

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

JAMANGO MCKINNEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 JAMAGO McKINNEY,)
)
 DEFENDANT.)
 _____)

2008-GS-23-2170 & 2171

TRANSCRIPT OF RECORD

SEPTEMBER 9, 2009
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE R. LAWTON McINTOSH

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

R. DOUGLAS WEBB, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

JOHN P. ABDALLA, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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WITNESS

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CERTIFICATE OF REPORTER

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(NO EXHIBITS WERE PRESENTED DURING THIS HEARING)

1 THE COURT: COUNSEL, I UNDERSTAND Y'ALL ARE READY TO GO
2 WITH THIS PLEA, IS THAT CORRECT?

3 MR. ABDALLA: READY, YOUR HONOR.

4 MR. WEBB: YES, YOUR HONOR.

5 MADAME CLERK: YOUR HONOR, THIS IS CASE NUMBER 2008-GS-
6 2170, THE STATE VERSUS JAMAGO SIR EDWARD MCKINNEY. HE IS
7 INDICTED AND PLEADING GUILTY TO CONSPIRACY.

8 2008-GS-2171, HE'S INDICTED AND PLEADING GUILTY TO TWO
9 COUNTS, ARMED ROBBERY AND POSSESSION OF A WEAPON DURING THE
10 COMMISSION OF A VIOLENT CRIME. CONSENTS TO SENTENCING ON
11 THIS DAY.

12 THE COURT: THANK YOU, MA'AM.

13 MADAME CLERK: I HAVE TWO SENTENCING SHEETS THERE.

14 THE COURT: THANK YOU, MA'AM.

15 MADAME CLERK: RAISE YOUR RIGHT HAND, PLEASE.

16 (WHEREUPON THE DEFENDANT WAS DULY SWORN)

17 MADAME CLERK: STATE YOUR FULL NAME FOR THE RECORD.

18 MR. MCKINNEY: MY NAME IS JAMAGO SIR EDWARD CHARLES
19 MCKINNEY.

20 MADAME CLERK: THANK YOU.

21 THE COURT: MR. MCKINNEY, WOULD YOU GIVE ME YOUR NAME,
22 PLEASE, SIR. I MEAN YOUR AGE, I'M SORRY.

23 MR. MCKINNEY: I'M TWENTY YEARS OLD.

24 THE COURT: TWENTY YEARS OLD?

25 MR. MCKINNEY: YES, SIR.

1 THE COURT: HOW FAR DID YOU GET IN SCHOOL?

2 MR. MCKINNEY: TENTH GRADE.

3 THE COURT: TENTH?

4 MR. MCKINNEY: YES, SIR.

5 THE COURT: OKAY. DID YOU DROP OUT OF THE TENTH?

6 MR. MCKINNEY: YES, SIR.

7 THE COURT: OKAY. DID YOU TRY TO GET YOUR GED?

8 MR. MCKINNEY: I WAS -- I WAS GOING TO, BUT I ENDED UP
9 IN HERE, SIR.

10 THE COURT: OKAY. SO WHAT YEAR -- HOW OLD WERE YOU --
11 WAS THAT SIXTEEN WHEN YOU DROPPED OUT OF THE TENTH GRADE?

12 MR. MCKINNEY: NO, SIR. I WAS EIGHT -- SEVENTEEN.
13 SEVENTEEN.

14 THE COURT: OKAY. HAVE YOU BEEN EMPLOYED SINCE YOU
15 DROPPED OUT?

16 MR. MCKINNEY: WELL, I HAD -- I WAS -- I WAS GOING -- I
17 HAD A JOB, BUT ALL I HAD -- DO A DRUG -- PASS A DRUG TEST
18 AND GET MY ID, MY SOCIAL SECURITY CARD, BUT I ENDED UP IN
19 HERE, SIR.

20 THE COURT: OKAY. SO YOU APPLIED. WHEN DID YOU APPLY
21 FOR EMPLOYMENT?

22 MR. MCKINNEY: OCTOBER 2007.

23 THE COURT: ALL RIGHT. ARE YOU MARRIED?

24 MR. MCKINNEY: NO, SIR.

25 THE COURT: DO YOU HAVE ANY CHILDREN?

1 MR. McKINNEY: NO, SIR.

2 THE COURT: CAN YOU READ, WRITE AND UNDERSTAND THE
3 ENGLISH LANGUAGE?

4 MR. McKINNEY: YES, SIR.

5 THE COURT: OKAY. ARE YOU UNDER THE INFLUENCE OF ANY
6 MEDICATIONS, DRUGS OR ALCOHOL TODAY?

7 MR. McKINNEY: NO, SIR.

8 THE COURT: COUNSELOR, ARE YOU SATISFIED THAT MR.
9 McKINNEY IS COMPETENT TO PLEAD GUILTY TODAY?

10 MR. ABDALLA: I AM, YOUR HONOR.

11 THE COURT: NOW YOU'RE CHARGED WITH ARMED ROBBERY AND
12 HAVING A WEAPON DURING THE POSSESSION [SIC] OF A VIOLENT
13 CRIME AS WELL AS CONSPIRACY.

14 MR. McKINNEY: YES, SIR.

15 THE COURT: SOLICITOR, ON THE ARMED ROBBERY, TELL ME
16 WHAT THAT RANGE IS, PLEASE, SIR.

17 MR. WEBB: IT'S TEN TO THIRTY YEARS, JUDGE.

18 THE COURT: TEN TO THIRTY?

19 MR. WEBB: YES, YOUR HONOR.

20 THE COURT: OKAY. AND WITH THE WEAPONS, DOES THAT ADD
21 ...

22 MR. WEBB: THE OTHER TWO ARE ZERO TO FIVE.

23 THE COURT: ZERO TO FIVE. SO WE'RE LOOKING AT
24 POTENTIALLY FORTY YEARS THAT I CAN GIVE YOU TODAY. IS THAT
25 -- DO YOU AGREE WITH THAT, MR. ABDALLA?

1 MR. ABDALLA: HOW MANY?

2 THE COURT: FORTY. I HAVE TEN TO THIRTY ON THE ARMED
3 ROBBERY, ---

4 MR. ABDALLA: OH, AT LEAST, YES, SIR.

5 THE COURT: THEN YOU HAVE ADDED FIVE FOR THE WEAPON AND
6 THEN ANOTHER FIVE FOR THE CONSPIRACY. SO ---

7 MR. ABDALLA: YES, SIR.

8 THE COURT: --- POTENTIAL UP TO FORTY.

9 MR. ABDALLA: YES, SIR.

10 THE COURT: ANY PART OF THAT SUSPENDABLE?

11 MR. WEBB: BY THE STATUTE IT CAN BE SUSPENDED, JUDGE.

12 THE COURT: OKAY.

13 MR. ABDALLA: IT CAN BE SUSPENDED, BUT AS THE COURT IS
14 AWARE, IT'S NON-PAROLABLE, JUDGE.

15 THE COURT: MR. McKINNEY, DO YOU UNDERSTAND THAT TODAY
16 I CAN SENTENCE YOU -- SENTENCE YOU UP TO FORTY YEARS OF
17 JAIL? DO YOU UNDERSTAND THAT?

18 MR. McKINNEY: YES, SIR.

19 THE COURT: AND I DON'T KNOW WHETHER OR NOT THERE'S A
20 RECOMMENDATION IN THIS CASE OR NOT, BUT WHETHER OR NOT THERE
21 IS I DON'T HAVE TO ACCEPT THAT. DO YOU UNDERSTAND THAT?

