

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL 16 2012

Appeal from Lee County
R. Ferrell Cothran, Jr., Circuit Court Judge

S.C. Supreme Court

DAVID BACCHUS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA

COUNTY OF LEE

THE STATE OF SOUTH CAROLINA,
PLAINTIFFS

VS.

DAVID BACCHUS,
DEFENDANT

2009-GS-31-111

OCTOBER 8, 2009
BISHOPVILLE, S.C.

BEFORE THE HONORABLE GEORGE C. JAMES, JR., JUDGE.

A-P-P-E-A-R-A-N-C-E-S

MR. PAUL FATA,
ASSISTANT SOLICITOR FOR THE STATE

MS. DEBORAH BUTCHER,
PUBLIC DEFENDER

MARGARET T. SULLIVAN,
COURT REPORTER

1 MR. FATA: Your Honor, the State calls
2 indictment 2009-GS-31-111. The State versus David
3 Bacchus. Indictment for assault and battery of a
4 high and aggravated nature. And assault on a
5 correction's officer. Mr. Bacchus is entering a
6 plea to assaulting a correction's officer which is
7 Count 2. The State is nol-prossing Count 1,
8 assault and battery of a high and aggravated
9 nature. The State has a recommendation of two and
10 one half years.

11 He is represented by Ms. Butcher.

12 (Whereupon, the defendant is sworn.)

13 THE COURT: Is this Mr. June here?

14 MR. FATA: This is Lieutenant June. He was the
15 correction's officer that was assaulted.

16 THE COURT: Ms. Butcher, does your client
17 understand the charge, his rights, and the punishment
18 that he is facing?

19 MS. BUTCHER: Yes, Your Honor.

20 THE COURT: Does he understand that whatever
21 sentence is imposed it must be consecutive---

22 MS. BUTCHER: Yes, Your Honor.

23 THE COURT: ---to what he is serving?

24 MS. BUTCHER: Yes, Your Honor.

25 THE COURT: What is he serving now?

1 MS. BUTCHER: He is serving, I think I got this
2 right, an 18-year sentence. He's supposed to get out in
3 2001, for voluntary slaughter.

4 THE COURT: He's supposed to get out when?

5 MS. BUTCHER: 2000 -- 2021.

6 THE COURT: Do you think a jury would, based on
7 your knowledge of the facts in this case, find him
8 guilty?

9 MS. BUTCHER: Yes, Your Honor.

10 THE COURT: Any concern about his competence?

11 MS. BUTCHER: No, Your Honor.

12 THE COURT: Your name, sir?

13 THE DEFENDANT: David Bacchus.

14 THE COURT: Mr. Bacchus, have you ever pled
15 guilty to anything before?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand I am going to be
18 asking you a lot of questions?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you ever been treated for
21 alcohol abuse or drug abuse or mental illness?

22 THE DEFENDANT: No, sir.

23 THE COURT: Are you under the influence of any
24 substance today?

25 THE DEFENDANT: No, sir.

1 THE COURT: Do you take medication?

2 THE DEFENDANT: No, sir.

3 THE COURT: According to the information I have,
4 you are 44-years-old?

5 THE DEFENDANT: Yes, sir.

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

7 THE DEFENDANT: 12th grade.

8 THE COURT: Now do you understand that you can
9 talk to your lawyer at any time. You can step back and
10 talk to her and we will allow you do that. I won't hold
11 that against you. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: If somebody in here says something
14 you don't understand or you don't agree with, you let me
15 know, okay?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All in all, do you have any
18 condition today that would keep you from being able to
19 understand what you are doing?

20 THE DEFENDANT: No, sir.

21 THE COURT: The indictment in your case, as far
22 as Count 2 is concerned, says that on or about June 1,
23 2009, you did assault Cedric June, an employee of a
24 state or local correction's facility while he was
25 performing job related duties, by striking him in the

1 back of the head with a metal lock. Do you understand
2 that charge?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: It carries a minimum of 6 months
5 and a maximum of 5 years. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: When you plead guilty, you give up
8 the right to assert certain constitutional rights. Do
9 you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: One of those rights which you would
12 have to give up is your right to remain silent. Do you
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You also have give up your right to
16 have a jury trial. Which means your right to have a
17 12-person jury decide whether or not you are guilty.
18 During that trial, you would not have to prove anything.
19 And the state would have to prove, present enough
20 evidence to convince 12 jurors that you were guilty
21 beyond a reasonable doubt. Again, you wouldn't have to
22 prove anything. Do you understand your right to a jury
23 trial?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You also have to give up your right

1 to confront any witnesses the state calls against you.

2 That means you have to give up your right to be present
3 when they testify. Give up your right to listen to
4 them. And give up the right for your lawyer to question
5 those witnesses. Also, typically, you could call your
6 own witnesses, even though you wouldn't have to.

7 Do you understand all those rights I just
8 explained to you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you want to give up each one of
11 those rights and plead guilty today?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that if you have
14 any defenses to this charge, when you plead guilty, you
15 give up the right to assert that defense?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And if you made any statements to
18 the authorities that would incriminate you, when you
19 plead guilty, you give up the right to challenge the
20 admissibility of that statement?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you guilty or not guilty of
23 assault on a correction's officer?

24 THE DEFENDANT: Guilty.

25 THE COURT: In a minute, Mr. Fata is going to

1 tell me what the state's version of the facts are. I am
2 going to ask you at some point if you can tell me what
3 you did that makes you guilty. Or I am going to ask you
4 whether or not what he says is right. Do you understand
5 that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: There is a recommendation of a
8 sentence for two and a half years. Is that your
9 understanding?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that whatever
12 sentence is imposed, has to run consecutive to your
13 current sentence?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: In other words, this sentence
16 wouldn't start until you finished the other one. Do you
17 understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: I don't have to follow that
20 recommendation either. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has anybody promised you anything
23 to get you to plead guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Has anybody used any threats, force

1 or intimidation?

2 THE DEFENDANT: No, sir.

3 THE COURT: Is your lawyer making you plead
4 guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you had enough time to decide?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And are you pleading guilty based on
9 your own free will?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you satisfied with the services
12 of your lawyer?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you understood all your talks?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And is there anything else you want
17 her to do that she hasn't done for you?

18 THE DEFENDANT: She did everything to the best
19 of her ability.

20 THE COURT: Have you talked to her enough?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Is there anything else you
23 want her to do in reference to you other what has been
24 presented to you?

25 THE DEFENDANT: No, sir.

1 THE COURT: You have 10 days to appeal this
2 plea, and the sentence. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions about what
5 we have been over?

6 THE DEFENDANT: No, sir.

7 THE COURT: Mr. Fata.

8 MR. FATA: Your Honor, on June 1st 2009, in the
9 Chesterfield unit, and the Chesterfield unit is the one
10 we receive a lot of complains from. A lot of activities
11 go on there that shouldn't be.

12 The defendant hit Lieutenant June in the head
13 with what is commonly called a lock in a sock. This was
14 a lock on a rope. Hit him in the back of the head.
15 Swat him. And I've got photographs. This is Lieutenant
16 June. This is the thing that he swung, and hit
17 Lieutenant June in the back of the head. After this,
18 you know, everybody was called and then a lock down and
19 so forth.

20 Investigator Greer interviewed the inmate. And
21 the inmate said he had a longstanding disagreement with
22 Lieutenant June. And that Lieutenant June had
23 embarrassed him by pulling him out of the shower naked.
24 And they got into an argument when Lieutenant June told
25 him to do something he didn't like. And that's why he

1 assaulted Lieutenant June. Lieutenant June is here.

2 And before he makes any comment, I want to give you the
3 defendant's record.

4 In 2003, he had a resisting arrest for which he
5 received 30 days. Malicious injury to personal property
6 of which he was fined and did 150 days suspended to 60
7 days. He had a driving without a license. And he has
8 removal of a license, conceal identity. Both of those
9 were 30 days. He has a voluntary manslaughter
10 conviction in 2006. The record I have shows 18 months
11 obviously that's incorrect. It has to be -- because you
12 get, the minimum sentence is more than 18 months.

13 THE COURT: 18 years.

14 THE DEFENDANT: Yes, sir.

15 MR. FATA: It's probably years. Grand larceny
16 5 years. And failure to stop for a blue light, three
17 years. Resisting arrest, one year.

