

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

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APR 28 2014

S.C. Supreme Court

MICHAEL ELLIS EVANS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002466

APPENDIX

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	Case No(s) .: 2010GS2303317;
	)	2010GS2303319;
-VS-	)	2010GS2303321;
	)	2010GS2303364;
Michael Ellis Evans,	)	2010GS2303366
	)	
Defendant.	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	Case No(s) .: 2010GS2303353;
	)	2010GS2303355;
-VS-	)	2010GS2303357;
	)	2010GS2303359;
Rakeem Johnson,	)	2010GS2303514
	)	
Defendant.	)	

May 17, 2011
Greenville, South Carolina

B E F O R E:

HONORABLE G. EDWARD WELMAKER, Judge.

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

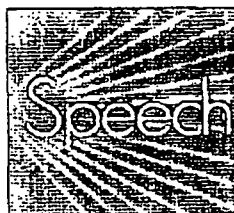
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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 17th day of May, 2011 at approximately 1:03 a.m.)

THE CLERK: Your Honor, in the case of 2010-GS-23-3319, the State versus Michael Ellis Evans indicted for Conspiracy, pleading to the same. In the case of 200-317 -- 2000 -- excuse me, 2010-GS-23-3317, 3321, 3364, and 3366, Mr. Ellis is indicted to Armed Robbery and pleading to the same.

Mr. Ellis, please raise your right hand.

(WHEREUPON, Mr. Ellis is duly sworn.)

THE CLERK: All right. And then, Your Honor, in the case of 2010-GS-23-3359, the State versus Rakeem R. Johnson indicted for Conspiracy, pleading to the same. Then in the case of 2010-GS-23-3353, 3355, and 3357, Mr. Johnson is indicted for Armed Robbery and pleading to the same. In the case of 2010-GS-23-3514, Mr. Johnson is indicted for Armed Robbery and Possession of a Weapon during the Commission of a Crime. He's pleading the same to both.

Mr. Johnson, please raise your right hand.

(WHEREUPON, Mr. Johnson is sworn.)

THE COURT: Mr. Singleton, you represent

1 Mr. Evans in this matter?

2 MR. SINGLETON: Yes, Your Honor.

3 THE COURT: Mr. Patel, you represent Mr.
4 Johnson?

5 MR. PATEL: Yes, Your Honor.

6 THE COURT: Have each of you attorneys had
7 an opportunity to discuss with your clients the
8 charges pending against them, the possible
9 punishments they face and their constitutional
10 rights?

11 MR. SINGLETON: Yes, Your Honor.

12 MR. PATEL: I have, Your Honor.

13 THE COURT: You believe your client
14 understands those discussions you've had with
15 them?

16 MR. SINGLETON: Yes, Your Honor.

17 MR. PATEL: He has, Your Honor.

18 THE COURT: Have you had a chance to
19 review with your individual clients the State's
20 evidence?

21 MR. SINGLETON: Yes, Your Honor.

22 MR. PATEL: Yes, Your Honor. He was
23 afforded a copy of discovery as well.

24 THE COURT: Based upon your investigation
25 of the facts and circumstances surrounding the

1 case against your client, Mr. Singleton, do you
2 believe the State could produce sufficient
3 evidence to convince a jury of his guilt beyond
4 a reasonable doubt?

5 MR. SINGLETON: Yes, Your Honor.

6 THE COURT: Mr. Patel, do you believe the
7 State could produce sufficient evidence against
8 your client to convince a jury of his guilt
9 beyond a reasonable doubt if the trial were to
10 go --

11 MR. PATEL: I do, Your Honor. I do, Your
12 Honor. I'm sorry.

13 THE COURT: Mr. Evans, how old are you
14 please, sir?

15 MR. EVANS: 22, sir.

16 THE COURT: Are you married?

17 MR. EVANS: No, sir.

18 THE COURT: Do you have children?

19 MR. EVANS: Yes, I have son.

20 THE COURT: How old is your son?

21 MR. EVANS: He's two.

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

23 MR. EVANS: 11th grade.

24 THE COURT: Where did you attend?

25 MR. EVANS: Wade Hampton High School.

1 Wade Hampton.

2 **THE COURT:** Wade Hampton? Since you been
3 out of high school, have you done any sort of
4 work?

5 **MR. EVANS:** Yes, sir.

6 **THE COURT:** What kind?

7 **MR. EVANS:** Cleaning buildings and stuff.

8 **THE COURT:** When did you last work, Mr.
9 Evans?

10 **MR. EVANS:** The night of the last robbery,
11 sir.

12 **THE COURT:** Okay. That would have been in
13 February?