22 MR. McKINNEY: YES, SIR.

23 THE COURT: OKAY. SO YOU STILL WANT TO PROCEED WITH
24 YOUR GUILTY PLEA?

25 MR. McKINNEY: YES, SIR.

1 THE COURT: OKAY, SIR. AND THIS WAS ON THE TRIAL
2 DOCKET, IS THAT CORRECT?

3 MR. WEBB: YES, YOUR HONOR.

4 THE COURT: AND SO THERE'S -- I ASSUME THERE'S NOT A
5 RECOMMENDATION?

6 MR. WEBB: THERE'S NO RECOMMENDATION, JUDGE.

7 THE COURT: IS THERE ANY AGREEMENT OF ANY NATURE OR
8 KIND AS FAR AS HIS PLEA IS CONCERNED?

9 MR. WEBB: NO, YOUR HONOR.

10 THE COURT: YOU AGREE WITH THAT?

11 MR. ABDALLA: I AGREE, JUDGE.

12 THE COURT: MR. McKINNEY, HAS ANYBODY FORCED,
13 THREATENED OR PROMISED YOU ANYTHING TO GET YOU TO PLEAD
14 GUILTY?

15 MR. McKINNEY: NO, SIR.

16 THE COURT: ARE YOU PLEADING GUILTY FREELY AND
17 VOLUNTARILY?

18 MR. McKINNEY: YES, SIR.

19 THE COURT: BOTH THE INDICTMENTS HAVE BEEN TRUE BILLED?

20 MR. WEBB: YES, YOUR HONOR.

21 THE COURT: MR. KENNEDY, McKINNEY, EXCUSE ME, YOU
22 UNDERSTAND THAT YOU HAVE A RIGHT TO A JURY TRIAL ON ALL
23 THESE INDICTMENTS AGAINST YOU? YOU UNDERSTAND?

24 MR. McKINNEY: YES, SIR.

25 THE COURT: DO YOU UNDERSTAND THAT IN THAT JURY TRIAL

1 YOU'D BE PRESUMED TO BE INNOCENT? YOU UNDERSTAND THAT?

2 MR. MCKINNEY: YES, SIR.

3 THE COURT: AND THAT THE STATE WOULD HAVE TO PROVE EACH
4 AND EVERY ELEMENT OF THE CHARGES AGAINST YOU BEYOND A
5 REASONABLE DOUBT. YOU UNDERSTAND THAT?

6 MR. MCKINNEY: YES, SIR.

7 THE COURT: YOU ALSO -- DO YOU UNDERSTAND THAT YOU ALSO
8 HAVE CERTAIN CONSTITUTIONAL RIGHTS? ONE WOULD BE THE RIGHT
9 TO CONFRONT AND EXAMINE WITNESSES AGAINST YOU. DO YOU
10 UNDERSTAND THAT?

11 MR. MCKINNEY: YES, SIR.

12 THE COURT: A RIGHT TO PRESENT EVIDENCE IN YOUR
13 DEFENSE. DO YOU UNDERSTAND THAT?

14 MR. MCKINNEY: NO, SIR. I'M TALKING ABOUT LIKE ---

15 THE COURT: YOU -- GO AHEAD, MR. ABDALLA.

16 (WHEREUPON MR. ABDALLA WAS CONSULTING WITH HIS CLIENT)

17 MR. MCKINNEY: YES, SIR. YES, SIR.

18 THE COURT: DO YOU UNDERSTAND YOU ---

19 MR. ABDALLA: I'M SORRY, JUDGE, JUST FOR THE COURT'S
20 RECORD, I HAD SPOKEN TO HIM ABOUT THIS PREVIOUSLY. AND I
21 WANTED TO REMIND HIM OF THAT.

22 THE COURT: OKAY.

23 MR. MCKINNEY: YES, SIR.

24 THE COURT: MR. MCKINNEY, HAVE YOU HAD SUFFICIENT TIME
25 TO TALK TO YOUR ATTORNEY?

1 MR. McKINNEY: YES, SIR.

2 THE COURT: OKAY. NOW, AGAIN, DO YOU UNDERSTAND THAT
3 YOU HAVE A CONSTITUTIONAL RIGHT TO PRESENT RELEVANT AND
4 COMPETENT EVIDENCE IN THE DEFENSE OF YOUR CASE? DO YOU
5 UNDERSTAND THAT?

6 MR. McKINNEY: YES, SIR.

7 THE COURT: AND YOU ALSO UNDERSTAND THAT YOU HAVE A
8 RIGHT TO REMAIN SILENT, AND A LOT OF PEOPLE SAY RIGHT NOT TO
9 TAKE THE STAND? DO YOU UNDERSTAND THAT?

10 MR. McKINNEY: YES, SIR.

11 THE COURT: AND THAT IF YOU CHOSE NOT TO TAKE THE STAND
12 THAT I WOULD CHARGE THE JURY THAT THEY COULD NOT HOLD THAT
13 AGAINST YOU IN ANY FORM OR FASHION AND THEY WERE NOT TO USE
14 THAT IN THEIR DELIBERATIONS IN ANY FORM OR FASHION, DO YOU
15 UNDERSTAND THAT?

16 MR. McKINNEY: YES, SIR.

17 THE COURT: DO YOU WISH TO WAIVE THESE CONSTITUTIONAL
18 RIGHTS?

19 MR. McKINNEY: YES, SIR.

20 THE COURT: DO YOU WISH TO GO BACK AND WAIVE YOUR RIGHT
21 TO A JURY TRIAL?

22 MR. McKINNEY: YES, SIR.

23 THE COURT: OKAY, SIR. DO YOU WISH TO CONTINUE WITH
24 THIS GUILTY PLEA?

25 MR. McKINNEY: YES, SIR.

1 THE COURT: ARE YOU, IN FACT, GUILTY OF ARMED ROBBERY?

2 MR. MCKINNEY: YES, SIR.

3 THE COURT: OF HAVING POSSESSION DURING A VIOLENT
4 CRIME?

5 MR. MCKINNEY: YES, SIR.

6 THE COURT: AND OF CONSPIRACY?

7 MR. MCKINNEY: YES, SIR.

8 THE COURT: ARE YOU SATISFIED WITH THE SERVICES OF YOUR
9 ATTORNEY?

10 MR. MCKINNEY: YES, SIR.

11 THE COURT: HAS HE DONE EVERYTHING THAT YOU'VE ASKED
12 HIM TO DO?

13 MR. MCKINNEY: SIR?

14 THE COURT: HAS HE DONE EVERYTHING THAT YOU'VE ASKED
15 HIM TO DO?

16 MR. MCKINNEY: YES, SIR.

17 THE COURT: DO YOU FEEL LIKE HE'S HAD MORE THAN AMPLE
18 TIME TO INVESTIGATE YOUR CASE AND TO DEVELOP A DEFENSE ON
19 YOUR BEHALF?

20 MR. MCKINNEY: YES, SIR.

21 THE COURT: DO YOU CONTEND, AS WE STAND HERE TODAY,
22 THAT YOUR ATTORNEY HAS NOT DONE ANYTHING TOWARDS YOUR CASES
23 THAT HE SHOULD HAVE DONE?

24 MR. MCKINNEY: I DON'T UNDERSTAND.

25 MR. ABDALLA: THAT WAS CONVOLUTED, JUDGE. I'M SORRY,

1 IF I MAY SAY SO.

2 THE COURT: I'LL TRY IT AGAIN. MR. MCKINNEY, IS THERE
3 ANYTHING, AS WE SIT HERE TODAY, THAT YOU CONTEND THAT YOUR
4 ATTORNEY SHOULD HAVE DONE THAT HE HAS NOT DONE?

