever and the situation went to something different.

16 Q. Let me stop you right there. Why do you feel that the
17 armed robbery and kidnapping should not apply to you?

18 Explain that.

19 A. Because, I mean, what they said it was the hands of
20 one, hands of all case. And whereas one of the guys who
21 was the driver of the vehicle received a strong arm
22 robbery case because they said that he didn't get out of
23 the car which wasn't true, because he helped me took the
24 guy's things.

25 So, I felt that if I ain't have a gun, you know what

ANTONIO HAIR - DIRECT

1 I'm saying, my intentions wasn't armed robbery but I was
2 facing an armed robbery situation due to the fact that one
3 of my co-defendants had a weapon.

4 Q. Okay. And just for the Court's information, this was
5 a three-defendant case; you, Mr. Butler, and Mr. Spigner?

6 A. Yes, sir.

7 Q. Mr. Butler got five years?

8 A. Yes, sir.

9 Q. On a strong arm robbery?

10 A. Yes, sir.

11 Q. But all of y'all was supposed to be in on this; is
12 that what you're saying?

13 A. Yes, sir.

14 Q. So one of things you're upset about is how is he able
15 to get strong arm and you ended up --

16 A. With armed robbery and kidnapping.

17 Q. Right. You didn't have the gun?

18 A. No, sir.

19 Q. Okay. Go ahead.

20 A. I was, you know what I'm saying, the witness, the
21 witness, Mr. Everson Simmons, stated that, you know what
22 I'm saying, I did try to diffuse the situation and not let
23 things go further than where it went, you know what I'm
24 saying.

25 Q. Now, Mr. Who?

ANTONIO HAIR - DIRECT

1 A. Everson Simmons. That was a witness.

2 Q. That was a witness?

3 A. That was a witness in the case. He gave law
4 enforcement a verbal statement stating that, you know what
5 I'm saying, I ain't have a gun and I was trying to stop
6 the defendant, you know what I'm saying, the person who
7 had the gun.

8 Q. Okay.

9 A. But, but, you know what I'm saying, for some odd
10 reason I still couldn't get my charge down to what I
11 actually did which was strong arm robbery. And so I ended
12 up pleading guilty to armed robbery and kidnapping.

13 Q. And did you relay all of this information to your
14 lawyer?

15 A. Yes, sir.

16 Q. Okay. And was it your intent to go to trial?

17 A. Yes, sir. I signed some type of paper to go to
18 trial. But he took me, I went back to the jail and he
19 brought me back after he contacted my mother and told me
20 that my mother wanted to talk to me before I proceeded
21 with a trial and catch like 30 years or whatever.

22 I told him that the time didn't really matter to me.
23 My issue was proving my point on innocence of armed
24 robbery and kidnapping.

25 Q. Okay. Now, Antonio, we've been back there, we've been

ANTONIO HAIR - DIRECT

1 talking about this. And, you know, there's a, I want to
2 say, about a 14-page transcript of everything that was
3 said in court with Judge Young.

4 A. Yes, sir.

5 Q. And you and I talked about that. And I even told you
6 what this lady might do --

7 A. Yes, sir.

8 Q. -- with that transcript; didn't I?

9 A. Yes, sir.

10 Q. All right. Now, why did you answer these questions in
11 the manner that you answered them?

12 A. Because for one, you know, I want to go to trial. He
13 don't want me to go to trial so he, you know what I'm
14 saying, he felt like it was best for other attorneys to
15 talk to me about pleading guilty, not going to trial, you
16 know. He had Mr. Chisholm, I think, Ms. Hinds to come
17 communicate with me about, you know what I'm saying, not
18 going to trial, you know what I'm saying.

19 His thing was me getting a lot of time. My thing was
20 not the time. My thing was just proving my innocence of
21 armed robbery and kidnapping. But their thing was getting
22 me to plead guilty because that was the best option. I
23 don't feel that's the best option because strong arm
24 robbery is what I did, you see what I'm saying.

25 I didn't want to be involved with the armed robbery

ANTONIO HAIR - CROSS

1 and the kidnapping but due to the fact that like the Judge
2 Roger Young said, it doesn't matter whether y'all was
3 going to steal or not. If one guy's committed the murder,
4 then you all guilty as charged because our intention was
5 malice from the start.

6 See what I'm saying?

7 So my thing was trying to get a strong arm robbery
8 which is what I confessed to, you know what I'm saying, I
9 gave a written statement confessing to strong arm
10 robbery. That's what I did. I have no problems admitting
11 that. That's what I did.

12 So I felt like I was mistreated in that he didn't
13 investigate it like he should have.

14 Q. Okay. Is there anything else you want to tell the
15 Judge here that we haven't covered about why you should
16 have your case reopened?

17 A. No, sir.

18 Q. You're sure? There's nothing else, we've put it all
19 out there?

20 A. Yes, sir.

21 MR. BROOKS: All right. Answer any questions of the
22 attorney general.

23 MS. HARRIGAN: May it please the Court.

24 THE COURT: Yes, ma'am.

25

ANTONIO HAIR - CROSS

1 CROSS-EXAMINATION

2 BY MS. HARRIGAN:

3 Q. Mr. Hair, how many times did you meet with your
4 attorney before your guilty plea?

5 A. Honestly, I can't really remember.

6 Q. A rough estimate. More than five times?

7 A. No, it wasn't that many. I got locked up December the
8 1st, 2009. I really don't want to give an answer because
9 honestly I can't remember, but it wasn't more than like
10 five times.

11 Q. Do you recall going over your discovery with your
12 attorney?

13 A. Yes, ma'am. In my discovery Mr. Butler wrote a
14 statement in my discovery, you know what I'm saying,
15 stating that --

16 Q. Who is Mr. Butler?

17 A. That's one of the co-defendants. He wrote a statement
18 in my discovery stating certain things, you know.

19 And I told Mr. Mellard that everything he said was a
20 lie, you know. He just pretty much was trying to push
21 things off. I'm the only one with a record, you know what
22 I'm saying. I got two co-defendants that doesn't have a
23 record.