18 THE COURT: Where are you from?

19 THE DEFENDANT: Florence County.

20 MR. FATA: And this all occurred in, it doesn't
21 indicate the county where it all occurred. Anyway, do
22 you want to speak to the court?

23 LIEUTENANT JUNE: Yes, sir.

24 MR. FATA: You have to direct your comments to

25 the judge.

1 THE COURT: Yes, sir, Mr. June.

2 LIEUTENANT JUNE: Good morning, Judge, Your
3 Honor. I have been working for the Department of
4 Corrections approximately 17 years. And the majority of
5 my time was in the Lee Correctional Institution. I have
6 experienced several situations. There were several
7 situations. I have never, ever experienced a situation
8 of being assaulted the way Mr. David Bacchus assaulted
9 me from behind.

10 Now personally, I felt Mr. Bacchus tried to take
11 my life that day. I thank God that day, and I thank God
12 today that I had the strength to stay on my feet and
13 fight to keep this man off of me. But, like I say
14 today, it is emotional to me. It's emotional every day
15 to look at them pictures. I didn't want to see that,
16 but I did. But I'm good.

17 THE COURT: Was he fully clothed? Because
18 there's a picture of him too.

19 LIEUTENANT JUNE: That is a picture of him when
20 he went to medical. And that is a picture of me. They
21 take my shirt and tee shirt off because blood was on it.

22 THE COURT: Did you miss a lot of time from
23 work?

24 LIEUTENANT JUNE: Yes, I missed. I haven't been
25 back to work yet. But there's other situations going on

1 with that too. But every day, I mean, sometimes, you
2 know, I go to the doctor, see the doctor. He says that
3 in the back of my head the nerves will heal one day or
4 soon. But I get a sharp pain back there. When I get
5 that sharp pain, I can only think about the situation
6 that happened.

7 THE COURT: Did he say anything to you during
8 the event?

9 LIEUTENANT JUNE: He never said one thing. All
10 he did was came up from behind when I had like 50
11 inmates out, taking them somewhere, and just started
12 hitting me from behind. Never said one thing to me.

13 THE COURT: Where did he get the lock? The
14 metal lock?

15 LIEUTENANT JUNE: You can purchase that at the
16 canteen for their personal lockers.

17 THE COURT: Anything else?

18 LIEUTENANT JUNE: No, sir.

19 THE COURT: Anything else from the department?

20 INVESTIGATOR: Yes, Your Honor. I am
21 investigator. Investigator Greer. And during my
22 investigation, the only thing that I make Your Honor
23 aware; is that, during my conversation with Mr. Bacchus,
24 and other individuals, this was a premeditated act. And
25 that's all I have to say.

1 THE COURT: There is a substantial, factual
2 basis for the plea. Mr. Bacchus has entered freely,
3 voluntarily, knowingly and intelligently. He is
4 represented by an attorney with whom he is satisfied. I
5 will accept his plea. Ms. Butcher.

6 MS. BUTCHER: Thank Your Honor. And, Your
7 Honor, and what I am about to say in no way validates
8 Mr. Bacchus. I just would simply give you a full
9 picture. My understanding is that when he was hit,
10 Mr. Bacchus, handcuffed, on the ground. And then this
11 officer, while he was, Mr. Bacchus was in handcuffs on
12 the ground, was slammed to the ground. That's why we
13 have a picture of the injuries of Mr. Bacchus. And I
14 believe the officer did get a little bit of suspension
15 or something of that nature. Which contributed to the
16 loss of work. And like I say, Your Honor, that's only
17 for a full picture. Not to validate Mr. Bacchus'
18 actions in any way.

19 Prison itself is a very stressful situation.
20 And I believe these two had prior words, et cetera,
21 which led to this. Your Honor, that's just to give you
22 a full picture. He fully admits what he did. And it
23 was wrong. And he, I think, realizes that. Your Honor,
24 at this point, he is going to be roughly 35 by the time
25 he gets out for what he is serving now, Your Honor. I

1 believe adding this time to it, he's already lost about
2 half of his life in the system, Your Honor.

3 I do feel like two and half a years is
4 appropriate. And we would ask you to follow the
5 recommendation of the State. And Mr. Bacchus would like
6 to speak.

7 THE COURT: Mr. Bacchus.

8 THE DEFENDANT: Your Honor, I do admit my guilt.
9 And I don't have anything to say about that, because I
10 was wrong. I see in prison right under good time, to
11 lose my sentence from what I am doing standing in front
12 of you. And I apologize for that. And I ask the court
13 to please give me mercy, and have another chance. And I
14 can prove to myself and prove to you all that I can be a
15 better man.

16 THE COURT: How do you -- what did you
17 loop the lock around?

18 THE DEFENDANT: Huh?

19 THE COURT: What did you loop in to the lock?

20 THE DEFENDANT: A piece thing from my neck back.

21 THE COURT: And on your what? Neck back?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you measured that. You put it
24 in a sock or something?

25 THE DEFENDANT: Sir?

1 THE COURT: How did you carry it? Did you
2 conceal it, or did you just have it in your hand?

3 THE DEFENDANT: I had it in my hand.

4 THE COURT: And how far away was Mr. June when
5 you hit him?

6 THE DEFENDANT: About 12, 15 feet.

7 THE COURT: And is there any reason why you
8 didn't -- did you do it when his back was turned?

9 THE DEFENDANT: There was really no reason why.

10 THE COURT: Anything else, Ms. Butcher?

11 MS. BUTCHER: No, sir, Your Honor.

12 THE COURT: You are committed to the State
13 Department of Corrections, And this is consecutive to
14 the sentence you are currently serving. A period of
15 three years. Thank you.

16 ----End of Requested Transcript of Record-----

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CERTIFICATE

State of South Carolina

County of Lee,

I, Margaret T. Sullivan, Official Court Reporter for the Third Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the above captioned case, relative to appeal, in General Sessions Court on October 8th 2009, for Bishopville, South Carolina.

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

May 17, 2010
Date

Margaret T. Sullivan

Margaret T. Sullivan, Court Reporter
My commission expires October 3, 2011

STATE OF SOUTH CAROLINA)

County of Lee)

IN THE COURT OF COMMON PLEAS

David Brooks # 315173)
Full name and prison number (if any) of Applicant)

10-CP-31-SP

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 4466 Broad River Rd. Columbia, South Carolina, 29210

2. Name and location of Court which imposed sentence Court of General Sessions, Bishopville, SC

3. Name(s) of co-defendant(s) (if any) None

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-31-111 Assault and Battery High and Aggravated

(b) Nature, on Assaulting a Correctional Officer

(c) _____

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

(a) 10/9/09; Assault on Correctional Officer B/hrs.

(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. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Counsel did not advise me of my right to appeal

- (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, Involuntary Plea of Guilty
- (b) Violations of U.S. Const. Amend. 5th, 10th, 8th, and 14th Amend
- (c) Indictment is defective, false Imprisonment

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

- (a) U.S. Const. Amend. 5th, 10th, 8th, 14th Amend
- (b) EVANS v STATE 1011 S.E. 2d 510 (2005)
- (c) Brady v Maryland 43 S.Ct 1194 (1963)

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? _____
- (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? _____

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

iv. _____

(c) the disposition thereof:

i. _____ *N/A*

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____ *N/A*

ii. _____

iii. _____

iv. _____

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

i. _____ *N/A*

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 / First challenge (P.C.R.) Avenue for presentation of Rule (10) B(3)

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

(a) which grounds have been presented:

i. _____ *N/A*

ii. _____

iii. _____

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

i. _____ *N/A*

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) _____

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? Yes - Guilty Plea was entered
- (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. Deborah Butcher
1042-d Camden Law Firm
 - ii. Camden SC 29020
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Pre trial arraignment and Plea
 - ii. _____
 - iii. _____

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

Conviction and sentence vacated; OR when grant of a new trial

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 ~~Greenville~~ Lenoir)

VERIFICATION

I, David Beechus # 315113, 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.

D. Beechus

SWORN to and subscribed before me this 23 day of Feb, 200.

Eugene Huff (L.S.)
Notary Public Commission Expires April 4, 2018

My Commission Expires: _____

2

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

I, David Bocchus # 315173, 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.