5 MR. MCKINNEY: NO, SIR.

6 THE COURT: OKAY, SIR. DO YOU HAVE ANY COMPLAINTS
7 AGAINST THE SOLICITOR'S OFFICE?

8 MR. MCKINNEY: NO, SIR.

9 THE COURT: ANY LAW ENFORCEMENT OFFICIAL?

10 MR. MCKINNEY: NO, SIR.

11 THE COURT: ANYONE INVOLVED WITH THIS CASE?

12 MR. MCKINNEY: NO, SIR.

13 THE COURT: COUNSEL, HAVE YOU EXPLAINED THE CHARGES AND
14 THE ELEMENTS OF THE CHARGES TO MR. MCKINNEY?

15 MR. ABDALLA: YES, I HAVE, YOUR HONOR.

16 THE COURT: HAVE YOU EXPLAINED THE POSSIBLE SENTENCES
17 THAT HE COULD RECEIVE?

18 MR. ABDALLA: YES, I HAVE, YOUR HONOR.

19 THE COURT: HAVE YOU EXPLAINED TO MR. MCKINNEY HIS
20 CONSTITUTIONAL RIGHTS?

21 MR. ABDALLA: I HAVE.

22 THE COURT: DO YOU BELIEVE THAT THERE IS A SUBSTANTIAL
23 FACTUAL BASIS FOR HIS DECISION TO PLEAD GUILTY?

24 MR. ABDALLA: I DO -- I DO BELIEVE SO. YES, YOUR
25 HONOR.

1 THE COURT: DO YOU, IN FACT, AGREE WITH MR. MCKINNEY'S
2 DECISION TO PLEAD GUILTY?

3 MR. ABDALLA: I DO.

4 THE COURT: SOLICITOR, I'LL BE GLAD TO HEAR FROM YOU,
5 PLEASE, SIR.

6 MR. WEBB: YOUR HONOR, IN THE MORNING HOURS OF DECEMBER
7 13TH, 2007 THE TWO VICTIMS IN THIS CASE, A SIXTEEN YEAR OLD
8 FEMALE AND A SEVENTEEN YEAR OLD MALE, WERE WALKING TO THEIR
9 HOUSE TO GET READY FOR SCHOOL. THEY HAD THEIR BOOK-BAGS
10 WITH THEM.

11 THIS DEFENDANT AND THREE OTHERS PULLED UP IN A WHITE
12 FORD CONTOUR AND APPROACHED THE VICTIMS. THIS DEFENDANT WAS
13 BEHIND THE DRIVER. HE GOT OUT OF THE CAR, OPENED THE DOOR,
14 SHOWED THEM A GUN AND DEMANDED THAT THEY TAKE OFF ALL THEIR
15 CLOTHES AND GIVE THEM ANY MONEY THAT THEY HAD.

16 THE VICTIMS, SCARED, TOOK OFF THEIR CLOTHES DOWN TO
17 THEIR UNDERWEAR. THIS VICTIM THEN -- THE DEFENDANT THEN
18 SAID, YOU HAVE TO TAKE IT ALL OFF. THE VICTIMS TOOK OFF
19 THEIR UNDERWEAR, GAVE THE DEFENDANT THEIR BOOK-BAGS, WHICH
20 CONTAINED BOOKS AND OTHER SCHOOL MATERIALS. THE DEFENDANT
21 AND THE OTHERS TOOK THE ITEMS AND DROVE OFF.

22 THE VICTIMS THEN WENT BACK TO THEIR HOUSE AND CALLED
23 THE POLICE. THE VICTIMS LATER IDENTIFIED THIS DEFENDANT IN
24 A PHOTO LINE-UP. AND THE ITEMS WERE NEVER RECOVERED.

25 THE VICTIMS ARE HERE PRESENT IN COURT TODAY. WE WERE

1 READY TO GO TO TRIAL. THEY DO NOT WISH TO ADDRESS THE
2 COURT, BUT THEY ARE PRESENT TODAY. AND THIS ALL OCCURRED IN
3 GREENVILLE COUNTY.

4 THE COURT: OKAY. AND THEY DON'T WISH TO ADDRESS THE
5 COURT ---

6 MR. WEBB: NO, YOUR HONOR.

7 THE COURT: --- IN ANY FASHION? OKAY. IS THERE ANY
8 PRIOR RECORD?

9 MR. WEBB: THE ONLY ADULT RECORD HE HAS, JUDGE, IS A
10 FALSE INFORMATION TO POLICE OF LAST YEAR.

11 THE COURT: HOW MUCH TIME HAS HE SERVED?

12 MR. WEBB: SIX HUNDRED AND TEN DAYS, JUDGE.

13 THE COURT: SIX HUNDRED AND TEN DAYS? COUNSEL, DO YOU
14 AGREE THAT HE'S SERVED SIX HUNDRED AND TEN DAYS?

15 MR. ABDALLA: I DO, YOUR HONOR.

16 THE COURT: ALL RIGHT. COUNSEL, I'LL BE GLAD TO HEAR
17 FROM YOU.

18 MR. ABDALLA: THANK YOU, YOUR HONOR. YOUR HONOR, AS
19 YOU HEARD, MY CLIENT, JAMAGO, IS TWENTY YEARS OLD. HE WAS
20 IN THE TENTH GRADE WHEN HE LEFT SCHOOL AT JL MANN. HE LEFT
21 AT THE APPROXIMATE AGE OF SEVENTEEN.

22 HE WAS LIVING WITH HIS BROTHER, MICHAEL, WHO, I
23 BELIEVE, IS PRESENT IN COURT TODAY. HIS FATHER'S IN
24 COLUMBIA. HIS MOTHER LIVES IN GREENVILLE. THE REST OF HIS
25 FAMILY LIVES IN GREENVILLE.

1 JUDGE, THERE'S NO DOUBT ABOUT IT THAT JAMAGO GOT OFF ON
2 THE WRONG -- GOT GOING IN THE WRONG DIRECTION. THANK
3 GOODNESS HE DOES NOT HAVE CHILDREN OR ANYTHING. SO HE'S NOT
4 BEEN TOTALLY IRRESPONSIBLE. HE DIDN'T HAVE CHILDREN, IN
5 THAT ORDER, AND HAVE A JOB AND ALL THAT, BUT I'M TRYING TO
6 IMPRESS UPON THE COURT THAT EVERYTHING HE'S DONE HAS NOT
7 BEEN WRONG.

8 I THINK JAMAGO IS A GOOD KID WHO REALLY DID SOME STUPID
9 THINGS FOR A SHORT PERIOD OF HIS LIFE. AND I WOULD LIKE TO
10 THINK THAT THAT'S AN ANOMALY. I'VE SPOKEN WITH JAMAGO ON A
11 FEW OCCASIONS AND, YOUR HONOR, I THINK HE -- I'D ASSESS HIM
12 TO BE A DECENT KID, JUDGE. AND THERE'S NO WAY WE COULD EVER
13 KNOW THAT ANSWER.

14 BUT AS AN ADVOCATE FOR JAMAGO AND FOR ALL MY
15 DEFENDANTS, I'D LIKE TO THINK THAT THERE IS HOPE. AND MY
16 ASSESSMENT OF HIM IS IT'S NOT TOO LATE FOR HIM TO TURN IT
17 AROUND.

18 I'M SAYING THIS BECAUSE I WOULD REALLY LIKE THE COURT
19 TO GIVE HIM SOMEWHERE AROUND THE MINIMUM OF TEN TO FIFTEEN
20 YEARS. OF COURSE, WE'D RATHER TEN, BUT I'M TRYING TO BE
21 REALISTIC, JUDGE.

22 HE DOESN'T HAVE A PRIOR RECORD. HE'S TWENTY YEARS OLD.
23 IF HE GETS TEN TO FIFTEEN YEARS HE'S NOT GOING TO GO OUT AND
24 GET OUT OF PRISON BEFORE HE'S THIRTY YEARS OLD ANYWAY.

25 IT GETS TO A POINT WHERE IF YOU DON'T THINK A PERSON

1 WILL EVER GET -- COME AROUND, WE MAY AS WELL JUST SHOOT
2 EVERYBODY. AND I'M NOT SAYING THAT TO BE FLIPPANT, BUT I'M
3 SAYING THAT BECAUSE I'M HOPING THE COURT WILL BELIEVE THERE
4 IS HOPE AND GIVE HIM SOME HOPE THAT THERE'S SOMETHING AT THE
5 END OF THE RAINBOW.

6 I CAN NEVER MINIMIZE WHAT MY CLIENT DID. THAT'S
7 SOMETHING THAT'S ALREADY BEEN DONE. AND HE'D HAVE TO SPEAK
8 TO THAT. BUT, JUDGE, I WOULD LIKE TO SAY THAT I WOULD HATE
9 FOR THAT TO RUIN HIS LIFE ENTIRELY. AND I THINK A SENTENCE
10 OF AT LEAST TEN YEARS, OR LIKE I SAID, BETWEEN TEN AND
11 FIFTEEN YEARS IS GOING TO BE AMPLE PUNISHMENT.