24 Q. And, what is your record?

25 A. Ma'am?

ANTONIO HAIR - CROSS

1 Q. When you said you had a record?

2 A. I mean, I done been incarcerated before. I done been,
3 you know what I'm saying, in trouble before.

4 Q. What is your record?

5 A. I got a burglary charge. I got a gun charge. I got,
6 you know what I'm saying, a drug charge, you know, things
7 like that. So, you know what I'm saying, I'm pretty much
8 the only one with a record so, you know what I'm saying.

9 Mr. Butler pretty much said that, you know, he was
10 coming down Sprinkle Avenue when some guys flagged him
11 down and started to offer him some money for some gas to
12 take him a certain place, you know what I'm saying. We
13 got out. He said that, you know what I'm saying, one, one
14 suspect had a weapon, you know what I'm saying, which
15 was -- to my knowledge I still say that a weapon never was
16 presented, you see what I'm saying, but, you know, that's
17 a whole another issue or whatever.

18 And, you know what I'm saying, he's saying that he
19 didn't know what was going on. He said that he picked me
20 and Mr. Spigner up which in actuality me and him picked
21 Mr. Spigner up. You see what I'm saying?

22 So basically everything he said was a lie. Somehow or
23 another he worked something out. He got his charge down
24 to strong arm robbery because of something about he didn't
25 get out of the car which wasn't true, you see what I'm

ANTONIO HAIR - CROSS

1 saying.

2 Q. Did you discuss with your attorney these possible
3 defenses such as you didn't have a weapon?

4 A. Yes, ma'am.

5 Q. And that no weapon was presented at all?

6 A. Yes, ma'am.

7 Q. What was your attorney's response to these comments?

8 A. Pretty much that, you know, under the hands of one,
9 hands of all, whether I had the weapon or not I was
10 guilty. So, I mean, that's how I've been charged.

11 Q. How many times did he explain that legal concept of
12 the hand of one, hand of all to you?

13 A. He sent me some paper, explained it to me in the back
14 that, you know what I'm saying, it doesn't matter. I was
15 there. The guy had a gun, so I'm just as guilty as him.

16 Q. Judge Young explained the concept of hand of one, hand
17 of all during your guilty plea as well; correct?

18 A. Yes, ma'am.

19 Q. Did you give your attorney any leads or potential
20 witnesses to investigate?

21 A. Yes, ma'am. But it ain't really, ain't really nothing
22 checked out. But he did, him and Mr., I think his last
23 name Mr. Daniels at M&M Private Investigations, they did
24 contact Mr. Simmons and Mr. Simmons recounted what I said
25 to them. That, you know what I'm saying, I did try to

ANTONIO HAIR - CROSS

1 stop the guy with the gun or whatever. I gave the guy
2 back his car keys and things like that. And I didn't want
3 certain things to happen.

4 So he did say that but, you know, ain't nothing ever
5 came out of that either.

6 Q. So your attorney did use a private investigator on
7 this case?

8 A. Yes, ma'am.

9 Q. Did you speak with the private investigator without
10 your attorney there ever?

11 A. No, ma'am. Private investigator did told me that, you
12 know what I'm saying, things had looked kind of different
13 due to the fact that the witness, Mr. Simmons, stated, you
14 know what I'm saying, what I told them that, you know what
15 I'm saying, I wasn't really trying to be involved with the
16 gun situation and things like that, that I did gave the
17 man back his car keys and I was trying to diffuse the
18 situation. He did, you know what I'm saying, report that
19 to the private investigator.

20 Q. Did you want a trial on these charges?

21 A. Yes, ma'am.

22 Q. Did you ever ask your attorney to negotiate plea
23 offers with the State?

24 A. Yes, ma'am.

25 Q. Did he inform you of the various plea offers made by

ANTONIO HAIR - CROSS

1 the solicitor's office?

2 A. The only thing that came at me was 15 years for armed
3 robbery and kidnapping. That was the negotiated plea
4 because that's what the other co-defendant had got and it
5 would be the same as for the co-defendant.

6 Q. So you received a similar sentence as your
7 co-defendants?

8 A. One co-defendant. Mr. Spigner. Mr. Butler got five
9 on a strong arm robbery.

10 Q. You understood this was a negotiated sentence;
11 correct?

12 A. Yes, ma'am.

13 Q. The judge could either accept it or reject it?

14 A. Yes, ma'am.

15 Q. So you knew when you were walking into court that day
16 you'd receive a 15-year active sentence of incarceration?

17 A. Yes, ma'am.

18 Q. Was it your decision to plead guilty?

19 A. I mean after, after everything that transpired I
20 really was just trying to get the situation over with
21 because I ain't really had proper representation, you see
22 what I'm saying.

23 He wasn't going to work with me. He didn't want to go
24 to trial with me so basically, you know, everything just
25 became a headache and, you know what I'm saying, I'm

ANTONIO HAIR - CROSS

1 telling you you're my counsel, I'm telling you I want to
2 go to trial, you get other attorneys to tell me that I
3 shouldn't go to trial. I mean, I ain't had no
4 representation, so.

5 Q. And you stated previously that your attorney,
6 Mr. Mellard, did have a private investigator; correct?

7 A. Yes, ma'am.

8 Q. And he did follow leads but nothing checked out to
9 help, I believe were your exact words; correct?

10 A. Nothing, nothing. The only thing that checked out was
11 the witness, Mr. Simmons.

12 Q. And your attorney advised you that nothing was
13 checking out and the investigator wasn't finding any
14 promising defense for you?

15 A. The investigator last, the investigator last write,
16 little write-up, whatever he did was that, you know what
17 I'm saying, was he, well I was in there whenever they
18 contact the victim -- the witness. So I heard all of that
19 conversation or whatever, and that was it. That was the
20 last write-up on that.

21 Q. And after these discussions with your attorney, it was
22 your decision to enter a guilty plea?

23 A. Yes, ma'am.

24 Q. You wanted to accept this State's negotiated sentence
25 for 15 years?

ANTONIO HAIR - CROSS

1 A. I mean, I didn't want to but if you're not going to
2 represent me, I got to, I just copped out. I just felt
3 like I just come back, you know, and try to fight it later
4 but, no, I didn't want to accept it.