14 **MR. EVANS:** Yes, sir.

15 **THE COURT:** Okay. Have you, uh, ever been
16 treated for alcohol or drug abuse?

17 **MR. EVANS:** No, sir.

18 **THE COURT:** You ever been treated for any
19 sort of mental illness?

20 **MR. EVANS:** No, sir.

21 **THE COURT:** You have any alcohol, drugs,
22 prescriptive drugs in your system today that
23 would affect your ability to understand what
24 we're doing?

25 **MR. EVANS:** No, sir.

1 **THE COURT:** You understand why we are here
2 and what we're here about?

3 **MR. EVANS:** Yes, sir.

4 **THE COURT:** Mr. Johnson, how old are you,
5 sir?

6 **MR. JOHNSON:** 19, sir.

7 **THE COURT:** Are you married?

8 **MR. JOHNSON:** No, sir.

9 **THE COURT:** Do you have any children?

10 **MR. JOHNSON:** Yes, sir.

11 **THE COURT:** How many children do you have?

12 **MR. JOHNSON:** Two..

13 **THE COURT:** And how old are your children?

14 **MR. JOHNSON:** 2 and 1.

15 **THE COURT:** How far did you go in school?

16 **MR. JOHNSON:** 9th grade.

17 **THE COURT:** Where did you attend, sir?

18 **MR. JOHNSON:** Carolina.

19 **THE COURT:** Since you been out of high
20 school, did you work anywhere?

21 **MR. JOHNSON:** No, sir.

22 **THE COURT:** Mr. Johnson, you ever been
23 treated for alcohol or drug abuse?

24 **MR. JOHNSON:** No, sir.

25 **THE COURT:** You ever been treated for any

1 mental illness?

2 **MR. JOHNSON:** No, sir.

3 **THE COURT:** You have any prescriptive
4 drugs, alcohol, anything in your system today?

5 **MR. JOHNSON:** No, sir.

6 **THE COURT:** You aware of why we are here
7 and what these charges are about then?

8 **MR. JOHNSON:** Yes, sir.

9 **THE COURT:** Mr. Evans, uh, I have an
10 indictment before me that says on or about
11 January the 20th, 2010, you were armed with a
12 deadly weapon or otherwise presenting an object
13 which a person of reasonable, uh, -- could
14 reasonably believe was a weapon, and you took,
15 by means of force or intimidation, goods or
16 monies belonging to the Sphinx, that being from
17 a Rosemary Blackmond. Are you here to plea
18 guilty today to that armed robbery that took
19 place here in Greenville County?

20 **MR. EVANS:** Yes, sir.

21 **THE COURT:** Mr. Johnson, I have an
22 indictment that says on that same date again,
23 January the 20th, 2010, you also were
24 committing an armed robbery again with a weapon
25 or using force or intimidation take money from

1 Rosemary Blackmond at the Sphinx. Are you
2 pleading guilty to that armed robbery as well?

3 **MR. JOHNSON:** Yes, sir.

4 **THE COURT:** I have another indictment
5 before me, Mr. Evans, that says on or about
6 January the 21st, 2010, you also committed an
7 armed robbery, this again at a Sphinx business,
8 again using a deadly weapon. That time, it was
9 from the person or in the presence of a Dale
10 Hall. Are you pleading guilty to that armed
11 robbery today as well?

12 **MR. EVANS:** Yes, sir.

13 **THE COURT:** Mr. Johnson, uh, you pleading
14 guilty to that same offense of January the 21st
15 here in Greenville County to taking, uh, money
16 by using a deadly weapon by force or
17 intimidation from a Dale Hall?

18 **MR. JOHNSON:** Yes, sir.

19 **THE COURT:** You pleading guilty to that
20 armed robbery?

21 **MR. JOHNSON:** Yes, sir.

22 **THE COURT:** I have an indictment that says
23 that, Mr. Evans, on or about the 26th of
24 January 2010, again by means of a deadly weapon
25 or showing what reasonably could be deemed to

1 be a deadly weapon by force or intimidation
2 took money belonging to a Li'L Cricket, that
3 being from a Diane Thorton. Are you pleading
4 guilty to that armed robbery today?

5 **MR. EVANS:** Yes, sir.

6 **THE COURT:** Mr. Johnson, on that same day
7 of January the 26th, 2010, uh, you participated
8 in an armed robbery of a Diane Thorton at a
9 Little Cricket, again taking money belonging to
10 Little Cricket. You pleading guilty to that
11 armed robbery?

12 **MR. JOHNSON:** Yes, sir.