12 I CAN'T TELL THE COURT HOW MANY PEOPLE I'VE PLED FOR
13 KILLING PEOPLE THAT GET LESS THAN FIFTEEN YEARS. AND THANK
14 GOODNESS NOBODY WAS SERIOUSLY INJURED OR KILLED IN THIS.
15 AND THAT'S MY CASE TO THE COURT, JUDGE. I WOULD ASK YOU TO
16 CONSIDER A MINIMAL SENTENCE ON THE ARMED ROBBERY.

17 THE COURT: MR. MCKINNEY, YOU HAVE ANYTHING YOU'D LIKE
18 TO ADD?

19 MR. MCKINNEY: YES, SIR. I APOLOGIZE FOR THE THINGS I
20 DONE TO THE VICTIMS OR WHATEVER. I WASN'T IN MY RIGHT -- MY
21 RIGHT STATE OF MIND. I WAS -- I DON'T KNOW. I JUST WAS
22 WITH THE WRONG PEOPLE, YOUR HONOR. AND I APOLOGIZE FOR
23 THAT.

24 THE COURT: ANYTHING FURTHER?

25 MR. MCKINNEY: NO, SIR.

1 MR. WEBB: YOUR HONOR, I'M SORRY.

2 THE COURT: GO AHEAD.

3 MR. WEBB: I DO WANT ADD -- PUT ONE THING ON THE
4 RECORD. THE CO-DEFENDANT, THE DRIVER OF THE CAR, WAS
5 ARRESTED. HE IS POSSIBLY PENDING TRIAL AS WELL. HE'S A
6 FELLOW MEMBER OF THE CRIPS HERE IN GREENVILLE COUNTY.

7 HE WAS GOING TO TESTIFY TODAY, BUT OFFICIALLY NO OFFER
8 HAS BEEN MADE TO HIM. I JUST WANTED TO PUT THAT ON THE
9 RECORD AS WELL.

10 THE COURT: SO YOU CONTEND THIS IS GANG RELATED
11 ACTIVITY?

12 MR. WEBB: YES, YOUR HONOR.

13 MR. ABDALLA: JUDGE, THE ONLY THING I DO WANT TO SAY IS
14 AT ONE TIME, AND I DON'T KNOW IF IT WAS DONE BY THIS
15 SOLICITOR, I HAVE A LETTER WHERE THE CO-DEFENDANT AT ONE
16 TIME WAS OFFERED A TEN YEAR SENTENCE. SO THAT'S ONE OF THE
17 REASONS I'M ASKING FOR SOMETHING SIMILAR IN THIS CASE.

18 AND I KNOW THAT'S NOT THE OFFER NOW. I'M SIMPLY SAYING
19 AT ONE TIME ---

20 THE COURT: AND I RESERVE MY OWN JUDGMENT ON THE CASES
21 AS WELL, BUT LET ME DO THIS FIRST. I'M GOING TO GO AHEAD
22 AND ACCEPT MR. MCKINNEY'S PLEA AS BEING KNOWINGLY,
23 INTELLIGENTLY AND VOLUNTARILY MADE WITH THE ADVICE OF A VERY
24 COMPETENT ATTORNEY WITH WHOM HE'S WELL SATISFIED. I'M GOING
25 TO FIND THAT THERE IS A SUBSTANTIAL FACTUAL BASIS.

CERTIFICATE OF REPORTER

1

2 I, THE UNDERSIGNED, SUSAN W. HUDGINS, OFFICIAL COURT
 3 REPORTER FOR THE THIRTEENTH 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 TRIAL/HEARING
 7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
 8 COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 9TH DAY
 9 OF SEPTEMBER 2009.

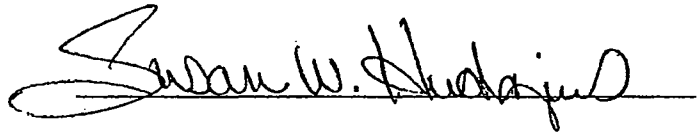
10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
 11 NOR INTEREST TO ANY PARTY HERETO.

MAY 26, 2010

12

13

14



15

CIRCUIT COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

County of Greenville

2010 APR -1 PM 2:49

Jamagom Skiney #336810

Full name and prison number (if any) of Applicant

FILED-) GREF) PAWS

2010-CP-23-2589

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 L.C.I. 990 wisacky Hwy Bishopville SC.
29010
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) Armed Robbery 2008-45-23-002171

(b) COY. SPIRACY 2008-GS-23-002170
(c) _____

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

(a) 9-9-09 17 years
(b) _____
(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓
(b) after a plea of not guilty _____
(c) after a plea of nolo contendere _____

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

NO

8. If you answered Ayes@ to (7), list:

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

i. _____
ii. N/A
iii. _____

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

i. _____
ii. _____
iii. N/A

(c) the date of each such result:

i. _____
ii. _____
iii. N/A

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

i. _____
ii. _____
iii. N/A

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) Did NOT know

(b) _____
(c) _____

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

(a) Ineffective Assistance ~~of~~ Counsel
(b) Violation of Constitutional Rights
(c) _____

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

(a) Counsel failed to object
(b) Counsel failed to protect my rights
(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? No
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

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

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

i. _____
ii. _____
iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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) _____
- (b) _____
- (c) _____

N/A

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Greenville public Defenders office
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea and Sentencing
 - ii. _____
 - iii. _____

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

Vacate conviction

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Lee)

VERIFICATION

I, Jamago McKinney, 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.

Jamago McKinney

SWORN to and subscribed before me this 30 day of March 2010.

[Signature] (L.S.)
Notary Public

My Commission Expires: 3 11-4-2015

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

I, Jamago McKinney, 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.

Jamago McKinney
Applicant

SWORN or affirmed to and subscribed before me this
30 day of March, 2010.

Debra Jones
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2010-CP-23-2589
COUNTY OF GREENVILLE)	
)	
Jamago Sir Edward McKinney,)	
S.C.D.C. No. 336810,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed April 1, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the February 2008 term of General Sessions for conspiracy (2009-CP-23-2170), armed robbery (2009-GS-23-2171, count 1), and possession of a weapon during commission of a violent crime (2009-GS-23-2171, count 2). John P. Abdalla, Esquire represented the Applicant.

On September 9, 2009, the Applicant pled guilty.¹ The Honorable R. Lawton McIntosh sentenced the Applicant to concurrent terms of five (5) years for conspiracy, twenty (20) years suspended on the service of seventeen (17) years for armed robbery, and five (5) years for possession of a weapon during commission of a violent crime. The Applicant did not appeal.

¹ The State nol prossed numerous indictments after the Applicant entered his guilty plea.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel.
2. Violation of Constitutional rights.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386

S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General


JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

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

By:


Attorneys for Respondent

August 20, 2010

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JAMANGO MCKINNEY

Direct By Ms. Horlbeck 5

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JOHN ABDALLA

Direct By Ms. Ratigan 18

Cross By Ms. Horlbeck 24

There were no exhibits.

» > o < «

Certificate of Reporter 28

1 MS. RATIGAN: May it please the Court. Your
2 Honor, this is the case Jamago McKinney vs. The State of
3 South Carolina. Docket number 2010-CP-23-2589.

4 Mr. McKinney was indicted for conspiracy, armed robbery
5 and possession of a weapon during the commission of a
6 violent crime. He was represented on these charges by
7 Mr. Abdalla. On September 9th, 2009 he pled guilty to
8 those charges before Judge McIntosh. I would note that
9 several charges were nolle prossed after he entered his
10 guilty plea. Judge McIntosh sentenced him to concurrent
11 terms of five years of conspiracy, 20 years suspended on
12 the service of 17 years for armed robbery and five years
13 for possession of a weapon during the commission of a
14 violent crime. He did not file an appeal and the State is
15 ready to go forward.