5 Q. Did you accept the 15-year sentence because you didn't
6 want to risk exposure to a greater sentence if convicted
7 at trial?

8 A. I didn't want to risk the fact that, I didn't want to
9 risk being found guilty when I'm not going to be
10 represented, you know. If you're not going to represent
11 me, why should I go to trial with you.

12 So I took the 15 years. Hopefully, you know what I'm
13 saying, maybe get back in court and, you know, try to get
14 something better or whatever.

15 Q. And that's what you're doing here today, just trying
16 to get something better?

17 A. Yes, ma'am.

18 Q. You understand that if Judge Dickson grants your PCR
19 all of your original charges will come back; correct?

20 A. Yes, ma'am.

21 Q. And you'll be facing a more significant sentence
22 length possibly?

23 A. Yes, sir.

24 Q. Correct? More than 15 years?

25 A. Yes, ma'am.

ANTONIO HAIR - CROSS

1 Q. Do you recall you telling Judge Young that you wished
2 to plead guilty during your guilty plea?

3 A. Actually I froze. He asked me do I want to plead
4 guilty to the charges. I told him yes and no. And my
5 reason for telling him yes and no because I was willing to
6 plead to strong arm robbery but not armed robbery and
7 kidnapping.

8 So it went, it further went on and, you know, so he
9 came back and he ran this down, explained to me what the
10 hands of one, the hands of all was and asked me, you know
11 what I'm saying, did I want to, did I still want to plead
12 guilty. So I told him yeah.

13 Q. After he explained the legal concept of hand of one,
14 hand of all; correct?

15 A. Yes, ma'am.

16 Q. Do you recall telling Judge Young that you were indeed
17 guilty?

18 A. Yes, ma'am; of strong arm robbery.

19 Q. But you pled guilty to armed robbery; correct?

20 A. Yes, ma'am, and kidnapping.

21 Q. And you did indeed tell the judge that you were guilty
22 of those crimes during your guilty plea; correct?

23 A. Yes, ma'am.

24 Q. And you were under oath then; correct?

25 A. Yes, ma'am.

ANTONIO HAIR - CROSS

1 Q. So are you indeed guilty of armed robbery and
2 kidnapping?

3 A. No, ma'am.

4 Q. And you were under oath then?

5 A. I'm not getting -- I'm not -- the reason why I'm
6 pleading guilty or I have pled guilty because I wasn't
7 going to get the representation. So my thing was plead
8 guilty, get it out of the way and just try to come back to
9 court and, you know what I'm saying, get some type of
10 justice on my behalf.

11 So that's my reason for pleading guilty.

12 Would I plead guilty -- would I go to trial with
13 Mr. Mellard? No. I wanted to go to trial but he didn't
14 want to go to trial. So would I go to trial if I had the
15 opportunity with a lawyer that's going to represent me?

16 Yes.

17 So being that I wasn't going to get represented, you
18 know what I'm saying, I felt like I should have just, I
19 could have just went to trail and just say, find me guilty
20 if I went with him. You see what I'm saying? So, why go
21 to trial? I might as well just cop out and just do the
22 paperwork and try to come back to court.

23 Q. Do you recall agreeing with the facts presented by the
24 State during your guilty plea?

25 A. What is that?

ANTONIO HAIR - CROSS

1 Q. When the solicitor went over the facts giving rise to
2 your --

3 A. Yes, ma'am.

4 Q. -- indictments. Do you recall agreeing with his
5 recitation of the facts?

6 A. Yes, ma'am.

7 Q. So that is what occurred; correct?

8 A. Yes, ma'am.

9 Q. Do you recall waiving your constitutional rights at
10 your guilty plea?

11 A. Yes, ma'am.

12 Q. Do you recall telling the judge you were satisfied
13 with Mr. Mellard's representation of you?

14 A. Yes, ma'am.

15 Q. And you understood that this was for a negotiated
16 sentence of 15 years?

17 A. Yes, ma'am.

18 Q. And you think you should have been charged with strong
19 arm robbery is your contention here today?

20 A. Yes, ma'am.

21 Q. But you don't dispute that you discussed this with
22 Judge Young on the record; correct?

23 A. No, ma'am.

24 Q. And he explained to you the concept of hand of one,
25 hand of all?

DOUGLAS MELLARD - DIRECT

1 A. Yes, ma'am.

2 Q. And Mr. Mellard had reviewed that with you prior to
3 your guilty plea?

4 A. Yes, ma'am.

5 MS. HARRIGAN: No further questions, Your Honor.

6 THE COURT: Anything on redirect?

7 MR. BROOKS: No, sir, Judge.

8 THE COURT: Thank you, Mr. Hair. You may step down.

9 Appreciate it.

10 MR. BROOKS: We call Mr. Mellard to the stand.

11 THE COURT: Mr. Mellard, please.

12 DOUGLAS MELLARD, having been duly sworn, was examined
13 and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BROOKS:

16 Q. Mr. Mellard, you were court appointed to represent
17 Mr. Hair?

18 A. Yes.

19 Q. Is that through the public defenders office?

20 A. Yes.

21 Q. And, this case ended up being a plea?

22 A. Yes, it did.

23 Q. And do you recall all the circumstances?

24 A. All of them? No, I don't recall all of them, but I
25 recall probably most of them.

DOUGLAS MELLARD - DIRECT

1 Q. Okay. Mr. Hair said he wanted to go to trial?

2 A. That's true.

3 Q. Okay. How did it come about that it didn't go to
4 trial and it turned into a plea?

5 A. Let's see. He filled out a request for trial on the
6 15th of June. I got that right here, if you want to see
7 it.

8 Q. Oh, sure.

9 A. (Document handed to counsel.)

10 Q. This is probably what he was mentioning when he said
11 he signed something?

12 A. Right. That's exactly what he was mentioning.

13 Q. Okay.

14 A. And at that point, as he said, we had discussed his
15 case. We had met with the investigator. We had called up
16 the witnesses, all of that kind of stuff.