13 **THE COURT:** Mr. Evans, I have an
14 indictment before me that says on or about
15 February the 23rd of 2010 you again committed
16 an armed robbery, this time taking money
17 belonging to the Citgo here in Greenville
18 County, that being taken from the person or
19 other presence of Ronald Arnell and/or Samuel
20 Burnhart. Are you pleading guilty to that
21 armed robbery, sir?

22 **MR. EVANS:** Yes, sir.

23 **THE COURT:** On that same date, I have an
24 indictment that says that you conspired with
25 Rakeem Johnson for the purpose of accomplishing

1 an unlawful act, that being an armed robbery.
2 Are you pleading guilty to conspiracy of that
3 armed robbery also?

4 MR. EVANS: Yes, sir.

5 THE COURT: Mr. Johnson, I have an
6 indictment that says on or about the 23rd of
7 February of 2010, you took some property, uh,
8 uh, that being an armed robbery, you took some
9 property belonging to the Citgo from the person
10 or in the presence of Ronald Arnell and/or
11 Samuel Burnhart. Are you pleading guilty to
12 that, uh, armed robbery?

13 MR. JOHNSON: Yes, sir.

14 THE COURT: I also have a count 2 of that
15 indictment that says on that particular date
16 that you visibly displayed a firearm during the
17 commission of an armed robbery, that being in
18 violation of the law of South Carolina and that
19 you were in possession of a weapon during the
20 commission of a violent crime. Are you
21 pleading guilty to that today?

22 MR. JOHNSON: Yes, sir.

23 THE COURT: The indictment on that same
24 date of February the 23rd, 2010 also charges
25 you with conspiring with Michael Evans for the

1 purpose of accomplishing an unlawful object,
2 that being an armed robbery. Are you pleading
3 guilty to that conspiracy today of the armed
4 robbery?

5 **MR. JOHNSON:** Yes, sir.

6 **THE COURT:** Solicitor, I'll be glad to
7 hear about the background facts surrounding
8 these matters.

9 **MR. MOYER:** Thank you, Your Honor. May it
10 please the Court. There are four separate
11 robberies as Your Honor has noted. I'll begin
12 with the first one that took place on January
13 the 20th of 2010. On that date, the defendants
14 entered a Sphinx convenience store on White
15 Horse Road both wearing masks.

16 One of the defendants pulled out a pistol
17 and demanded cash from the clerk. They told
18 the -- two of the customers who were in the
19 store at the time to lie down on the floor face
20 down. The clerk handed the defendants about
21 \$100. The defendants then ran out of the, uh,
22 of the convenience store at that time.

23 The second incident happened the following
24 day. It was January the 21st of last year.
25 These two defendants and a third person who has

1 not been identified entered the Sphinx on Allen
2 Street in Greenville. Again, both wearing
3 masks. One had a pistol. They demanded money
4 and cigarettes from the clerk. The defendants
5 left on that particular incident with about
6 \$330 worth of cash.

7 On January the 26th of last year, the
8 defendants and, once again, an unidentified
9 third person entered a Little Cricket
10 convenience store on White Horse Road again
11 wearing masks. One of them had a pistol
12 pointed at the clerk. Demanded money. The
13 clerk gave the defendants money from the cash
14 register and the defendant fled.

15 The final incident, Your Honor, is the one
16 that was on the trial docket for today. That's
17 the one that took place on February the 23rd of
18 last year. That happened at a corner mart on
19 Easley Bridge Road in Greenville County. This
20 -- on this particular incident, it was just
21 these two defendants who were involved in the
22 robbery.

23 They both entered the convenience store
24 that evening. Both of them again had masks.
25 One pulled out a pistol, pointed it at the

1 clerk and demanded money. The clerk got
2 somewhere around \$150 out of the cash register.
3 Put it down on the counter. Mr. Evans reached
4 out and grabbed the majority of the money. Mr.
5 Johnson than reached out and grabbed a couple
6 of other loose bills that were on the counter.
7 The defendants ran out of the corner market
8 store at that time.

9 It just so happened that a Greenville
10 County deputy was driving along Easley Bridge
11 Road right about that time. He was aware of
12 all these armed robberies that were taking
13 place in the area. In fact, he knew that that
14 very convenience store had been robbed a few
15 weeks prior and it had been an armed robbery.

16 The deputy pulled up just as he saw these
17 two defendants running out of the store. He
18 pulled his patrol car around the side of the
19 building. He saw the defendants run around
20 behind the convenience store and go down some
21 very steep steps. The deputy began following
22 them and chased them through several yards
23 without the defendants knowing he was behind
24 them. He watched them get into a vehicle that
25 was parked back in a dark area in a

1 neighborhood back behind the convenience store.