D. Bocchus

Applicant

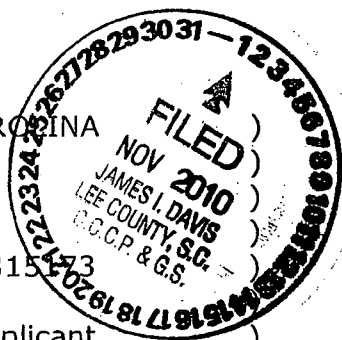
SWORN or affirmed to and subscribed before me this

23 day of Feb, 2010

Engene Keeth
Notary Public

My Commission Expires: _____
My Commission Expires April 4, 2010.

STATE OF SOUTH CAROLINA
COUNTY OF LEE
DAVID L. BACCHUS, 315



IN THE COMMON PLEAS COURT
DOCKET NO.: 2010-CP-31-51

Applicant

AMENDED APPLICATION FOR POST
CONVICTION RELIEF

STATE OF SOUTH CAROLINA
Respondent,

The Applicant through undersigned Counsel wishes to Amend his Application for Post Conviction Relief as follows:

Applicant has concerns of Article I Declaration of Rights to which he feels have been violated.

ARGUMENT

This Article was violated when Investigator Greer took evidence to the Grand Jury that wasn't in Judicial power and this Article is clear that no person or persons exercising the functions of one said department shall assume or discharge the duties of any other. When you review the evidence from the 19-29 Incident Report, there was none listed in the section titled "Evidence". It comes from a separation of power, which is a violation.

I

Section 8 of Article I, separation of power states, In the governments of this state, the legislative, executive and judicial power of the government shall be forever separate and distinct from each other and no person or person exercising

the functions of one of said departments shall discharge or assume the duties of any other.

II

When Section 8 of Article 1 took place, it violated ex post facto law, Sec 4 Article 1 S. C. Const. and Article 1 Sect. 9 (cl.3) and 10 of the U. S. Constitution which provides that neither Congress nor any State shall pass an ex post facto law. It impaired the obligation of contracts of the constitution and agency policy which is policy OP 22.14 "Inmate disciplinary System". The policy of the agency states the evidence must be listed. If the charge involved contraband, the item of contraband should be produced at the hearing and full statement of the facts underlining the offense to include witnesses, evidence and disposition of evidence must be listed. *Wolff v McDonnell* 418 U. S. 539(1974)(Misconduct Reports Sec 2-B).

ARGUMENTS

With this in the light, impairment of contract, titles, effect of the conviction is corrupted.

III

Sec. 11 Article 1 was violated because nothing contained in this constitution is deemed to limit or prohibit the establishment by General Assembly of a State grand jury with authority to return indictments irrespective of the county where the crime has been committed and that other authority including procedure as the General Assembly may provide.(1970 (56) 2684, 1971 (57) 315, 1989 Act no 5; 1989 Act no 8).

When the separation of power act was violated and ex post facto law impairing the obligation of contract, effect of conviction wasn't implemented

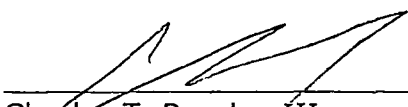
Applicant's due process of law Article 1 Sec 3 was violated which is clearly a subject matter jurisdiction issue. (State v Wilkes 550 S.E. 2d 332 (S.C. App. 2001).

Review criminal key 99, 101, 110. In Applicant's case there's lack of subject matter jurisdiction because there's no weapon of evidence to support the indictment, not by the responsible authority was contraband not be investigator which is a separate authority within the agency. (Art. 1, Sec 7, Art 1 Sec 4). Therefore court lacks subject matter jurisdiction.

CONCLUSION

The provisions of the Constitution shall be taken, deemed and construed to be mandatory and prohibitory and not merely directory, except where expressly made directory or permissive by its own terms (Art. 1 Sec 23). It's also clear in the cardinal rule of statutory construction that a court must ascertain and give effect to the intent of the legislature. What a legislature says in the text of a statute is considered the best evidence of the legislature's intent or will. Singer, Sutherland statutory construction § 46-03 H 94(5th ed 1992). Statutes language is plain unambiguous and convey a clear meaning and the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Hodges v Rainey 341 S.C. 79 (2000).

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, David Bacchus



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October 28, 2010

STATE OF SOUTH CAROLINA
COUNTY OF LEE

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2010-CP-31-0050

David Bacchus, #315173,
Applicant,

v.

State of South Carolina,
Respondent.

RETURN
(Appointment of Counsel Requested)

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 4, 2010, 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 Florence and Lee County Clerks of Court. The Applicant was indicted at the October 2009 term of the Lee County Grand Jury for (1) Assault and Battery of a High and Aggravated Nature ("ABHAN") and Assaulting a Corrections Officer (09-GS-31-0111). Deborah Butcher, Esquire, represented the Applicant. On October 8, 2009, Applicant plead guilty to Assaulting a Corrections Officer (09-GS-31-0111), and the charge of ABHAN was *nolle prossed*. The Honorable George C. James, Jr., sentenced Applicant to confinement for a period of thirty six (36) months consecutive to the sentences Applicant is currently serving on his Florence County charges.¹ The Applicant did not appeal his conviction or sentence.

¹ There was a recommended sentence of 2 ½ years.

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

II.

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

1. Ineffective Assistance of Counsel;
2. Involuntary Guilty Plea;
3. "Violations of U.S. Const. Amend. 5th, 6th, 8th, and 14th Amend.";
4. "Indictment is Defective"; and
5. "False Imprisonment."

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. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

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

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

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

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

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is

without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Applicant has claimed that the trial court lacked subject matter jurisdiction. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); See also U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code

Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

VI.

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

VII.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
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Aug. 20, 2010.

STATE OF SOUTH CAROLINA
COUNTY OF LEE

COURT OF COMMON PLEAS
10-CP-31-00051

David Bacchus

-vs-

State of South Carolina

:
:
:
:
:

Transcript of Record

Tuesday, October 25, 2011
Sumter, South Carolina

B E F O R E:

HONORABLE R. Ferrell Cothran, Jr., Judge.

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

Charles T. Brooks, III, Esquire
Attorney for the Applicant

Rutledge Johnson, Assistant Attorney General
Attorney for the State

Dianne A. Rutledge
Circuit Court Reporter

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
David Bacchus				
Mr. Brooks	11			
Mr. Johnson		21		
Deborah Butcher				
Mr. Brooks	25			
Mr. Johnson		28		
Certificate of Court Reporter		31		

E X H I B I T S

(No exhibits were introduced during the hearing.)

1 MR. JOHNSON: Your Honor, we have Mr. David Bacchus
2 versus the State. Docket No. 2010-CP-31-0050 (sic). This
3 was a guilty plea on October 8th of 2009 in front of the
4 Honorable George C. James, Jr. He was represented by Ms.
5 Deborah Butcher. He pled guilty to assaulting a
6 corrections officer. The ABHAN charge has been nol prossed
7 in exchange for his plea. He then filed a P.C.R.
8 application March 4, 2010 in Lee County. Now he's
9 represented by Mr. Charles Brooks.

10 MR. BROOKS: May it please The Court, Judge. My
11 client is respectfully asking The Court for a continuance.
12 And he indicates he would like to address The Court.

13 THE COURT: All right.

14 MR. BACCHUS: Your Honor, this is my first time with
15 my lawyer. And I ask him today to ask for a motion to
16 continuance because there's some things that I would like
17 to -- during our correspondence I asked him to -- asked him
18 to investigate. However, these things have not been
19 investigated. Your Honor, being that I am the applicant, I
20 have the burden of proof to present any evidence. However,
21 today, Your Honor, I do not have evidence. So I'm asking
22 The Court to please grant the motion to continuance so I
23 could get my lawyer to investigate these things, and then
24 he can present these things and I would be able to have
25 opportunity to be successful today at the P.C.R. hearing.

1 THE COURT: All right. What grounds are you
2 requesting relief from? What do you think was done wrong
3 in this?

4 MR. BACCHUS: Your Honor, first -- first and foremost,
5 I was promised that I will receive a certain amount of time
6 by my lawyer. However, when I went to this hearing -- when
7 I went to my plea hearing, I receive a different sentence
8 than what I was promised by my lawyer. Your Honor
9 understand? So in order for me to be successful at this
10 hearing, I would have to show how my counsel was
11 ineffective. And today I do not have the evidence to
12 present to The Court to prove that my lawyer was
13 ineffective two time -- two time in my plea hearing.