17 I don't know whether he was brought to court the next
18 day or we had him brought to court, but the next day he
19 decided he wanted to plead and he signed this guilty plea
20 checklist.

21 This is dated the day after this, the 16th.

22 Q. Okay. And, did you talk to him about a potential
23 trial and what that would mean and who would be
24 testifying?

25 A. We talked about that. They were, there was one

DOUGLAS MELLARD - DIRECT

1 witness he had talked about Mr, I believe -- let me look.
2 His name was Everson Simmons, I think was the fellow's
3 name. We had tried to contact him over the course of
4 June. I think it was June when all of this was done. We
5 did finally get in touch with him. As he said, my
6 investigator and, you know, he -- basically what
7 Mr. Simmons said was that he said, Mon, which I think was
8 his nickname, had told the fellow with the gun to put the
9 gun up.

10 That was the extent of what my notes say.

11 Q. Told the fellow to put gun up?

12 A. Uh-huh.

13 Q. Okay. Did you go to the solicitor with that?

14 A. No, I did not. Simply because if we were going to go
15 to trial -- the solicitor wasn't coming off their offer.
16 I mean, he was 15 or trial. That's what he had said early
17 on.

18 So if he wanted a trial, I guess we would have called
19 him and see how it went.

20 Q. So the solicitor wasn't budging?

21 A. He wasn't budging.

22 Q. How -- do you recall how Mr. Butler was able to get a
23 deal as opposed to Mr. Hair?

24 A. My understanding is that three people were in a car.

25 They drove up to the, I think it was a car wash or

DOUGLAS MELLARD - DIRECT

1 something like that. Two people got out of the car. That
2 would be Mr. Hair and, I think it was Mr. Spigner, I
3 think.

4 Q. He would have been the one with the gun?

5 A. He would have been the one with the gun.

6 Q. Okay.

7 A. They then went over to the victim, got in the victim's
8 car. One was in the back seat with the victim. One was
9 driving. And they drove to one location.

10 So you had two people in one car. Mr. Hair and
11 Mr. Spigner and the victim were in one car. And I think
12 Mr. Butler was in the car that was following them. So I
13 think that's why he ended up getting the reduced charge.

14 Q. And that's what, that's the information of -- that's
15 what the State was relying on?

16 A. Correct.

17 Q. Did Mr. Hair tell you anything different as far as
18 what those State's version of the facts were?

19 A. No. He, Mr. Hair was telling us pretty much what he's
20 told y'all here today. It should be strong arm, not armed
21 robbery.

22 Now, he kind of avoided the kidnapping part which is a
23 potential problem in the case, but his big thing was, you
24 know, it's, it's strong arm not armed robbery.

25 Q. Okay. So, and Mr. Butler who drove the vehicle

DOUGLAS MELLARD - DIRECT

1 following them, he's the one that got strong arm?

2 A. Correct.

3 Q. And, of course, this is what you -- I guess it's hard
4 to get into Mr. Sorenson's head, but I guess what you
5 believe was the rationale behind the solicitor doing that
6 was because Mr. Butler stayed in the car?

7 A. Correct.

8 Q. And drove behind him; is that correct? Is that a good
9 way to assess it?

10 A. Well, like you said, it's hard to get into his head. I
11 think it's -- I don't know. I think you could reach that
12 conclusion. Whether that's what he was thinking, I've
13 never been able to figure him out to tell you the truth.

14 Q. Was Mr. Butler's case resolved before Mr. Hair?

15 A. I don't think so.

16 THE APPLICANT: Last.

17 BY MR. BROOKS:

18 Q. So his case was still pending while Mr. Hair's case
19 was being resolved?

20 A. That's my understanding. I know that the co-defendant
21 Spigner did plead before him. I know that.

22 Q. And he got 15 years?

23 A. He got 15.

24 Q. Okay. And was it your understanding that Mr. Butler
25 would potentially testify against Mr. Hair?

DOUGLAS MELLARD - DIRECT

1 A. I didn't know what Butler was going to do. I think he
2 probably would have. I believe maybe the solicitor
3 mentioned that. I don't -- I can't tell you for sure, but
4 there's always that possibility.

5 Q. Okay. Did you advise Mr. Hair one way or another to
6 take a plea or go to trial?

7 A. What I told him was, he was -- for a while he wanted a
8 trial. I'm like, well. It was, again, it was kidnapping
9 and armed robbery. And, his big thing was, well, it's not
10 armed robbery, it's strong arm.

11 My thing is, well, we're kind of avoiding the
12 kidnapping part. So, I told him all of that stuff and
13 then he said he wanted a trial. So I'm like okay. And
14 got him signed up for trial.

15 Q. Okay. Now wasn't there some interaction where his
16 mother had gotten involved?

17 A. We -- let me see (reviewing records). I want to say
18 -- let me look real quick here. (Pause.)

19 We did call his mom. There was a meeting with
20 Mr. Hair, and Investigator McDaniel and myself. We called
21 his mom, but we were calling his mom to try to find this
22 Everson Simmons fellow. And my notes say that his mom
23 tried to call this Simmons fellow but he wouldn't return
24 her call.

25 So what I have is when we were trying to find that

DOUGLAS MELLARD - CROSS

1 Simmons fellow.

2 Q. Okay. And did you -- I don't know if you answered
3 this question. If you did, please forgive me.

4 Did you advise him to take a plea or advise him --

5 A. I didn't. He -- throughout the process -- on the same
6 day we called his mom, my notes indicate that we discussed
7 him wanting to plead. He said he did want to plead. He
8 just wanted to explore the Simmons option.

9 But then the next week when we brought him back he
10 wanted a trial. So I think he was kind of, some weeks he
11 wanted to plead, some weeks he wanted a trial.