16 THE COURT: Okay.

17 MS. HORLBECK: Your Honor, we call Jamago
18 McKinney to the stand, please.

19 THE CLERK: Mr. McKinney, please place your left
20 hand on the Bible, raise your right.

21 JAMAGO MCKINNEY, after being duly sworn,
22 testified as follows:

23 THE CLERK: Thank you, please be seated. State
24 your name for the record.

25 THE WITNESS:: May name is Jamago McKinney.

DIRECT EXAMINATION

1
2 BY MS. HORLBECK:

3 Q Mr. McKinney, what was the name of your attorney who
4 represented you on your charges?

5 A Mr. John Abdalla.

6 Q Did you plead guilty or go to trial?

7 A I pled guilty.

8 Q As a result of your guilty plea did you file this
9 petition for post-conviction relief?

10 A Yes, ma'am.

11 Q Okay. All right. You in your petition you alleged
12 ineffective assistance of counsel. And one of the
13 things you listed is that Mr. Abdalla didn't give you
14 your complete copy of your motion of discovery?

15 A Yes, ma'am.

16 Q Okay, tell the Court a little bit about that?

17 A When I had another attorney named Andrew Moorman. I
18 had -- me and him had conflict of interest. I had
19 went in front, I can't remember the Judge name, but
20 that assigned Mr. Abdalla to me. And I had told him,
21 the first time me and Mr. Abdalla spoke, I had told
22 him that my motion was not complete. I had like
23 statements missing, photo line-up missing, it was a
24 incomplete motion, Rule 5. And I asked him can he
25 get that for me and he said he would.

1 Q Okay. What statements were missing from your Rule 5
2 package?

3 A Statements from Anthony Willow, statements from
4 Dustin Fent and statements from Jeremy Hawthorn.

5 THE COURT: Who?

6 THE WITNESS: Jeremy Hawthorn.

7 THE COURT: Jeremy Hawthorn, okay.

8 BY MS. HORLBECK:

9 Q And your photo line-up was also missing?

10 A Yes, ma'am.

11 Q Okay. Were those items ever provided to you by
12 Mr. Abdalla or anyone from his office?

13 A No, ma'am.

14 Q Okay. You also alleged that Mr. Abdalla didn't
15 preform some research that you requested he do for
16 you?

17 A Yes, ma'am.

18 Q All right, what research did you want him to do?

19 A Due to the fact that the victim stated that the
20 assailant had -- even I -- like when they -- when
21 they robbed him or whatever, I tell him that, like
22 the description that they did is not me. Because
23 when I got arrested five days after this charge, I
24 had a -- I had a -- I had a afro, you know. And I
25 told him that's a mistake in identity. Because how

1 they described it to the police is that I'm not
2 matching up. You know, it don't match up with the
3 way I'm built.

4 Q Okay. All right. Let me just back you up a little
5 bit. What did the victims -- what description did
6 the victims give police about your height or the
7 suspect's height and weight and hair?

8 A They said I had a even hair cut. They said I was
9 5'10. They said I weighed 180 pounds. And they said
10 that I looked like I was from a certain area of town.

11 Q Okay. Now, when you say even hair cut, what does
12 that mean, short or long?

13 A Yeah, like a short hair cut like I'm wearing now.

14 Q And at the time your hair was what?

15 A I had a afro.

16 Q All right. And the victims said that the suspect was
17 how tall, do you remember?

18 A 5'10.

19 Q How tall are you?

20 A I'm 5'5.

21 Q All right. And the victims reported to the police
22 that the suspect weighed approximately how much?

23 A 180.

24 Q And how much do you weight? Or how much did you
25 weight at the time?

1 A Like 157.

2 Q Okay. All right. Did you discuss the descriptions
3 that the victims gave with Mr. Abdalla?

4 A Yes, ma'am.

5 Q And what did you ask him to do?

6 A I asked him -- I told him that you can -- that you
7 can verify my -- about my length of my hair and about
8 all my weight and all that through booking. My mug
9 shot, I had a afro and through booking they tell
10 me -- they weight me and said I weighed at like 150
11 something. Somewhere from 157 to 160 pounds. And
12 they say I wun't [sic] no taller than 5'.

13 Q Okay. Did you want Mr. Abdalla to contact the
14 victims and or try to contact the victims and ask
15 them about their description?

16 A Yes, ma'am.

17 Q Did he do that?

18 A No, ma'am.

19 Q Okay. Did you and Mr. Abdalla discuss the potential
20 sentence you could receive?

21 A Yes, ma'am.

22 Q What did he say about that?

23 A He told me when I first met him, he told me I was
24 facing leave.

25 Q Okay.

1 A So I'm thinking right, I ain't nothing but I'm 18
2 years old. Life, that's a long time. I ain't had no
3 life, you know. And I had tell him that I can't -- I
4 don't want to do life. So he like -- he like -- I
5 ask him what's the best thing we can do?

6 He said, Plea.

7 I say, I really don't want to plea because I
8 really want a trial because I feel like -- because I
9 like the victims -- the victims description of me, it
10 don't fit me. And I feel like they got me mistaken
11 for someone else. So I told him I really wanted a
12 trial. So he tell me, the best advice he gave me, he
13 said the best thing I can do for you is get you to
14 plead. So.

15 Q Okay. Did the State serve a notice of intent to seek
16 a life without parole sentence, do you remember?

17 A If they did I didn't know -- I tell you I didn't have
18 no complete motion, no complete Rule 5.

19 Q Okay. But you did certainly face, I think, 40 to 50
20 years?

21 A Yes, ma'am, 50 years at the most.

22 Q Okay. Is that what Mr -- do you think that that's
23 what Mr. Abdalla was talking about when he told you a
24 life sentence?

25 A If he was talking about that, he didn't state it. He

1 just said life. Life is -- life is life.

2 Q Okay. And what did he advise you to do rather than
3 face the possibility of a life sentence?

4 A He told me to plead.

5 Q Okay.

6 A Plead guilty.

7 Q Did you and he discuss the possible sentence?

8 A Yes, ma'am. He told me -- he told me -- like right
9 before -- right before I signed my guilty plea, I
10 tell him -- he's like man, me and the Judge talked,
11 he said he would give you from anywhere from 10 to 15
12 years. I told him, Okay. I'm cool with that. I can
13 do that. Even though I ain't do this I said, I'm
14 cool with it. I take that. Because it's better than
15 life. I was scared. So I tell him I plea to 15
16 years, 10 or 15 years. So he telling me -- but he
17 telling me -- he tell me, okay.

18 So when I'm about to sign I tell him, I thought
19 about it and I said really, I really want a trial.
20 Because I feel like I can beat them.

21 He tell me, he said, Man, the best thing you can
22 do is plead. He said, if I tell you you're going to
23 get 15 years, you're going to get 15 years.

24 So when I signed it, he tell me, when I come in
25 the courtroom, that they going to ask me some

1 questions, just say, yeah, yeah and no. He tell me I
2 cannot bring up -- don't tell the Judge that he said
3 he was going to give me 15 years. Because if I said
4 that, that the Judge was going to get mad and not go
5 with the recommendation.

6 Q Okay. Did you give Mr. Abdalla the names and
7 addresses or phone numbers of your witnesses so that
8 he can contact them?

9 A Yes, ma'am. I gave him -- I gave him -- I gave him
10 the address of Michelle Bennett. And I -- like I
11 called a number but she had got her number changed so
12 I didn't have a number. But I gave him her address
13 and her name.

14 Q Did he subpoena her?

15 A No, ma'am, not to my knowledge. No, ma'am.

16 Q Okay. All right. And when you pled guilty did you
17 do that of your own freewill?

18 A No, ma'am. I -- like I told you before, it was based
19 on Mr. Abdalla advice.

20 Q Okay. All right. If you could do it all over again
21 what would -- would you still plead guilty?

22 A No, ma'am, I go to trial.

23 Q Okay. All right. Do you have any other complaints
24 about Mr. Abdalla representation that you want to
25 tell the Court?

1 A Yes, ma'am. Like, I was reading the Gentry vs. State
2 case and like it's based on indictments. I ain't
3 know that, like, if you had, like, if you got, like,
4 a defective indictment that you got to make an
5 objection before the jury is sworn. Now, due to the
6 knowledge -- due to the fact that I didn't have this
7 knowledge that you had to make this -- make this
8 objection before the jury is sworn. And when I got
9 down the road, when I got down to Lee County, I
10 wrote -- I wrote to the Clerk of Court and they sent
11 my indictments, I got my indictments and a lot of
12 other charges. Come to find out that my indictments
13 was -- they had a defective in it, you know what I'm
14 saying?