14 THE COURT: Well, what sentence do you claim your
15 lawyer promised you?

16 MR. BACCHUS: My lawyer promised that I would receive
17 a 2 and a half year sentence upon recommendation of the
18 state. However, when we went into the courtroom, the judge
19 sentence me to 3 years consecutive.

20 THE COURT: All right. Did the state recommend a 2
21 and a half year sentence?

22 MR. BACCHUS: Yes, sir, it's in the transcript.

23 THE COURT: Okay. So your lawyer told you the state
24 was going to recommend 2 and a half years and the judge
25 didn't follow it?

1 MR. BACCHUS: No, sir. My lawyer -- my motion -- my
2 Rule 5 motion of discovery, she told me that she talked to
3 the judge in chambers, that he agreed to sentence me to 2
4 and a half years. He said if I would plead today, I
5 receive 2 and a half years for assaulting a corrections
6 officer. So upon the advice of my trial counsel, I took
7 that plea. However, when I went into the courtroom, the
8 judge did something completely different than what the
9 state recommended as well as what my lawyer promise me.
10 Then I went into courtroom, I receive more time than I was
11 promised.

12 Like I said, I don't have proof today to submit
13 evidence to prove my lawyer was ineffective, sir.

14 THE COURT: Well, the only way your lawyer was
15 ineffective is you claiming that she promised you that you
16 were going to get 2 and a half years and you got 3 years?

17 MR. BACCHUS: Yes, sir.

18 THE COURT: Well, so what proof do you think your new
19 lawyer is going to be able to get to substantiate that? If
20 the state recommended 2 and a half years, then the judge
21 would have instructed you, I'm sure, that it's only a
22 recommendation and he doesn't have to follow it. Didn't he
23 tell you that?

24 MR. BACCHUS: Yes, sir. See, as I said, that means my
25 counsel would do my Rule 5 discovery, she told me that she

1 talked to the judge in chambers and that he would agree to
2 the 2 and a half years on assaulting a corrections officer
3 if I plead guilty today. So upon the advice of my counsel,
4 that's the only reason why I pled. However, when I went
5 into the courtroom, it was something completely different.
6 This is the reason why ---

7 THE COURT: I understand what your contentions are.

8 MR. BACCHUS: Yes, sir.

9 THE COURT: Why do you need a continuance on that?
10 What is your lawyer going to be able to get to change that?

11 MR. BACCHUS: Well -- well, Your Honor, I would like
12 to put my lawyer on the stand as a witness, however, I have
13 some questions I would like to ask -- I would like to ask
14 her, I don't have those questions with me.

15 Two, the other ground I'm trying to raise -- I don't
16 have evidence -- I don't have the evidence to present as
17 documentation.

18 THE COURT: How long have you been knowing about this
19 hearing coming?

20 MR. BACCHUS: I just found out October 7, 2011. My
21 counsel right here, Mr. Brooks, had been my P.C.R. counsel
22 for 17 months. I just found it out.

23 THE COURT: I understand, but you've had since October
24 7 you say. What have you had to do all this time?

25 MR. BACCHUS: Your Honor -- okay. Mr. Brooks has been

1 my lawyer since last year, since I believe May 2010.
2 During the course of us corresponding, I've been asking him
3 to meet to investigate certain things. Your Honor, I've
4 been asking my lawyer to see me as well to explain to me
5 what -- at a P.C.R. hearing, what does entail putting up as
6 evidence at the P.C.R. hearing? And that has not been
7 done.

8 Today I briefly talked to him and I explained it as
9 well. And I said there are other grounds -- there are
10 other grounds as well, and I have to have documentation to
11 prove it. And like I said, the only way to be successful
12 at a P.C.R. hearing today is present any evidence and I
13 cannot do that; so that's why I ask my lawyer to ask you to
14 please grant a motion of continuance so he could
15 investigate, the next time around, we'll be able to present
16 some things as evidence as well as my testimony.

17 THE COURT: But do you have any other grounds in your
18 petition?

19 MR. BACCHUS: Yes, sir.

20 THE COURT: Where at? I mean, I assume that your
21 whole thing is a conversation you had between your lawyer.
22 I've got you here. I've got your lawyer here. What other
23 people are going to be here -- what other thing could your
24 new lawyer do to investigate it? What else could he do if
25 he's got everybody here that was part of this?

1 MR. BACCHUS: Like I said, Your Honor, there are
2 things like dealing with the arrest warrant, dealing with
3 the proof of service on the arrest warrant, other things in
4 the indictment, I would like -- I would like to have
5 presented at my P.C.R. hearing. I would like to have the
6 evidence. I don't have any evidence to present. I can't
7 put it on the record because I don't have any evidence,
8 this is why I ask my lawyer before this hearing even came
9 to investigate the facts so I could have presented here
10 today.

11 Your Honor, the only thing I can present is my
12 testimony, and it will be disputed by my lawyer on the
13 stand. I can't present to you today, Your Honor, and I
14 would like to present more than just my testimony. I would
15 like to present documentation as well to substantiate my
16 claim. And I can't present that today, Your Honor. This
17 is the purpose of me asking my lawyer to please grant my
18 motion to continue.

19 THE COURT: You got 3 years for this. You're serving
20 time for something else?

21 MR. BACCHUS: Yes, sir.

22 THE COURT: What are you serving time for?

23 MR. BACCHUS: Voluntary manslaughter.

24 THE COURT: And how much time do you have for that?

25 MR. BACCHUS: Voluntary manslaughter, I receive a 20-

1 year sentence for that.

2 THE COURT: So you're doing 20 and this is 3
3 consecutive?

4 MR. BACCHUS: Yes, sir.

5 THE COURT: Okay. What's the state's position on a
6 continuance?

7 MR. JOHNSON: Your Honor, the state's position is we
8 oppose the motion for continuance. We have Ms. Butcher
9 here. She's been sitting all day in the courtroom. He's
10 had ample notice. He filed this back -- I mean, the plea
11 was back in 2009. Filed 2010. We have everybody here.
12 The state's position is to go forward with it.

13 THE COURT: Okay. All right. Then I'll deny your
14 motion. We'll proceed. You've had all this time to get
15 it.

16 MR. BACCHUS: The only way I can present evidence is
17 through my counsel. If I had a right to investigate
18 everything and present evidence here, I can't do it. I
19 can't -- I can't file motion to The Court myself. I have
20 to present it to my counsel.

21 THE COURT: You can testify as to what you think the
22 evidence is in this case.

23 MR. BACCHUS: Okay. That's the only evidence I can
24 present today, Your Honor, it will be disputed by my
25 lawyer.

1 THE COURT: You don't know that.

2 MR. BACCHUS: I know that.

3 THE COURT: Let's see.

4 MR. BACCHUS: The attorney general is going to put her
5 up as a witness is going to dispute it.

6 THE COURT: Well, how is that ---

7 MR. BACCHUS: She's going to dispute ---

8 THE COURT: How is that going to change it? You know,
9 how is that going to change? She's going to testify as to
10 what she perceives is the truth and you can testify to what
11 you perceive is the truth.

12 MR. BACCHUS: I have documentation evidence to
13 substantiate what I was going to say today.

14 THE COURT: Why didn't you bring it?

15 MR. BACCHUS: Because I have -- I don't have it in my
16 possession. I ask my lawyer to please get these things. I
17 don't have them in my possession.

18 THE COURT: Well, you said you have it, but you don't
19 have it.

20 MR. BACCHUS: No. I told you I had questions that I
21 wanted to ask my lawyer on the stand that I don't have. I
22 also told you that I wanted to raise other grounds, you
23 know.

24 THE COURT: Okay. You can ask -- you can ask them.

25 MR. BACCHUS: I appreciate that though, sir.

1 THE COURT: All right. Proceed.

2 MR. BROOKS: Call Mr. Bacchus to the stand.

3 David Bacchus, being first
4 duly sworn, testified as follows:

5 CLERK: Please state your name. Spell your last name
6 for the record.

7 MR. BACCHUS: David Bacchus, B-a-c-c-h-u-s.

8 DIRECT EXAMINATION BY MR. BROOKS:

9 Q Mr. Bacchus, you were represented by Ms. Butcher in
10 this case?

11 A Yes, sir.

12 Q What other evidence out there that may exist to
13 confirm about your being promised 2 and a half years
14 consecutive versus 3?