12 My thing is; I'll tell you what I, you know, what we
13 got and you make the call.

14 THE APPLICANT: Can I object to that?

15 THE COURT: That's what your attorney's there for.

16 MR. BROOKS: Beg the Court's indulgence, Your Honor.

17 THE COURT: Okay.

18 MR. BROOKS: (Conferring with Applicant.)

19 THE COURT: Any other questions?

20 MR. BROOKS: No other questions, Judge.

21 THE COURT: Okay. Ms. Harrigan?

22 MS. HARRIGAN: May it please the Court.

23 THE COURT: Yes, ma'am.

24

25

DOUGLAS MELLARD - CROSS

1 CROSS-EXAMINATION

2 BY MS. HARRIGAN:

3 Q. Mr. Mellard, how long have you been practicing law?

4 A. Since '97.

5 Q. And where are you currently employed?

6 A. The Orangeburg Public Defenders Office.

7 Q. How long have you been there?

8 A. Since 2005.

9 Q. You had experience dealing with armed robbery cases
10 before?

11 A. Quite a bit, yeah.

12 Q. This wasn't your first armed robbery or your first
13 kidnapping; was it?

14 A. No.

15 Q. Do you recall when you were appointed?

16 A. I could look in my file, if you want me to. It might
17 be in the file. (Reviewing documents.)18 Looks like the case was assigned to me in December of
19 '09.

20 Q. Do you recall how many times you met with Mr. Hair?

21 A. Let me see. Can I look at my file?

22 Q. Certainly.

23 A. I usually write it down. So, let's see. (Reviewing
24 documents.) One, two, three, four, five, six, seven,
25 eight, nine -- probably about 12 times.

DOUGLAS MELLARD - CROSS

1 Q. Do you recall how long those meetings lasted?

2 A. Some of them might be 10 minutes, some of them maybe
3 if the investigator was there might be 30 minutes to an
4 hour. I don't know.

5 Q. You employed a private investigator in this case?

6 A. We did.

7 Q. Can you -- did he prepare any reports?

8 A. He did. He prepared a couple reports.

9 Q. Could you summarize for the Court his investigation
10 and the reports he prepared?

11 A. He did a report where he tried to contact the victim
12 in the case to see, basically I wanted to see what the
13 victim would say.

14 According to my investigator, the victim, he wanted
15 Mr. Hair to serve time. He was willing to testify against
16 Mr. Hair. And he, this is a quote, he wants justice
17 served. Whatever that means.

18 We also tried to find Mr. Simmons and so the other
19 reports are based on Mr. Simmons. Tried to call him, the
20 investigator tried to call him. We had contacted
21 Mr. Simmons in the present -- this is his report.
22 Basically we had put the phone in the room with Mr. Hair,
23 the investigator called Mr. Simmons. Mr. Simmons then
24 agreed to meet with the investigator at four o'clock on
25 June 11th to give a report.

DOUGLAS MELLARD - CROSS

1 The investigator waited until six o'clock that day
2 and, according to his report, Simmons never showed up.

3 So that's the basic gist of the investigation.

4 Q. Based on your private investigator's reports as well
5 as your own investigation, what viable defenses did you
6 have to set forth at trial?

7 A. Kidnapping I didn't think we had nothing, to tell you
8 the truth.

9 As far as the armed robbery, we could maybe argue
10 strong arm robbery. I don't know how good that would have
11 been, but that would probably have been the gist of it.

12 Q. Did you explain to Mr. Hair that you didn't see a
13 viable defense to kidnapping?

14 A. I think I might have mentioned that to him. His big
15 thing though was always, it was a strong arm not an armed
16 robbery.

17 I think even in his -- when he pled guilty, I think he
18 was, pretty much he pled guilty to kidnapping. It was the
19 issue of the strong arm/armed robbery thing.

20 Q. And that's reflected in that transcript on pages four
21 through six.

22 So he never denied that he was guilty of kidnapping to
23 you?

24 A. He wouldn't say he was guilty of kidnapping. He just
25 focused on the armed robbery and strong arm robbery

DOUGLAS MELLARD - CROSS

1 distinction. He's always said, and I think he even said
2 this to the Court, that he went there to strong arm
3 somebody. He went there to take their stuff.

4 Q. Did you inform him of the legal concept of hand of
5 one, hand of all?

6 A. I did.

7 Q. And did he ever deny that his co-defendant pulled a
8 gun on the victim?

9 A. No. I don't think he denied it. I don't want to
10 say -- because I think I heard him testify earlier about
11 there may not have been a gun, but then he said that some
12 witness said put, he told the guy to put the gun up. So I
13 can't really tell you.

14 Q. Did Mr. Hair seem to understand your conversations and
15 meetings?

16 A. He did.

17 Q. Did he request that you enter into plea negotiations
18 with the State?

19 A. He did once to see if we would get -- I think he --
20 our first couple meetings he wanted to try to get the best
21 deal he could. That's kind of usually everybody wants to
22 see what's the best deal out there.

23 Q. I believe you testified before on direct that the
24 solicitor's office offered 15 years and wouldn't budge
25 from that?

DOUGLAS MELLARD - CROSS

1 A. Correct.

2 Q. Was there ever an offer to strong arm robbery?

3 A. No.

4 Q. Did you communicate these offers to Mr. Hair?

5 A. I did.

6 Q. Did you inform him of the consequences of a guilty
7 plea?

8 A. Yeah, I did. And like I said, I did the plea
9 checklist and, which I do in these kind of cases.

10 MS. HARRIGAN: May I approach, Your Honor?

11 THE COURT: You may.

12 MS. HARRIGAN: Your Honor, would it be possible to get
13 a copy of this?

14 THE COURT: Sure.

15 (State's Exhibit No 1, guilty plea checklist, marked
16 for identification.)

17 MS. HARRIGAN: Your Honor, the State would move this
18 guilty plea checklist in as State's Exhibit One.

19 THE COURT: Any objection?

20 MR. BROOKS: No objection.

21 THE COURT: Okay. All right. State's One.

22 (State's Exhibit No. 1, guilty plea checklist, was
23 received into evidence.)

24 BY MS. HARRIGAN:

25 Q. And, Mr. Mellard, in State's Exhibit One, this guilty

DOUGLAS MELLARD - CROSS

1 plea checklist, you advised Mr. Hair of several things;
2 correct?