15 The Greenville police officer was the sole
16 witness before the grand jury and then, like, the
17 indictment number and the term that -- the term that
18 was on the indictment, it don't match up. It's like
19 somebody try to change it up and stuff. So it's
20 really -- it's really inadequate.

21 Q Okay. So the defects -- one defect in your
22 indictment is the terms don't match up? The terms of
23 court don't match up?

24 A No, ma'am.

25 Q And the second defect is the only witness was the

1 officer?

2 A Yes, ma'am.

3 Q All right. Did you discuss your indictment with
4 Mr. Abdalla?

5 A Due to the fact that I ain't never get my indictment.
6 I ain't never seen no indictment until I caught my
7 time. Until after I caught my time.

8 Q All right. So did -- you were you and Mr. Abdalla
9 ever able to discuss your indictment?

10 A No, ma'am.

11 Q Did you have the knowledge to ask him to make a
12 motion to dismiss the indictment or quash the
13 indictment?

14 A No, because -- can you repeat that again?

15 Q Sorry. Yes, let me repeat that, let me rephrase it.
16 At that time did you know enough about indictments to
17 ask Mr. Abdalla to try to get them dismissed because
18 of the defects?

19 A No, ma'am. Because like when I first got it?

20 Q Yes.

21 A When I first got it, I had asked -- I had asked the
22 grand jury -- excuse me, I had asked the Solicitor
23 about the terms. And they gave me -- they tell me to
24 look up the Gentry case. And I looked it up and it
25 tells you right there, like, like -- it basically

1 tells you how indictment supposed to be. And that's
2 when I found out that my indictment had a defect.

3 Q When did you first see your indictment?

4 A I can't remember.

5 Q Before or after you'd been sentenced?

6 A After I was sentenced.

7 Q Okay. All right. Anything else?

8 A No, ma'am.

9 MS. HORLBECK: Okay, please answer any questions
10 Ms. Ratigan has.

11 CROSS-EXAMINATION

12 BY MS. RATIGAN:

13 Q So you had Mr. Moorman as your first lawyer, is that
14 correct?

15 A Yes, ma'am.

16 Q And you had reviewed some of the discovery with him
17 before you had Mr. Abdalla?

18 A Yes, ma'am.

19 Q Then at some point Mr. Moorman got released and
20 Mr. Abdalla got appointed?

21 A Yes, ma'am.

22 Q What was the conflict you had with Mr. Moorman? Was
23 there a conflict of interest or were y'all just not
24 getting along?

25 A Conflict of interest.

1 Q What was his conflict?

2 A That basically the same thing that Mr. Abdalla did.
3 I was asking him to do the same thing and he ain't do
4 it. Like, I asked him about to give me a complete
5 Rule 5, he never produced it. Just like I asked
6 Mr. Abdalla, I asked him to give me a complete Rule
7 5, he never produced it.

8 Q Okay. So by the time you had Mr. Abdalla as your
9 lawyer, you asked him to look into these things you
10 said you hadn't gotten yet?

11 A Yes, ma'am.

12 Q There were some statements, photo line-up, things of
13 nature?

14 A Yes, ma'am.

15 Q But you knew there had been a photo line-up?

16 A Yes, ma'am, I knew it. Well no, let me rephrase
17 that. I never knew, I just heard. I never had
18 actually facts, I just heard it.

19 Q So at that point you had heard the victims had
20 identified you in a photo line-up, you just hadn't
21 seen it?

22 A I just heard they had a photo line-up of me in it.

23 Q Did you have any co-defendants in this case, do you
24 remember?

25 A Yes.

1 Q Had they implicated you?

2 A Yes, ma'am.

3 Q Okay.

4 A They -- yes, ma'am. Yes, ma'am.

5 Q And originally you had several more charges than just
6 these, didn't you?

7 A Yes, ma'am.

8 Q And some of those charges were, like, some assault
9 and battery with intent to kill, some weapons
10 charges?

11 A Yes, ma'am.

12 Q Okay. And when you pled guilty to these three
13 charges those were all dismissed?

14 A Really, I had told Mr. Abdalla that I really wanted
15 to go to trial for all those charges because due to
16 the fact that I got a warrant that's clearly saying
17 that my co-defendant said that--

18 Q Well hold on a second, that's not what I'm asking
19 you. What I'm asking you is, when you went ahead and
20 pled guilty to these charges, those charges all got
21 dismissed, right?

22 A I really don't know.

23 Q You don't know, that's fine. And you testified that
24 Mr. Abdalla told you he had spoken to the Judge and
25 the Judge would give you 10 to 15, is that correct?

- 1 A Yes, ma'am. Because my co-defendant was getting a 10
2 year, a 10 year deal, too. Supposed to have got a 10
3 year deal, he was supposed to be testifying on me.
4 And we had -- somehow we had got his plea into my
5 paper work. And I had showed Mr. Abdalla that.
- 6 Q And did he promise you you'd get 10 to 15 or just
7 that he'd ask for it?
- 8 A He told me I get 15 years, he tell me his word is
9 good as gold.
- 10 Q So he promised you that 10 to 15 years?
- 11 A Yes, ma'am.
- 12 Q But didn't you tell Judge McIntosh that no one had
13 promised you anything to get you to plead guilty?
- 14 A Yes, ma'am. Like I said before, when Mr. Abdalla
15 told me that when I go before the Judge, he's going
16 to ask me some questions to answer yes or no. And do
17 not -- if he ask me -- if he ask me if anybody
18 promised me something to tell the Judge, No. Because
19 if I told him yes it been like that Mr. Abdalla
20 wasn't -- Mr. Abdalla told me, you know what I'm
21 saying, do not tell the Judge that -- that we had --
22 that we had discussed he was going to give me 15
23 years.
- 24 Q So Mr. Abdalla asked you to lie to the Judge when he
25 asked you that question?

1 A Basically, yes, ma'am.

2 Q Okay.

3 MS. RATIGAN: That's all I have, Your Honor.

4 MS. HORLBECK: No redirect.

5 THE COURT: All right, you can step down.

6 MS. HORLBECK: We rest.

7 THE COURT: All right, State.

8 MS. RATIGAN: Judge, we call Mr. Abdalla.

9 THE COURT: All right, come on around,
10 Mr. Abdalla.

11 THE CLERK: Place your left hand on the Bible,
12 raise your right hand.

13 JOHN ABDALLA, after being duly sworn, testified
14 as follows:

15 THE CLERK: Thank you, you may be seated. State
16 your full name for the record.

17 THE WITNESS: John Paul Abdalla.

18 THE COURT: Speak up a little bit.

19 THE WITNESS: John Paul Abdalla.

20 THE COURT: All right.

21 DIRECT EXAMINATION

22 BY MS. RATIGAN:

23 Q Do you recall representing Mr. McKinney on these
24 charges?

25 A I do.

- 1 Q Were you the first attorney in this case?
- 2 A No, Andy Moorman had represented him for a year and a
3 half or so.
- 4 Q And by the time you got the case had discovery
5 already been filed or did you need to file for that?
- 6 A Discovery had already been filed, according to all
7 the notes, and have been gone over with with
8 Mr. McKinney. I received it a few months before the
9 trial, actually.
- 10 Q Did you review the discovery materials with
11 Mr. McKinney?
- 12 A My recollection is that I reviewed the discovery
13 materials with Mr. McKinney. I'm not going to say
14 that he's lying about things that were missing
15 because I don't have a recollection of anything that
16 was missing, so. If I left anything out, I'm sorry.
17 I don't recall leaving it out but I don't have -- I
18 can't remember. I just have to be honest, if
19 anything was missing.
- 20 Q Do you recall if you received a photo line-up as far
21 the discovery?
- 22 A I don't recall.
- 23 Q Do you recall if there was a photo line-up?
- 24 A There was a photo line-up.
- 25 Q Do you recall Mr. McKinney asking you to research the

1 discrepancies between the victims physical
2 description of him and his actual description?

3 A I don't remember that specifically. I do remember
4 him asking me to look into some discrepancies but I
5 can't remember exactly what they were.