15 A As I stated, we was in a conference room. And we was
16 going over my Rule 5 motion of discovery. And I was
17 telling her the whole time that I would like to proceed to
18 trial. However, as we was talking and we was going over my
19 Rule 5 motion of discovery, she told me that she was in the
20 judge's chamber that morning, and that she said the judge
21 stated that he would agree to the 2 and a half years if I
22 would plead guilty today; that was October 8, 2009. She
23 said, if I plead guilty today, she promised me that the
24 judge will agree to the 2 and a half years sentence on
25 assaulting a corrections officer.

1 And I stated that I was telling her the whole time
2 that we were talking I would like to proceed to trial. So
3 upon that advice of my counsel, I pleaded guilty.

4 And when I went into the courtroom that same day,
5 October 8, 2009, I receive a completely different sentence
6 than what I was promised.

7 However, I do acknowledge the fact that the judge did
8 not have to abide by the state recommendation. Like I
9 said, upon the advice of my counsel, I would not have plead
10 guilty. She went in there and told me, she promise me that
11 I would receive this amount of time.

12 Q What other -- do you know what other evidence out
13 there that exist that is pertinent to the guilty plea other
14 than, I mean, the conversation between you and Ms. Butcher?

15 A As of today that I've written down, I would like to
16 get on the record, if that's possible.

17 Q What are your issues?

18 A Is it okay for me to go ahead?

19 Q Go right ahead.

20 A After she advise me that -- she had advise me to
21 guilty plea. Applicant pled to the charge. Sir?

22 Q It might be easier for you not to read them, but to
23 say them. People tend to read faster and it's harder for
24 this lady right here to take it. So you may be -- we
25 talked about that in the conference room.

1 A Yes, sir.

2 Q You may need to just tell us what the issue is?

3 A However, that would be the best way to do, I don't
4 have everything to memory, this is why I wrote it down. So
5 I can speak slower so that she will be able to type at the
6 same time.

7 Q Okay.

8 A All right. Applicant alleges that he an involuntary
9 guilty plea. Applicant pled guilty to a charge that he
10 never receive a warrant on. He was only made aware of this
11 charge of assaulting a corrections officer upon October 8,
12 2009 when applicant receive his Rule 5 motion of discovery.
13 On advice of trial counsel, applicant was promised that if
14 he will plead guilty to assault on a corrections officer
15 charge, he was promised to only receive a 2 and a half year
16 sentence for this conviction.

17 Counsel was ineffective for failing to move to
18 suppress evidence that would mention an indictment on a
19 institutional level. No mention of -- would reduce the
20 applicant -- and when the P.C.R. court review the S.C.D.C.
21 1929 incident report form, no weapon was documented as
22 evidence, no evidence was produced. This is the same
23 weapon described in the narrative of both charges in the
24 indictment.

25 Counsel failed to move to suppress all evidence.

Mr. Bacchus -- Direct by Mr. Brooks

14

1 Applicant also alleges that he only had a meeting with
2 his counsel on two separate occasions, and both meetings
3 lasted no longer than 30 minutes. Applicant was not
4 afforded adequate assistance of counsel and the advice that
5 counsel gave the applicant cannot bring the applicant
6 guilty plea to be known and intelligently given.

7 Therefore, this prejudice the applicant because had
8 not counsel -- had not counsel promised the applicant that
9 he will receive a sentence of only 2 and a half years for
10 the assaulting a corrections charge and move for the
11 suppression of evidence, applicant would not have pleaded
12 guilty and would have moved for trial.

13 Applicant contends that trial counsel was ineffective
14 in not -- in not but for advice of counsel would not have
15 pled guilty. As early of July 21, 2009 applicant wouldn't
16 have felt that trial counsel was -- applicant was not
17 contacted by trial counsel October 1, 2009 when she came to
18 the Broad River Correction Institution to visit him. Upon
19 this visit applicant counsel discussed the facts of this
20 case and applicant defense. Applicant told counsel that
21 before he makes any defense, he would like to obtain a Rule
22 5 motion of discovery.

23 Counsel acknowledged that she understood applicant's
24 request. Applicant went to court October 5 and October 6,
25 at which time he was asked by trial counsel and the

1 solicitor to plead guilty, at which time he informed, no.
2 On October 7, 2009 applicant was informed that the
3 solicitor would drop the charge of assault and battery of a
4 high and aggravated nature if applicant would plead guilty
5 to the assault on a corrections officer.

6 Applicant told counsel he would not plead guilty until
7 he receive Rule 5 motion of discovery. Counsel -- counsel
8 went and talk to solicitor and came back to inform
9 applicant that he receive his motion of discovery the next
10 day.

11 On October 8, 2009, when applicant came back to the
12 court, trial counsel had applicant's Rule 5 motion of
13 discovery that was just given to her that day. Applicant
14 and counsel reviewed the Rule 5 motion of discovery. She
15 promised applicant that she already talk to the judge and
16 that if applicant pleaded guilty that day, I would get only
17 2 and a half years on assault a corrections charge.

18 On advice of counsel applicant decided to plead guilty
19 to the charge of assault on a corrections officer.
20 However, upon pleading guilty trial Judge James sentence
21 applicant to 3 years imprisonment, which is contrary to
22 what counsel had promised applicant that he will be
23 sentenced to.

24 This prejudice the applicant because if trial counsel
25 had not promised applicant that he will receive a 2 and a

Mr. Bacchus - Direct by Mr. Brooks

16

1 half year sentence as recommended by solicitor, applicant
2 would not have pled guilty and would have insisted upon
3 going to trial; therefore it violated applicant's Sixth
4 Amendment right to have adequate assistance of counsel,
5 which is also a violation of applicant's Fifth and
6 Fourteenth Amendment right to due process and equal
7 assessment of the law.

8 Applicant contends trial counsel was ineffective for
9 failing to investigate. On June 12, 2009 applicant was
10 issue a warrant for the charge of assault and battery of a
11 high and aggravated nature. Trial counsel failed to
12 investigate and discover that a proof of service was not
13 submitted along with the arrest warrant in accordance with
14 South Carolina Rules of Criminal Procedure, Rule 1, which
15 states a law enforcement officer shall submit a proof of
16 service within five days after the arrest warrant is
17 issued.

18 Upon further investigation, trial counsel would have
19 seen that applicant was never served a warrant on the
20 charge of assault on a corrections officer, he have only
21 receive a copy of this warrant on disclosure of his Rule 5
22 motion of discovery on October 8, 2009, the same day the
23 applicant pled guilty to the charge of assaulting a
24 corrections officer.

25 Trial counsel had a duty to make a reasonable

1 investigation and to make a reasonable decision that made
2 this particular investigation unnecessary.

3 The applicant's case -- the decision not to
4 investigate must be directly assessed for reasonableness in
5 all circumstances applying the heavy measure of deference
6 to counsel judgment.

7 The A.B. Guidelines provide that investigation into
8 evidence should comprise every -- should comprise evidence
9 to discover all reasonable, available, mitigated evidence,
10 the evidence that may be introduced by the prosecutor.

11 Trial counsel had substantial and important role to
12 form in raising mistigative (phonetic) factors to the
13 prosecutor initially and to The Court at sentencing.
14 Investigation is essential to the fulfillment of these
15 functions.

16 This prejudice the applicant because had trial counsel
17 investigated and discovered, the applicant was never served
18 a warrant on a charge on assault on a corrections officer,
19 counsel could have moved to file a motion to dismiss the
20 charge of assault on a corrections officer in the
21 indictment, and applicant would not have pled guilty and
22 would have insisted on going to trial.

23 South Carolina Constitution Article 1, declaration of
24 rights, applicant allege have been violated. This article
25 was violated when Investigator Greer (phonetic) took

1 evidence to the grand jury that was not a judicial problem
2 and this article was clear that no person or persons
3 exercises the function of the department shall assume or
4 discharge the duty of another.

5 When the P.C.R. court review the evidence for -- when
6 the P.C.R. court review the evidence from the S.C.D.C. 1929
7 incident report form, they were not listed in the section
8 of title evidence. Where did the evidence in the
9 indictment come from? It came from a separation of power,
10 which is a violation of Section 8 of Article 1. Separation
11 of power states in the government of the state the
12 legislative, executive and judicial power of the government
13 shall be forever a separate and distinct from each other,
14 and no person or person exercise the function of one said
15 department shall assume or discharge the duties of another.