2 He approached the driver's side, uh, of the

3 vehicle where this defendant was seated. The

4 deputy, uh, told the two defendants to show

5 their hands. Uh, this defendant made some

6 movements that the deputy interpreted as

7 threatening. The deputy fired three times.

8 Two of the bullets struck this defendant which

9 resulted in his condition here today which I

10 believe Mr. Singleton will inform you more

11 about. But he is paralyzed.

12 At that time, the co-defendant, Mr.

13 Johnson, got out of the vehicle. Other

14 deputies arrived. The two defendants were

15 arrested at that time. Money was found in the

16 vehicle totaling the amount of money that was

17 stolen from the convenience store. A firearm

18 was found.

19 The defendant, Rakeem Johnson, gave a

20 statement to law enforcement, uh, admitting his

21 guilt in this incident and also the other cases

22 that are before the court. He implicated this

23 defendant as being involved also. Mr. Johnson

24 said that he was the one who was holding the

25 pistol on the January the 20th incident and the

1 February 23rd incident, the final incident. He
2 said on the other two cases that are before
3 you, the unidentified third person was holding
4 the pistol on those two occasions. So Your
5 Honor, those are essentially the facts as they
6 would come out at trial.

7 THE COURT: Where is this Citgo located on
8 Easley Bridge Road?

9 MR. MOYER: I don't have the exact --

10 UNIDENTIFIED SPEAKER: 784.

11 MR. MOYER: 784.

12 THE COURT: It is Washington Avenue or --

13 UNIDENTIFIED SPEAKER: Prior to Washington
14 Avenue on the right, sir. Across from Judson
15 Mill.

16 THE COURT: Okay. All right. I know
17 where you are talking about now.

18 MR. MOYER: The victim from the incident
19 that's on the trial docket is present and, I
20 believe, would like to address the court when
21 Your Honor would see fit to hear it.

22 THE COURT: All the other victims have
23 been notified?

24 MR. MOYER: The others have been. Yes,
25 Your Honor.

1 **THE COURT:** Mister, uh, Evans, you heard
2 the facts recited by the Solicitor surrounding
3 each of these incidences. Are those
4 substantially the facts that you are here to
5 plea guilty today?

6 **MR. EVANS:** Yes, sir.

7 **THE COURT:** Mr. Johnson, you've heard the
8 facts as well. Are those the facts to which
9 you are pleading guilty today?

10 **MR. JOHNSON:** Yes, sir.

11 **THE COURT:** Now, each of you understand
12 that by entering a plea of guilty, you are
13 giving up substantial rights you enjoy. You
14 give up your right to have a trial by jury. If
15 a jury were to be assembled, the State of South
16 Carolina would have to prove your guilt beyond
17 a reasonable doubt. They would have to
18 convince that jury unanimously of your guilt.

19 You would have a chance in a trial to
20 confront those witnesses against you and let
21 your attorneys ask them questions under oath.
22 You'd have an opportunity to call witnesses in
23 your own behalf if you chose to do so. In a
24 trial, you'd have an opportunity to challenge
25 incriminating statements you may have made

1 during the course of the investigation. You'd
2 have an opportunity to challenge the evidence
3 the state tries to put in.

4 Obviously, you'd have a right to remain
5 silent. You wouldn't have to say anything at
6 all because the State would have the full
7 burden of proving your guilt beyond a
8 reasonable doubt. You understand, gentlemen,
9 those rights that you're giving up by pleading
10 guilty? You understand that, Mr. Evans?

11 **MR. EVANS:** Yes, sir.

12 **THE COURT:** Mr. Johnson, you understand
13 that?

14 **MR. JOHNSON:** Yes, sir.

15 **THE COURT:** You want to give these rights
16 up?

17 **MR. EVANS:** Yes, sir.

18 **MR. JOHNSON:** Yes, sir.

19 **THE COURT:** Now, are each of you satisfied
20 with the attorney's representation that you
21 had? You satisfied with Mr. Singleton's
22 representation?

23 **MR. EVANS:** Yes, sir.

24 **THE COURT:** And Mr. Johnson, you satisfied
25 with Mr. Patel?

1 **MR. JOHNSON:** Yes, sir.

2 **THE COURT:** Have these lawyers met with
3 you as long and as often as you feel necessary?

4 **MR. EVANS:** Yes, sir.

5 **MR. JOHNSON:** Yes, sir.

6 **THE COURT:** Have you understood the
7 discussions you've had with them?

8 **MR. EVANS:** Yes, sir.