6 Q Did you represent Mr. McKinney on both these charges
7 and the ones that were nolle prossed?

8 A Yes.

9 Q Did you advise him of the potential sentence he could
10 receive on all of these charges?

11 A I did. Just for the record, I don't remember ever
12 remember using the term, Life. The only way I may
13 have said that, that I can imagine, is in the context
14 of there being so much time, it's constructive of a
15 life sentence. Because it wasn't a life sentence.
16 The only way it could have been life is if they tried
17 him under a violent crime, he got convicted and then
18 they bring him back later. I may have said something
19 like that. But I don't recall saying life exactly.

20 THE COURT: Would you have used it when you were
21 perhaps discussing the--

22 THE WITNESS: Yes.

23 THE COURT: -- effects of most serious
24 convictions?

25 THE WITNESS: Probably so.

1 THE COURT: Okay, thank you.

2 THE WITNESS: I just don't remember what
3 context. But I don't remember ever saying anything ever
4 carried life because it does not. I do know the sentences
5 well enough for that.

6 Q Did Mr. McKinney ever tell you to contact a Michelle
7 Bennett?

8 A I don't recall.

9 Q If he had given you contact information for potential
10 witnesses, would you have looked into it?

11 A I would have looked into it or had my investigator
12 look into it more than likely.

13 Q But there's nothing in your file that reflects any
14 investigation to a Michelle Bennett?

15 A No, I can't find that.

16 Q Okay. Did you see any defects in these indictments?

17 A No. I didn't see anything defective that would have
18 change any -- change the course of action.

19 Q Was this case always going to plead or at some point
20 was it headed for a trial?

21 A Well, at different times he told -- he told
22 Mr. Moorman the entire time, from what I read and
23 talked to Andy, that he didn't want to go to trial.
24 He didn't agree with the facts but didn't want to go
25 to trial. And he and I had several conversations

1 where he did not admit he was guilty most of the
2 times. Said he didn't do all of that. And when we
3 discussed the facts, my perception, my review of the
4 case was that it wasn't a realistically winnable case
5 to go to trial on. So I'd be the first to admit that
6 I told him his better action was to go to court. I
7 mean, to take a plea if he wanted to get out
8 sometime. Because he is a young man and has a lot to
9 look forward to.

10 Q And you shared with him your concerns about it not
11 being a winnable case?

12 A Oh, yeah.

13 Q Did you ever go to talk to Judge McIntosh prior to
14 the plea about special sentences?

15 A I did.

16 Q Can you tell the Court the content of that
17 conversation?

18 A No, I can't because I can't remember exactly what it
19 was. But I do remember talking to the Judge. And it
20 was when Judge McKinney [sic] first took the bench --

21 Q Judge McIntosh?

22 A Judge McIntosh. I'm sorry, Judge McKinney's the one
23 that -- nevermind. Judge McIntosh was reluctant to
24 have me approach. Well obviously me and the
25 prosecutor. And so he was a bit on the grumpy side

1 with me. But I said all I'm looking for is a
2 sentence probably between 10 and 15 years, something
3 on the low end. And the impression I got was that he
4 was going to go for that. And I am sure I shared
5 that with my client. And I would also be sure that I
6 shared with my client that this is my impression that
7 I can't make any guarantees. But Mr. McKinney thinks
8 that I guaranteed it but I don't remember. I mean, I
9 can't guarantee what the Judge is going to do. And I
10 always tell people that, look I can't guarantee it
11 but this is what my impression is.

12 Q And did you explain to Mr. McKinney that he was, in
13 fact, pleading guilty without any kind of
14 recommendation?

15 A I assumed I did, I don't have anything in writing to
16 that effect. But my normal course of business is to
17 say, Here's what my impression is of what the Judge
18 is going to do, the prosecutor is not going to
19 object, I'm going to ask for between 10 and 15 years
20 and you're likely to get a sentence in that range.

21 But when you go out you can't tell the Judge
22 you're pleading guilty because you're getting a deal
23 because that's not true. You're either pleading
24 guilty because you're guilty or you're not pleading
25 guilty. But I can't have you go out there and say

1 you're pleading guilty because you've been promised
2 something because that's not true.

3 Q Did you instruct Mr. McKinney to lie to the Judge?

4 A No, I did not. That wasn't my intent. Let me just
5 say, to clean it up a little. The Judge is going to
6 ask Mr. McKinney and any other defendant, Are you
7 standing here pleading guilty? Yes. Are you guilty
8 of what you're charged with? Yes. If they say no
9 then the Judge will not take their plea. He'll say,
10 Okay, let's just bring in the jury. And sometimes
11 clients get confused, it's been my experience, with
12 that language. So I say you can't tell the Judge
13 that you're pleading guilty if you're not guilty.
14 You're either guilty or you're not. And maybe he got
15 confused, maybe I didn't explain it properly but
16 that's what my intention was.

17 MS. RATIGAN: That's all I have, Your Honor.

18 THE COURT: All right, cross.

19 CROSS-EXAMINATION

20 BY MS. HORLBECK:

21 Q How long did you represent Mr. McKinney?

22 A I think three months.

23 Q Is there anything in your file that you actually did
24 contact the witness, Michelle Bennett?

25 A I don't have anything in the file to show that. I

1 have one of the files missing, to be honest.

2 Q Okay.

3 A I mean, I remember a lot from the case, not every
4 little specific detail, but I can't honestly testify
5 that I know that. I generally gave things to Tracy,
6 who contacted people for me. That was my
7 investigator with the Public Defender's Office.

8 Q Okay. It is possible that he asked you to contact a
9 Michelle Bennett or some other witness and you
10 didn't?

11 A Anything's possible, sure.

12 Q And you also testified on direct that you recall that
13 you were asked to look into some discrepancies, do
14 you remember whether you did look into those or not?

15 A I thought I did but I can't remember, no.

16 Q Do you remember what the discrepancies were? Were
17 they with the description?

18 A I think it was -- there were several witnesses that
19 had different, varying testimonies. My recollection
20 is that I instructed Mr. McKinney that, Look,
21 different people are saying different things and that
22 will create a little bit of confusion. However, as I
23 interpreted the whole set of events didn't look good
24 for Mr. McKinney. So in my impression win the
25 battle, lose the war. We could win this fight and

1 this fight because if we lose over here, you'll end
2 up getting more time than had we just taken the whole
3 ball of wax together.

4 Also, there were co-defendants that were going
5 to testify which were much more damaging than the
6 victims. Victims tend to not be as reliable.

7 Q Okay. And you said it's possible that things could
8 be missing from the discovery package that
9 Mr. McKinney got?

10 A It's possible but I would be surprised but anything's
11 possible, sure.

12 Q And you did speak to the Judge?

13 A Yes, I did.

14 Q And the impression you got from the Judge is that he
15 may go for a 10 to 15 year sentence?

16 A That's exactly right.

17 Q And you recall discussing your impressions with
18 Mr. McKinney?

19 A I recall -- I do. It was right back there. Seems
20 like it was this courtroom. I don't remember the
21 exact words but my typical thing is, Look you're
22 probably going to get 10 to 15 years. He said I
23 guaranteed it. I don't remember guaranteeing
24 anything like that. But if I did that was stupid on
25 my part but I don't remember ever saying that.

1 Q Do you think Mr. McKinney could have gotten confused?

2 A I do. And I do think that -- I was surprised he got
3 17 years. So tell you that I really thought he was
4 going to get more like 15.

5 MS. HORLBECK: That's all I have, thank you.

6 THE COURT: Any redirect?

7 MS. RATIGAN: No redirect and the State would
8 rest, Your Honor.

9 THE COURT: Okay.

10 MR. ABDALLA: Am I excused, I guess?

11 THE COURT: Yes, sir.

12 All right, anything you want to tell me?

13 MS. HORLBECK: No, sir, we're just going to rest
14 on the testimony.

15 THE COURT: Okay. Well I -- Mr. McKinney, I'm
16 denying your application for post-conviction relief. You
17 have the burden of proving that there was deficient --
18 that the conduct of your attorney fell below an objective
19 standard of reasonableness. And if that happened, that
20 you were prejudiced by it and the result might have been
21 different. I don't find that that's happened in this
22 case. And so I'm going to deny your petition.