16 South Carolina Constitution Article 1 Section 8 was
17 violated. It impaired the obligation of the -- of the
18 constitution. S.C.D.C. agency policy which is O.B. 22-14,
19 inmate disciplinary system. Agency policy state that
20 evidence must be listed in the charge of contraband. The
21 item of contraband shall be produced at the hearing. A
22 full statement of the facts in the underlying of the
23 offenses with witnesses, evidence, and depositional
24 evidence must be listed.

25 Section 11 Article 1 was violated because nothing

1 contained in this constitution. It deemed to limit or
2 prohibit the establishment of the general assembly of a
3 grand jury with the authority to return indictments
4 irrespective of the county where the crime was committed in
5 that other authority ---

6 MR. JOHNSON: Your Honor, he's here to testify, not to
7 read his application.

8 THE COURT: Was that your whole application?

9 MR. BACCHUS: Your Honor, this is the last part right
10 here.

11 THE COURT: All right. Finish it then.

12 A As the general assembly may provide when the
13 separation of power act was violated, the obligation of
14 contract effect of provision wasn't implemented. Applicant
15 due process of law, Article 1, Section 3, was violated,
16 which is clearly a subject matter jurisdiction issue.
17 Review criminal law 99, 101, and 110. The applicant's case
18 they lacked the subject matter jurisdiction (phonetic)
19 because they had no weapon of evidence of a report -- to
20 support the indictment by the responsible authority. The
21 responsible authority and the division of contraband, not
22 the division of investigation, which is a separated
23 authority within the agency. Article 1, Section 7 -- 1,
24 Section 4.

25 Therefore, The Court lacks subject matter jurisdiction

1 (phonetic).

2 THE COURT: Okay. Any other questions?

3 MR. BACCHUS: Sir?

4 THE COURT: I was talking to your lawyer.

5 Q Mr. Bacchus, you have put everything on the record; is
6 that correct?

7 A Yes, sir.

8 Q So we -- you testified that's all the evidence now; is
9 that correct?

10 A Yes, sir. As -- as I stated earlier when I was
11 speaking to the judge, things I did not put on the record,
12 I could substantiate if I have documentation evidence with
13 me. However, I don't have the documentation evidence with
14 me. So the only thing that I can present is my testimony.

15 Q Okay. All right. So we've put all the issues on the
16 record?

17 A Yes, sir.

18 Q Is that correct?

19 A Yes, sir.

20 Q And that's everything you've got?

21 A Yes, sir.

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

24 MR. JOHNSON: Thank you, Your Honor. May it please
25 The Court.

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION BY MR. JOHNSON:

3 Q Mr. Bacchus, you pled guilty to this charge, correct?

4 A Yes, sir.

5 Q And the judge asked you if you pled guilty because you
6 were guilty, and you said, yes. Correct?

7 A Yes, sir.

8 Q Nobody threatened or promised you anything in exchange
9 for this plea, did they?

10 A However, nobody threatened me. My lawyer promise me
11 that I would receive a 2 and a half year sentence.

12 Q You're right. But, didn't The Court advise you that
13 they don't have to go with that recommendation?

14 A Yes, they advised me of that. And my lawyer advised
15 me that -- like I said earlier in my testimony, I
16 acknowledge the fact that The Court does not have to go
17 with the recommendation of the state. I know that.

18 Q And in fact, Judge Cooper, could have given you 5
19 years?

20 A Yes, sir, I know that.

21 Q But he didn't.

22 A Yes, sir. Like I said, the only reason why I pled
23 guilty was because of the advice of my counsel. During the
24 whole time that we had been talking, I always told her that
25 I would like to go to trial. However, that morning when I

1 receive my Rule 5 motion of discovery, which was October 8,
2 2009, while we was reviewing my motion of discovery, she
3 stated that she was in the judge's chamber, and that the
4 judge agreed to the 2 and a half year sentence, and that if
5 I plead guilty today to the charge of assault a
6 correctional officer, that I would receive a 2 and a half
7 years sentence.

8 So we came in the courtroom and I decided to plead
9 guilty. So when I pled guilty, I receive a sentence
10 completely different from what I was promised I would get.

11 Q But at no point in the pleadings did you bring that up
12 to the judge, did you?

13 A No, sir.

14 Q And you have pled guilty before in other cases?

15 A That other case have nothing to do with this.

16 Q But you pled guilty before ---

17 A That's ---

18 Q --- in another ---

19 A --- irrelevant for ---

20 Q --- case, have you not?

21 A --- what I'm up here for now.

22 Q But you have pled guilty in other cases, correct?

23 A That case has nothing to do with the P.C.R. that I'm
24 here for now, sir.

25 Q Did you go to trial on that case?

1 A My case have nothing to do with it. I'm up here now

2 -- I'm up here now on P.C.R. for assaulting a corrections

3 officer, not for past previous case.

4 Q I'm asking about that. Simple yes or no question.

5 A I'm not going to answer that.

6 Q You've been in front of a judge to answer these type

7 of questions before, have you not?

8 A Yes, sir.

9 Q So you're familiar with the questions the judge asked
10 you?

11 A Yes, sir.

12 Q And you've testified truthfully then?

13 A Yes, sir.

14 Q And you're under oath today?

15 A Yes, sir.

16 Q You did that freely and voluntarily, did you not?

17 A Yes, sir, upon the advice of my counsel.

18 Q But she doesn't go to prison upon this, does she? She
19 doesn't get an extended sentence, does she?

20 A No, she doesn't.

21 Q So it's your choice, is it not?

22 A As I stated, it wasn't for her advice, I would not
23 have pled guilty and I would have insisted on going to
24 trial like I first started to.

25 Q And at that plea, you admit your guilt, correct?

1 A I did.

2 Q And you apologized for what you did to the victim?

3 A I did.

4 MR. JOHNSON: Beg The Court's indulgence, Your Honor.

5 (Pause.)

6 Q One more question. You told The Court that day that
7 your attorney did everything to the best of her ability,
8 did you not?

9 A And the reason why I told -- right, I did tell The
10 Court that she did everything to the best of her ability
11 because she told me what type of sentence I would receive
12 upon pleading guilty, so I felt she did everything to the
13 best of your ability; that's why I stated what I stated.
14 However, like I said, if it wasn't for the advice of my
15 counsel, I would not have pled guilty and I would have
16 insisted upon going to trial because she told me -- she
17 promised me that I would receive a certain sentence. When
18 I got in that courtroom -- even though that I know that The
19 Court does not have to go with the state recommendation, I
20 would not have pleaded guilty.

21 Q But you were satisfied with her representation,
22 correct?

23 A Correct, this is -- yes, I was.

24 MR. JOHNSON: No further questions, Your Honor.

25 THE COURT: Okay. Anything further, Mr. Brooks?

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

2 THE COURT: You can step down, sir.

3 MR. BACCHUS: I appreciate that, Your Honor.

4 (The witness leaves the witness stand.)

5 MR. BROOKS: I call Ms. Butcher to the stand.

6 Deborah Butcher, being first
7 duly sworn, testified as follows:

8 CLERK: Please state your name. Spell your last name
9 for the record.

10 MS. BUTCHER: Deborah Butcher, B-u-t-c-h-e-r.

11 DIRECT EXAMINATION BY MR. BROOKS:

12 Q Ms. Butcher, you represented Mr. Bacchus?

13 A I did.

14 Q Can you tell us what the state's case was against him?

15 A It was an assault on a correctional officer. There
16 was a sock and a lock that was involved. The correctional
17 officer was actually there at the hearing to testify.

18 Q Now, was it a deal for 2 and a half years?

19 A It was a recommendation. There was no negotiated
20 sentence.

21 Q Okay.

22 A And I always explain to my clients the difference
23 between negotiated and recommended sentence. And my
24 typical spiel is that judges typically will follow a
25 recommendation. They do not have to. They could give you

1 the entire sentence. They could even go lower if we make a
2 good argument.