3 A. Correct.

4 Q. Such as the possible sentences he could receive for
5 kidnapping and armed robbery?

6 A. Correct.

7 Q. Did you review this sheet with him as well as him
8 reading it?

9 A. I did.

10 Q. And he did sign and date it; correct?

11 A. Yes, ma'am.

12 Q. As well as yourself?

13 A. Yes, ma'am.

14 Q. And this was on the day of his guilty plea?

15 A. I think so.

16 Q. And you explained to him orally and through this
17 guilty plea checklist that this was a negotiated sentence?

18 A. Correct.

19 Q. He understood that he'd be receiving 15 years that
20 day?

21 A. Yes, ma'am.

22 Q. Whose decision was it for Mr. Hair to plead guilty?

23 A. It was Mr. Hair's.

24 MS. HARRIGAN: No further questions, Your Honor.

25 THE COURT: Anything on redirect?

1 MR. BROOKS: No, sir, Your Honor.

2 THE COURT: You may step down. Thank you, sir.

3 All right. Who's your next witness?

4 MR. BROOKS: Judge, that's the Applicant's case.

5 THE COURT: Okay. All right.

6 What I will do is I will -- let me review the
7 transcript and I will review the case notes that I have
8 and I'll get back to y'all with my decision.

9 MS. HARRIGAN: Thank you, Your Honor.

10 MR. BROOKS: Thank you, Judge.

11 THE COURT: Thank you all.

12 END OF CASE: 12:34 P.M.

13 ***

14 CERTIFICATE OF REPORTER

15

16 STATE OF SOUTH CAROLINA)

17 COUNTY OF AIKEN)

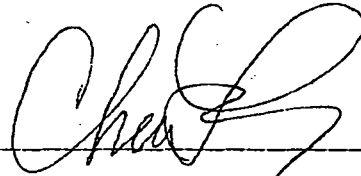
18

19 I, Cheri L. Young, Registered Professional Reporter
20 and Official Court Reporter for the State of South
21 Carolina, Second Circuit-At Large, do hereby certify that
22 the foregoing proceedings were written stenographically by
23 me using computer-aided translation; further, that the
24 foregoing is a true, accurate and complete record, to the
25 best of my skill and ability, of all the proceedings had

1 and evidence introduced in the hearing of the captioned
2 case, relative to appeal, in the Court of Common Pleas for
3 Orangeburg County, on the 21st day of May, 2013.

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

6 I have hereunder set my hand this Saturday, the 19th
7 day of October, 2013.

8
9


10 Cheri L. Young, RPR
11 Official Court Reporter
12
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GUILTY PLEA CHECKLIST

Nesobah D

1. Name of Defendant: Arnelio Ruiz Age: 29
 Address: _____ Marital Status: S
 Education: UPA Employment: fork lift

Needs to
 stay in
 County
 This Sunday
 + Next
 Saturday

2. I have read and explained the indictment (or information) to the defendant and believe that he understands that he is charged with the crime(s) of Armed Robbery + Kidnapping

3. The defendant has told me all the facts, witnesses and circumstances known to him about the charges.

(June 28th)

4. I have explained that there must be a factual basis for a plea of guilty and I believe that such a factual basis exists. I have discussed the factual basis with the defendant and he is prepared to reiterate it in court.

STATE'S EXHIBIT

5. I have explained to the defendant that if he ^{pleas} ~~pleas~~ guilty, the judge will ask questions concerning the offense, and if he answers these questions under oath, on the record, and in the presence of counsel, these answers may later be used against him in a perjury or false statement prosecution. I have also told him that this is the case even if his plea is not accepted or is accepted and is later withdrawn either before or after sentencing.

6. I have counseled and advised the defendant on the nature of each charge, on all lesser included charges, and on all possible defenses that he might have in this case.

7. I have explained to the defendant that he may plead not guilty to all of the charges now lodged against him. I have explained that if there is a plea of not guilty, the Constitution guarantees: the right to a speedy and public trial by jury; the right to confront and cross-examine all the witnesses called to testify against him; the right to use the power and processes of the court to compel the production of any evidence or witnesses in his favor; the right to have the assistance of a lawyer at all stages of the proceedings; the right to take the witness stand at his sole option. I have explained that if the defendant chooses not to take the witness stand, no inference of guilt may be drawn from such a failure; the privilege not to incriminate himself; the right to have the Government prove guilt beyond a reasonable doubt; the right to appeal from an adverse ruling on any pretrial motions or from a guilty verdict; and I have explained that if he pleads guilty, then he gives up most, if not all, of these rights. Furthermore, the defendant maintains the right to appeal a guilty plea if the appeal is filed within ten (10) days of entering the plea.

8. I have explained to the defendant that if he pleads guilty, there will be no trial, either before a court or jury, and the court has the power to impose the same punishment as if he did not plead guilty, stood trial, and had been convicted by a jury.

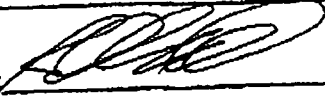
9. I have informed the defendant that the maximum punishment the law provided is _____ years imprisonment and a fine of _____ for the offense(s) charged in indictment: (for each individual crime) 30 years, and/or \$ _____ fine for the crime of Kidnapping; 10 to 30 years, and/or \$ _____ fine for the crime of Armed Robbery; _____ years, and/or \$ _____ for the crime of _____

10. If the defendant is between the ages of 18 and 25, I have explained that he may be sentenced under the Youthful Offender's Act or as a young adult offender for indeterminate sentence, which may require him to spend as long as six (6) years in a penal institution.

11. If the offense is a drug offense under Section 44, Code of Laws of SC, I have explained that there may be a minimum sentence that may have to be served on some of these violations and will most probably result in a suspension of the client's drivers license.

12. I have explained to the defendant that if he is currently on probation or parole, by pleading guilty, the probation or parole might be revoked, and he may be required to serve time in that case, which could be consecutive with any sentence imposed in this case. The defendant has informed me that he ~~is~~ (is not) now on probation for the following crime(s) Armed Robbery and/or the following time period: _____ years.