23 I'm going to request the Attorney General to
24 prepare an Order.

25 And I wish you the best of luck. Where they

1 have you, where are you?

2 MR. MCKINNEY: Lee County.

3 THE COURT: Lee County. Did you graduate high
4 school?

5 MR. MCKINNEY: No, sir. But I just got my --

6 THE COURT: GED.

7 MR. MCKINNEY: Yes, sir.

8 THE COURT: Congratulations, that's great. All
9 right.

10 (WHEREUPON, the proceedings were concluded.)

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2/19/09

WITNESSES

B. Lusk

Greenville Police Department

12/18/2007

DOCKET NO. 2008-GS-23-

KBF

002171

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February TERM 2008

2/19/09

THE STATE

vs.

PLEAD GUILTY

JAMAGO SIR EDWARD MCKINNEY

ARREST WARRANT NUMBER

COUNT I - J484406 COUNT II - J484408

ACTION OF GRAND JURY

TRUE BILL

Nicki Curran

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0139 and 0549

**ARMED ROBBERY and POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME**

Foreperson of Petit Jury

Date:

VIOLATION § 16-11-0330 and § 16-23-0490

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY and POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

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

COUNT I – ARMED ROBBERY

That JAMAGO SIR EDWARD MCKINNEY did in Greenville County, on or about the 13th day of December 2007, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: miscellaneous clothing items from the person or presence of D.D. and/or J.B.. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT II – POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That JAMAGO SIR EDWARD MCKINNEY did in Greenville County, on or about the 13th day of December 2007, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: ARMED ROBBERY. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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

SOLICITOR

R1221

WITNESSES

B. Lusk

Greenville Police Department

12/18/2007

DOCKET NO. 2008-GS-23-
KBF

002170

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
February

TERM 2008

9/9/9
PLEAD GUILTY

THE STATE

vs.

JAMAGO SIR EDWARD MCKINNEY

ARREST WARRANT NUMBER

J484407

ACTION OF GRAND JURY

TRUE BILL

Nicki Cummins

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0049

Indictment for

CONSPIRACY

VIOLATION § 16-17-0410

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

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

That JAMAGO SIR EDWARD MCKINNEY did in Greenville County, on or about the 13th day of December
2007, willfully and unlawfully combine with DUSTIN FANT for the purpose of accomplishing an unlawful
object or a lawful object by unlawful means, to wit: ARMED ROBBERY. This is in violation of §16-17-410 of
the South Carolina Code of Laws (1976) as amended.

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

UB Hodge
SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Jamago Sir Edward McKinney,)
 S.C.D.C. No. 336810,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-23-2589

ORDER OF DISMISSAL

FILED
 CLERK OF COURT
 GREENVILLE COUNTY
 SOUTH CAROLINA
 APR 29 2011 PM 12:40

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 1, 2010. The Respondent made its return on August 20, 2010. An evidentiary hearing into the matter was convened on November 9, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, John P. Abdalla, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted by the Greenville County Grand Jury for conspiracy (2009-CP-23-2170), armed

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robbery (2009-GS-23-2171, count 1), and possession of a weapon during commission of a violent crime (2009-GS-23-2171, count 2). He was represented by John P. Abdalla, Esquire.

On September 9, 2009, the Applicant pled guilty.¹ The Honorable R. Lawton McIntosh sentenced the Applicant to concurrent terms of five (5) years for conspiracy, twenty (20) years suspended on the service of seventeen (17) years for armed robbery, and five (5) years for possession of a weapon during commission of a violent crime. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. Violation of Constitutional rights.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

¹ The State not prossed numerous indictments after the Applicant entered his guilty plea.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated plea counsel was assigned to his case after his first plea attorney had a conflict. The Applicant stated he reviewed some discovery materials with his first attorney and some materials with plea counsel. The Applicant stated he told plea counsel the following items were missing from the discovery materials: statements from three (3) witnesses and the photographic lineup. The Applicant stated plea counsel failed to challenge the defective indictments. The Applicant testified plea counsel never contacted his witnesses (specifically, Michelle Bennett). The Applicant testified plea counsel told him he should plead guilty because he could potentially receive a life sentence. The Applicant testified he agreed to plead guilty because plea counsel promised he would receive a ten (10) to fifteen (15) year sentence. The Applicant acknowledged he told the plea judge that he had not been made any promises in exchange for pleading guilty but said that plea counsel told him to lie to the judge. The Applicant admitted numerous other serious charges were dismissed as a result of the plea. The Applicant admitted his co-defendants had implicated him and that he knew the victims had identified him in a photographic lineup.

Plea counsel confirmed he was not the Applicant's first attorney. Plea counsel testified the discovery motions had already been filed when he assumed representation. Plea counsel testified he reviewed the facts of the case and the discovery materials with the Applicant but did not recall there were any missing discovery items. Plea counsel testified there were no defects in the indictments. Plea counsel testified that, if he had received a witness name from the Applicant, he would have given the information to an investigator. Plea counsel testified he did not recall (and there was nothing in his file pertaining to) the name Michelle Bennett. Plea counsel stated he advised the Applicant of the potential sentences he could receive on each charge. Plea counsel stated he did not recall telling the Applicant he was facing a life sentence but that perhaps his advice was interpreted that way because the Applicant was facing substantial sentences. Plea counsel stated he told the Applicant this was not a case they could win at trial and that he would have advised the Applicant to plead guilty. Plea counsel stated he would have explained to the Applicant that he was pleading guilty without a sentence recommendation. Plea counsel testified he told the Applicant he would ask for a ten (10) to fifteen (15) year sentence, which he did. Plea counsel testified he did not tell the Applicant to lie to the plea judge.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that he was guilty of the charges. (Plea transcript, p.11). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way.

(Plea transcript, pp.8-11).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly investigate the case or obtain all of the discovery materials. Plea counsel testified he did not believe he was missing any of the discovery materials. The Applicant stated, for example, that the photographic lineup was missing but plea counsel testified he had reviewed that item. Further, while the Applicant alleged plea counsel failed to investigate his case, he failed to articulate what else plea counsel should have done to prepare and the impact this further preparation would have had on his case. See Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective because he did not subpoena witnesses – specifically, Michelle Bennett. As none of these alleged witnesses testified at the evidentiary hearing, any discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.”) (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have objected to the indictments. This Court notes indictments are not evidentiary or

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jurisdictional documents – they are merely notice documents. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). The indictments in this case were true-billed and clearly sufficient to put the Applicant on notice of the charges he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007). Further, the Applicant's argument that the Grand Jury was not scheduled to convene when his indictments were signed is without merit. While terms of court are technically prescribed by statute, this Court notes general sessions matters may be transacted during common pleas terms of court and vice versa. See S.C. Code Ann. §§ 14-5-410, -420 (Supp. 2003).

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the sentence he would receive. Plea counsel testified he advised the Applicant of the potential sentences he could receive on all of his outstanding charges. The Applicant must be advised of such before he can plead guilty. See Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (finding that, before a defendant can enter a guilty plea, he "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived"). This Court does not find credible the Applicant's assertion that plea counsel promised he would receive a 10-15 year sentence and that he should lie to the plea judge in order to receive that sentence. This Court finds plea counsel advised the Applicant that he would request a 10-15 year sentence and, in fact, did so at the plea hearing. (Plea transcript, p.15). The Applicant informed the plea judge no promises had been made in order to induce his plea. (Plea transcript, p.8). Further, the Applicant did not object when the State noted he was pleading guilty without a sentence recommendation. (Plea transcript, p.8). In addition, the Applicant signed the sentencing sheets in this case, which were clearly marked "Without Negotiations or

Recommendation.” This Court finds the Applicant was aware he was pleading guilty without a sentence recommendation.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty

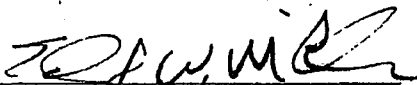
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(30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

- 1. That the application for post-conviction relief be denied and dismissed with prejudice; and
- 2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20 day of December, 2011.


 Edward W. Miller
 Presiding Judge
 Thirteenth Judicial Circuit

Jed, South Carolina.