3 Q Was there any in camera discussion with the judge
4 about this?

5 A Honestly, I do not remember. The solicitors and I
6 often go back and tell the judge what's coming up, a little
7 bit about what's going on with them. I do not recall
8 specifically sitting down and discussing this with the
9 judge. But if that did occur, I can say that Judge James
10 -- he never says, yes, I will do exactly that. He will
11 indicate whether or not he will consider what the
12 recommendation is. But, you know, he leaves it open. He's
13 got to hear the facts and the arguments of the plea.

14 Q Is it possible that Mr. Bacchus thought the judge was
15 on board in order to take this plea?

16 A I am sure that -- as I recall, I hadn't had the
17 discovery for long before Mr. Bacchus and I looked over it
18 -- which is often the case. When people are in S.C.D.C.,
19 they bring them over. We talk. If they have witnesses or
20 anything I need to do, we just don't plea. And, you know,
21 that's pretty much the standard way. If they do want to
22 plea, we go over the discovery.

23 Often, I just get it then. With some of these, the
24 solicitors will bring the people from S.C.D.C. over and
25 we'll talk and see if we can get anywhere with it.

1 And I totally forgot your question. I'm sorry.

2 Q Did you in any way communicate to Mr. Bacchus that the
3 judge was on board with 2 and a half years?

4 A If -- I -- I would never have said that. I never tell
5 my clients that the judge will do this if it's a
6 recommendation. If it's a negotiated sentence, I tell them
7 if the judge doesn't like it, we can withdraw the plea.
8 But with a recommendation, I wouldn't tell a client that
9 the judge has agreed to it. The most that I would ever say
10 is that typically the judges go along with recommendations
11 because they know the negotiations we've worked out, but
12 they do not have to.

13 MR. BROOKS: Beg The Court's indulgence.

14 (Pause.)

15 Q Ms. Butcher, you are the public defender; is that
16 correct, in Lee County?

17 A I have a contract with Lee County, yes.

18 Q Is it possible that you may not recall any
19 conversation that you had with Mr. Bacchus about the in
20 camera proceeding with the judge -- in camera discussion
21 with the judge?

22 A I can tell you I never would have told somebody the
23 judge is going to give you "X" number amount of time. I
24 recall Mr. Bacchus. I recall the situation. I recall
25 discussing things with him. And I never would have said

1 that.

2 MR. BROOKS: No other questions, Judge.

3 THE COURT: Okay. Anything from the state?

4 MR. JOHNSON: Just a few.

5 CROSS EXAMINATION BY MR. JOHNSON:

6 Q So you do recall being involved in this man's case --
7 Mr. Bacchus's case?

8 A Yes, actually it was the first time I'd heard of a
9 sock and a lock.

10 Q And you were able to get witnesses had he gone to
11 trial?

12 A He readily admitted that what he did. I remember him
13 talking about he did this because the correctional officer
14 he felt was disrespecting him. And we discussed the
15 possibility of getting witnesses, but there was no need.
16 He was going to plead.

17 Q You went over discovery, Rule 5 evidence against him?

18 A Yes.

19 Q The correctional officer's testimony?

20 A Yes, there were several statements.

21 Q And whose choice was it to take the plea?

22 A It was my client's choice. As a matter of fact, we
23 even discussed the fact that the correctional officer had
24 some -- I think he got suspended for a few days or
25 something. He was disciplined as well because he, I

1 believe, went overboard after he was hit.

2 Q Now, when the applicant pled, was his case up for
3 trial that week?

4 A Even if it had been put on a trial list, if I didn't
5 have the discovery, we wouldn't have been going to trial,
6 I'm sure. That would have been up to the judge, of course,
7 but I would have made that motion if I hadn't received the
8 discovery in a timely manner.

9 Q Before the plea, you felt like you had enough time to
10 prepare this case so that he made an informed decision?

11 A Oh, yes. If we were going for a trial, we -- like I
12 said, I wouldn't have allowed it. I would have made my
13 objections. You know, not to go to trial.

14 Q Did you ever -- excuse me. Did you ever promise the
15 applicant that he would get a set sentence?

16 A I do not make promises on recommendations. I explain
17 to them how it goes, what the procedure is, and that the
18 judge can -- he doesn't have to follow that recommendation.
19 He can give them the full amount of time. The most I say
20 is, typically, they do follow the recommendations.

21 Q So you'd say that's left to the judge's discretion?

22 A Correct.

23 MR. JOHNSON: No further questions, Your Honor.

24 THE COURT: Okay. You can step down.

25 (The witness leaves the witness stand.)

1 THE COURT: Anything further?

2 MR. BROOKS: That's the applicant's case.

3 THE COURT: Okay. I will review the record in this
4 case and the case law and let you all know.

5 MR. BROOKS: Thank you, Judge.

6 MR. JOHNSON: Thank you, Judge.

7 THE COURT: Thank you.

8 --- End of transcript of record ---

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1 I, the undersigned Dianne A. Rutledge, official court
2 reporter for the Fifth Judicial Circuit of The State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of the record of
5 the proceedings had and evidence introduced in the hearing
6 of the captioned case, relative to appeal, in the Circuit
7 Court for Lee County, South Carolina on the 25th day of
8 October 2011.

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

11

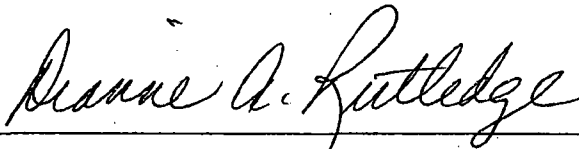
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May 17, 2012

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Court Reporter

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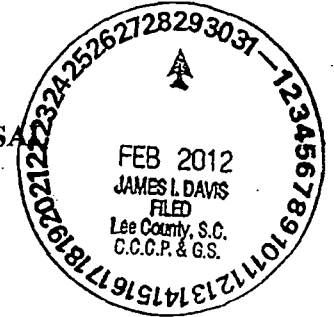
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STATE OF SOUTH CAROLINA)
 COUNTY OF LEE)
)
)
 David Bacchus, #315173,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT

2010-CP-31-0051

ORDER OF DISMISSAL



This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 4, 2010 and amended in November 2010. The Respondent made its Return on August 20, 2010. An evidentiary hearing into the matter was convened on October 25, 2011, at the Sumter County Courthouse. Charles T. Brooks, III, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Deborah Butcher, Esquire, also testified. This Court also had before it a copy of the records of the Lee County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lee County Clerk of Court. The Applicant was indicted at the October 2009 term of the Lee County Grand Jury for Assault and Battery of a High and Aggravated Nature (ABHAN) and Assaulting a Corrections Officer (2009-GS-31-0111). Deborah Butcher, Esquire, represented the Applicant. On October 8, 2009, the Applicant pled guilty to

RJC

Assaulting a Corrections Officer and the charge of ABHAN was *nolle prossed*.. The Honorable George C. James sentenced him to confinement for a period of thirty-six (36) months consecutive to the sentence the Applicant is currently serving on his Florence County charges. The Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of counsel;
2. Involuntary Guilty Plea;
3. "Violations of U.S. Const. Amend. 5th, 6th, 8th, and 14th,";
4. "Indictment is Defective; and
5. "False Imprisonment"

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 (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) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668,

RSC

104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

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

Sentencing Advice

The Applicant testified that Counsel promised that he would only receive two and a half (2 ½) years consecutive to his current sentence. He also testified that he pled on the advice of counsel. On cross-examination, the Applicant admitted his guilt. He also testified that he knew Judge James did not have to follow the State's recommendation. The Applicant further testified that he understood the maximum penalty was five (5) years and that the State dropped the ABHAN charge

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in exchange for the guilty plea.

Counsel testified that she explained the State's recommendation to the Applicant. Counsel testified that she did not promise the Applicant that the Court would or had to follow the State's recommendation.

This Court finds the Applicant understood that Judge James did not have to follow the State's recommendation of two and a half (2 ½) years. This Court also finds Counsel did not promise that Judge James would or had to follow the State's recommendation. Knowing this information, the Applicant still chose to plea. Accordingly, this allegation is dismissed.

Involuntary Guilty Plea

The Applicant further alleges he involuntarily pled guilty to Assaulting a Corrections Officer.

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

R34

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

The Applicant testified he pled guilty but never received a warrant. He also testified he pled guilty on the advice of counsel. The Applicant further testified there were no threats involve in his pleading guilty. Counsel testified she did not promise the Applicant he would receive a two and a half (2 ½) year sentence. She also testified that it was ultimately the Applicant's decision to plead guilty.