- 13. I have made no representation to the defendant with respect to the length of the sentence, probation or fine, or with respect to dismissal except as follows: (Plea Bargain negotiations) 15 yrs negotiable
- 14. I have explained to the defendant that even if the solicitor has agreed to accept a guilty plea in return for an agreed upon charge(s) and/or for a specific sentence, that the actual sentence that he receives is still to be determined by the Judge, and that the Judge may or may not accept the Solicitor's recommendation; and that the defendant may not (except in unusual circumstances) then withdraw his guilty plea because he did not get the sentence that the Solicitor recommended.
- 15. I have explained to the defendant all other possible collateral consequences of a plea of guilty, such as immigration consequences (e.g. deportation, exclusion, loss of immigration documents, etc.), possible civil ramifications (e.g. habitual offender, probation revocation, consecutive sentences, etc.)
- 16. I have explained to the defendant that the matter of sentence is strictly within the control of the Judge. I have explained that the Solicitor and I will have an opportunity to speak to the court before a sentence is imposed and that he will also be given an opportunity to speak to the court before sentence is imposed, if he so desires.
- 17. I have explained to the defendant that the court will not permit anyone to plead guilty who maintains innocence and have reaffirmed that the defendant is pleading guilty because he is in fact guilty of the offense charged.
- 18. I am satisfied that at the time I advised the defendant of his rights he was not under the influence of alcohol or drugs, nor under a doctor's care for any mental problem, and that he is mentally capable of understanding his legal rights, and understands the consequences of his decision to plead guilty. Have you ever been institutionalized for alcohol, drug abuse or mental illness? (yes) (no) If yes, explain: _____
- 19. Based upon my conferences with the defendant, I believe that his plea of guilty is free and voluntary and of his own accord and with the full understanding of all the matters set forth in the indictment, complaint, or information, and in this advisement of rights form.
- 20. I have explained to the defendant that if he has a prior record and that if he has committed several felonies in the past that there is a possibility he could be declared an "habitual offender" and could receive additional time in jail, up to and including life in prison. The defendant has informed me that his prior record is as follows: Burg 2nd, 6C, M.I.P., Coity, Burg 1st, FTSBL, PWD Cocaine
- 21. I have checked the police/Solicitor's files and their files show the following record for the defendant See above
- 22. Additional Comments: Most serious violent no parole

Date: 6-16-10 ATTORNEY FOR DEFENDANT: 

CLIENT ACKNOWLEDGMENT

My attorney, R Dops Held, has fully gone over this form with me and explained all my rights, the charges against me, and the penalties that I could receive. He/She has also told me the consequences of my pleading guilty to the charges against me and that the Judge is the only person who can decide my sentence. After having discussed all options open to me with my attorney, I freely waive my right to a jury trial and do hereby acknowledge my decision to plead guilty to the charge(s) of Kidnaps + Arms Robby

Date: X 6-16-10 Signed: X [Signature]
Defendant

Plea to Kidnaps (No sex offense result)
And Robby
15 yrs credit time served

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Antonio Hair, #248402,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

Case No. 2011-CP-38-0059

ORDER OF DISMISSAL

2013 JUN 13 11:11 AM

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed January 14, 2011. Respondent made its Return May 3, 2011. Thereafter, Applicant amended his application on May 13, 2013. An evidentiary hearing into the matter was convened May 21, 2013, at the Orangeburg County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the May 2010 term of the Orangeburg County Grand Jury for Kidnapping (2010-GS-38-0708) and Armed Robbery (2010-GS-38-0709). Applicant was represented by Robert D. Mellard, Esquire. On June 16, 2010, the Applicant appeared before the Honorable Roger Young and pled guilty as indicted. Pursuant to negotiations between Applicant and the State, Judge Young sentenced Applicant to fifteen years imprisonment on each charge, with the sentences to be served concurrently.

ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

tho

RECEIVED
JUN 13 2013
CLERK OF COURT
ORANGEBURG COUNTY, SC

A notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal by written Order dated August 13, 2010. The Remittitur was sent on August 31, 2010.

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully based on the following grounds:

1. Lack of evidence: "no physical evidence to place defendant at crime scene"; and
2. Ineffective assistance of counsel for failure to present evidence in defendant's case.

In its Return, Respondent moved to dismiss the first allegation as an improper ground for post-conviction relief.

In his amendment, Applicant alleged the following additional allegations of ineffective assistant of counsel:

"Applicant feels that his case should be overturned as trial counsel did not review his case thoroughly. Applicant was place in a "hand of one hand of call" case with reference to the strong arm robbery and Judge stated he was guilty by association. Applicant feels he was treated unfairly. Applicant also informed counsel that he wanted to go to trial, however, counsel was only concerned with a plea. Counsel took it upon himself to have other attorneys talk to Applicant as well as contact his mother in order to persuade him into taking a guilty plea."

At the evidentiary hearing, Applicant proceeded forward on the grounds raised in his amended application.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from plea counsel, Robert D. Mellard, Esquire (herein "Counsel"). This Court also had before it Applicant's guilty plea transcript, the records of the Orangeburg County Clerk of Court,

Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. Applicant testified that Counsel was court-appointed to represent him and that he met with Counsel "no more than five times" prior to his guilty plea. He testified that he reviewed discovery materials with Counsel prior to his guilty plea, including statements given by his co-defendants. He testified that he reviewed possible defenses and his version of the facts giving rise to these charges with Counsel, including that he had no knowledge that his co-defendant planned on using a weapon during the crime. He testified that Counsel informed him of the theory of "hand of one, hand of all" and its application on his case. He testified that he gave Counsel potential witnesses and leads to investigate, but "nothing checked out to help" with his defense. He testified that Counsel informed him that the State offered to allow him to plead guilty for a negotiated fifteen year sentence. He testified that he originally wanted to go to trial, but that "after everything was shown [to him]," he wanted to accept the State's plea offer rather than risk being convicted at trial and receiving a harsher sentence.