This Court finds the Applicant's plea was freely and voluntarily made. This Court also finds the Applicant failed to present any evidence to the contrary. Accordingly, this allegation is dismissed.

Failure to Investigate

The Applicant alleged Counsel failed to investigate his case.

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (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).

While his allegation was presented by testimony, the Applicant provided no evidence of such claim. Counsel testified she assessed the State's case against the Applicant. She also

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testified she discussed and explained the Rule 5, SCrimP, discovery to the Applicant. Counsel further testified she discussed interviewing potential witnesses with the Applicant.

This Court finds that the Applicant has failed to establish that Counsel was ineffective with investigating and preparing for this matter. Counsel testified that she reviewed discovery materials with the Applicant, met with and spoke with the Applicant, and was willing to speak with potential witnesses. The record clearly indicates that counsel was considerably prepared for this case. Moreover, the Applicant put forth no evidence suggesting what evidence Counsel failed to discover or investigate. Therefore, based on the foregoing, this allegation is denied.

Summary

This Court finds in regards to the allegations of ineffective assistance of counsel, involuntary guilty plea, and failure to investigate, that 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, was thoroughly competent in her representation, and that Plea Counsel's conduct did not fall below the objective standard of reasonableness. Further, this Court also finds that the record in this case fully demonstrates that the Applicant understood the nature of his plea, and that his plea was made freely and voluntarily.

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 her 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. Therefore, these allegations are denied.

CONCLUSION

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

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

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

QAC

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!



R. Ferrell Cothran, Jr.
Presiding Circuit Court Judge

Feb. 21, 2012

Manning, South Carolina

WITNESSES

SCDC

Investigator Lloyd Greer

ARREST WARRANT NUMBER

K243811 (1); K243833 (2)

D/A: 06/01/09

ACTION OF GRAND JURY

True Bell

Margaret Y. [Signature]

person of Grand Jury

Date: Oct 1, 2009

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-31- 111

The State of South Carolina

County of LEE

COURT OF GENERAL SESSIONS

OCTOBER TERM 2009

THE STATE

vs.

DAVID BACCHUS

Indictment for

ASSAULT AND BATTERY HIGH AND
AGGRAVATED NATURE

ASSAULTING A CORRECTIONAL
OFFICER

C. KELLY JACKSON, SOLICITOR

ARREST WARRANT

K- 243833

STATE OF SOUTH CAROLINA

LEE COUNTY

THE STATE

against

BACCHUS DAVID

Address: BISHOPVILLE, SC 29010

Phone: SSN: Race: B Height: 5' 07" Weight: 170

DOB: 06/10/1985 Agency ORI#: SCDCLEE

Prosecuting Agency: SC DEPT CORRECTIONS-LEE

Prosecuting Officer: LLOYD R GREER

Offense: ASSAULT ON CORRECTIONAL OFFICER

Offense Code: 2525

Code/Ordinance Sec: 16-3-0630

This Warrant is CERTIFIED FOR SERVICE in the LEE County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant BACCHUS DAVID

on 6-12-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: CENTRAL COURT

PO BOX 2-115 GREGG ST. BISHOPVILLE, SC 29010

STATE OF SOUTH CAROLINA

LEE COUNTY

AFFIDAVIT CASE # 92-0273

LLOYD R GREER

Personally appeared before me the affiant LLOYD R GREER who being duly sworn deposes and says that defendant BACCHUS DAVID did within this county and state on 06/01/09 violate the criminal laws of the State of South Carolina (or ordinance of LEE County/ Municipality of LEE) in the following particulars: ASSAULT ON CORRECTIONAL OFFICER

DESCRIPTION OF OFFENSE:

16-3-0630

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

INV LLOYD R GREER, STATES THAT THE DEFENDANT, DID IN LEE COUNTY, SC ON OR ABOUT 06/01/09, COMMIT THE CRIME OF ASSAULT ON A CORRECTIONAL OFFICER TO WIT: THAT DAVID BACCHUS, AN INMATE WITH THE SCDC, DID ASSAULT OFFICER CEDRIC JUNE, AN OFFICER OF THE SCDC, BY STRICKING THE VICTIM IN THE BACK OF THE HEAD WITH A METAL LOCK ON THE END OF A TETHER. PROBABLE CAUSE IS BASED ON INVESTIGATION, STATEMENTS FROM THE DEFENDANT AND EVIDENCE COLLECTED. THIS OFFENSE OCCURRED AT LCI, BISHOPVILLE, SC. THIS IS IN VIOLATION OF SECTION 16-3-0630 OF THE SC CODE OF LAWS, 1976, AS AMENDED.

Signature of Affiant

Signature of Lloyd R Greer

STATE OF SOUTH CAROLINA

LEE County/ Municipality of LEE

Affiant's Address: 550 WISACKY HWY BISHOPVILLE, SC 29010

Affiant's Telephone: 803 896 2559

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 06/01/09 defendant BACCHUS DAVID did violate the criminal laws of the State of South Carolina (or ordinance of

LEE County/ Municipality of LEE) as set forth below:

DESCRIPTION OF OFFENSE: ASSAULT ON CORRECTIONAL OFFICER

16-3-0630

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on JUNE 12, 2009

Signature of Issuing Judge: G.W.W. Judge's Address: PO BOX 2-115 GREGG ST BISHOPVILLE, SC 29010

Signature of Issuing Judge: Judge's Telephone: 803 484-6463

Judge Code: 410

CENTRAL COURT

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 75

COUNTY OF

INDICTMENT/CASE#: 2009-GS-31-0111

STATE

VS.

DAVID BACCHUS

AW#: K243833

AKA:

Date of Offense: June 01, 2009

Race: Black

Sex: Male

Age:

S.C. Code §: 16-03-0630

DOB: August 28, 1985

SS#:

CDR Code #: 2525

Address: LCI 990 Wisacky Highway Bishopville, SC 29010

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Assault on Corrections Officer

in violation of § 16-3-630 of the S.C. Code of Laws, bearing CDR Code # 2151215

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

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

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

ATTEST: [Signature] 2402 [Signature] Defendant [Signature] Attorney for Defendant 74029
Solicitor SC Bar # Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 36 days/months/years or under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: current

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred, Defendant Waives Hearing, Ordered PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: Obtain GED
 Set by SCDPPPS Attend Voc. Rehab. or Job Corp. _____

Recipient: May serve W/E beginning _____
*Fine: Substance Abuse Counseling
\$14-1-206 (Assessments 107.5%) \$ _____ Random Drug/Alcohol Testing

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$56-1-286 (DUI Breath Test) \$25 \$ 25.00

\$47.12 (Public Def/Prob) \$500 \$ _____
\$14-1-212 (Law Enforce. Funding) \$25 \$ _____
\$14/1/213 (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
\$90.7 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____ \$ _____ paid to Public Defender Fund

Other: _____

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

James Davis
Clerk of Court/ Deputy Clerk
Court Reporter: Margaret Sullivan

PRESIDING JUDGE: [Signature]
Judge Code: 2143
Sentence Date: 10/8/09

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEE)

INDICTMENT FOR
 ASSAULT AND BATTERY HIGH AND
 AGGRAVATED NATURE
 ASSAULTING A CORRECTIONAL OFFICER

At a Court of General Sessions, convened on 1/7/11, 2009, the Grand Jurors of
 LEE County present upon their oath:

COUNT ONE – ASSAULT AND BATTERY HIGH AND AGGRAVATED NATURE

That DAVID BACCHUS did in Lee County on or about June 1, 2009, commit an assault of a high and aggravated nature in that he did unlawfully attempt or offer to commit a violent injury upon CEDRIC JUNE, coupled with the present ability to complete the attempt or offer by a battery, and accompanied by circumstances of aggravation, to-wit: by striking him in the back of the head with a metal lock.

COUNT TWO – ASSAULTING A CORRECTIONAL OFFICER

That DAVID BACCHUS did in Lee County on or about June 1, 2009, violate Section 16-3-630 of the Code of Laws of South Carolina (1976), as amended, in that he did assault an employee of a state or local correctional facility, to-wit: CEDRIC JUNE, of the Lee Correctional Institute, while said officer was performing job-related duties, by striking him in the back of the head with a metal lock.

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

E. Kelly J. J. J.

 SOLICITOR