He recalled telling the plea court that he was guilty and agreeing with the facts presented by the State at his plea. He also testified that he understood he was waiving his constitutional rights by pleading guilty and recalled telling the plea court that he was satisfied with Counsel's representation. He testified that he is guilty of kidnapping, but that he is only guilty of *strong armed* robbery, not armed robbery. He testified that he intended to take property from the victim, but was unaware that his co-defendant was going to use a weapon. He acknowledged that he gave a written statement confessing his guilt to law enforcement. Applicant testified that his co-defendant pled to strong armed robbery and that he felt he should have been able to plead

to strong armed robbery. He also acknowledged that he has a lengthy record and is familiar with the criminal justice system. Applicant testified that he was aware this plea was pursuant to negotiations and he understood he would receive a fifteen year sentence if the plea court accepted his plea. He also testified that he recalled the plea court advising him regarding the law of "hand of one, hand of all" and its impact on his case.

Following Applicant's testimony, Counsel testified. He testified that he has been a member of the South Carolina bar since 1997 and that he was appointed to represent Applicant. He testified that at the time of his representation he was employed with the Orangeburg Public Defender's office, where he remains employed presently. He testified that he recalled this case and reviewed his file in anticipation of this hearing. He testified that he recalls meeting with Applicant approximately twelve times. He testified that he recalled reviewing discovery with applicant, as well as Applicant's version of the facts and possible defenses. He testified that Applicant told him he intended to rob the victim, but that he did not know his co-defendant was going to use a weapon. He elaborated that Applicant informed him that he tried to dissuade his co-defendant from using a gun. He testified that he advised Applicant regarding "hand of one, hand of all" and explained to him the impact it would have on his case. He testified that the Court also advised Applicant regarding "the hand of one, hand of all."

He testified that Applicant originally wanted to proceed to trial and on June 15, 2010, he filled out a request for trial form. He testified that in anticipation of trial, he interviewed potential witnesses, employed a private investigator, and informed Applicant of the results of such investigation. He testified that if Applicant would have proceeded to trial, he would try to convince the jury that Applicant was only guilty of the lesser included offense ^{of} ~~of~~ strong armed robbery, but that he did not think Applicant had a viable defense for kidnapping. He testified

that he tried to get the State to make a plea offer for strong armed robbery, but the prosecuting assistant solicitor refused to make such an offer. He testified that the State did make a plea offer, allowing Applicant to plead guilty to both offenses as indicted for a negotiated term of fifteen years imprisonment. He testified that he advised Applicant of this offer from the State and that he advised Applicant it was in his best interest to accept the plea offer. He testified that Applicant decided to accept this plea offer from the State. He testified that he reviewed a guilty plea checklist with Applicant, which was entered into evidence as State's Exhibit #1. He testified that it was ultimately Applicant's decision to plead guilty.

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).

Ineffective Assistance of Counsel

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 (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). An applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. 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 (1985).

After careful review based on the standard discussed above, Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is more credible than Applicant's testimony. The uncontroverted testimony reveals that Applicant elected to take advantage of a favorable negotiated plea offer from the State following a thorough investigation by Counsel which failed to yield any positive defenses. Counsel and Applicant both testified that Counsel and the plea court advised Applicant regarding "hand of one, hand of all" law and its impact on his case. Applicant testified that he decided to plead guilty to avoid a harsher sentence if convicted at trial and that he understood if his plea was accepted, he would receive a sentence of fifteen years. Applicant testified that he was guilty of kidnapping and had no viable

defenses to this charge, as well as that he intended to take property from the victim by force. This Court finds that Counsel demonstrated a normal degree of skill, knowledge and professional judgment that is expected of an attorney who practices criminal law. Additionally, this Court finds that Applicant has not met the burden of proof with respect to the prejudice requirement. Therefore, this Court finds this application must be denied and dismissed with prejudice.

CONCLUSION

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

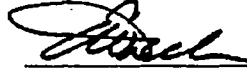
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203; SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right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

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 15 day of July, 2013.



EDGAR W. DICKSON
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina.



BOOKLET NO. 201UGS38-0708

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

The State of South Carolina
County of ORANGEBURG

Defendant

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

COURT OF GENERAL SESSIONS

May 10, 2010 TERM

THE STATE
vs.

Witness:

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

MAY 12 2010

Indictment for
KIDNAPPING

SC Code: 16-3-910

WITNESSES

James Shumpert

Orangeburg County Sheriff

2009014604

ARREST WARRANT NUMBER
M212846

Arrested: December 1, 2009

ACTING DEPUTY GRAND JURY

May 12 2010

Date May 12 2010

Foreperson of Grand Jury

Date: May 12, 2010

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

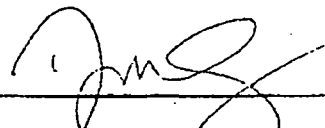
INDICTMENT
2010GS38-0708

At a Court of General Sessions, convened on May 12, 2010 the Grand Jurors of Orangeburg County present upon their oath:

KIDNAPPING

That in Orangeburg County, South Carolina, on or about October 31, 2009, the Defendant, Antonio D. Hair, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Koie Glover, without authority of law. This offense in violation of Section 16-03-910, of the South Carolina Code of Laws, as amended

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



Donald N. Sorenson, Solicitor

WITNESSES

James Shumpert

DOCKET NO. 2010GS38-0709

The State of South Carolina

County of ORANGEBURG

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

COURT OF GENERAL SESSIONS

May 10, 2010 TERM

THE STATE vs.

Antonio D. Hair

Defendant

Witness:

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

Indictment for

ARMED ROBBERY

ARREST WARRANT NUMBER M212847

Arrested: December 1, 2009

ACTION OF GRAND JURY TRUE BILL

May 12, 2010

MAY 12, 2010

Foreperson Date Grand Jury

Date: May 12, 2010

VERDICT

SC Code: 16-11-330(A)

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

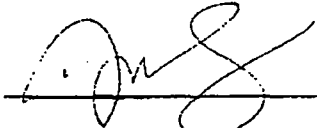
INDICTMENT
2010GS38-0709

At a Court of General Sessions, convened on May 12, 2010 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about October 31, 2009, in Orangeburg County, the defendant, Antonio D. Hair did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action 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, take and carry away goods and/or monies from the person or presence of the victim, Koie Glover, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a rifle. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

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



Donald N. Sorenson, Solicitor