9 **MR. JOHNSON:** Yes, sir.

10 **THE COURT:** Have they done everything to
11 defend you that you've asked them to do?

12 **MR. EVANS:** Yes, sir.

13 **MR. JOHNSON:** Yes, sir.

14 **THE COURT:** Are each of you completely
15 satisfied then with your attorney's
16 representation?

17 **MR. EVANS:** Yes, sir.

18 **MR. JOHNSON:** Yes, sir.

19 **THE COURT:** Has there been anyone that has
20 promised you anything by way of reward or
21 otherwise or held out any hope of a reward to
22 get you to, entice you to plea guilty here
23 today, Mr. Evans?

24 **MR. EVANS:** No, sir.

25 **THE COURT:** Mr. Johnson, has anybody

1 promised you anything to get you to plead
2 guilty?

3 MR. JOHNSON: No, sir.

4 THE COURT: Has anybody threatened either
5 one of you in any way to cause you to plea
6 guilty today, be it intimidation or otherwise?

7 MR. EVANS: No, sir.

8 MR. JOHNSON: No, sir.

9 THE COURT: Mr. Evans, are you pleading
10 guilty then of your own free will?

11 MR. EVANS: Yes, sir.

12 THE COURT: Are you pleading guilty
13 because you are guilty?

14 MR. EVANS: Yes, sir.

15 THE COURT: Mr. Johnson, are you pleading
16 guilty of your own free will?

17 MR. JOHNSON: Yes, sir.

18 THE COURT: You doing so because you are
19 guilty?

20 MR. JOHNSON: Yes, sir.

21 THE COURT: Have each of you understood
22 the questions I've asked you?

23 MR. EVANS: Yes, sir.

24 MR. JOHNSON: Yes, sir.

25 THE COURT: Have you been truthful in your

1 answers to me?

2 **MR. EVANS:** Yes, sir.

3 **MR. JOHNSON:** Yes, sir.

4 **THE COURT:** Now, do you understand that by
5 entering a plea of guilty to Armed Robbery that
6 you could be sentenced up to 30 years in jail.

7 **MR. EVANS:** Yes, sir.

8 **THE COURT:** You understand that, Mr.
9 Johnson?

10 **MR. JOHNSON:** Yes, sir.

11 **THE COURT:** You are pleading guilty to
12 four armed robberies. You understand that you
13 can receive a sentence of well over 100 years?

14 **MR. JOHNSON:** Yes, sir.

15 **THE COURT:** Plus you'll be pleading guilty
16 to conspiracy and, in your case, a weapons
17 charge. You understand you could get five
18 years on each of those. Mr. Johnson, you
19 understand that?

20 **MR. JOHNSON:** Yes, sir.

21 **THE COURT:** On the conspiracy too, Mr.
22 Evans, you understand that?

23 **MR. EVANS:** Yes, sir.

24 **THE COURT:** You still want to plea guilty,
25 both of you?

1 **MR. EVANS:** Yes, sir.

2 **MR. JOHNSON:** Yes, sir.

3 **THE COURT:** Do you understand that if you
4 meet our appellate court rules, the law would
5 give you a right to appeal this proceeding
6 within 10 days. If you could not afford an
7 attorney, one could be appointed for you. Each
8 of you understand that right ---

9 **MR. EVANS:** Yes, sir.

10 **MR. JOHNSON:** Yes, sir.

11 **THE COURT:** --- if you meet the
12 requirements? So I find there is a substantial
13 factual basis for the plea, that it has been
14 freely, voluntarily, knowingly and
15 intelligently made by Mr. Evans and by Mr.
16 Johnson with the advice of competent legal
17 counsel with whom each expressed their
18 satisfaction. So I will accept their plea,
19 Gentlemen.

20 Mr. Singleton, I'll be glad to hear from
21 you, and Mr. Patel. I certainly be glad to hear
22 from each of your clients.

23 **MR. SINGLETON:** May it please the Court.
24 Uh, as stated earlier, Mr. Evans is 22 years
25 old. This is, uh -- by all accounts aside,

1 we've got a 19-year-old, Mr. Johnson, and a 22-
2 year-old, Mr. Evans, that are pleading guilty
3 to some very serious charges. Uh, Mr. Evans
4 has no prior adult record before these charges,
5 before he was served with these warrants and
6 got these charges.

7 Uh, as a result of the robbery on February
8 the 23rd, uh, Mr. Evans was shot twice, once in
9 the leg and once in the back. I mean, once in
10 the arm, the left arm, and once in the back.
11 Since that date, he has been paralyzed
12 basically from the waist down. Exactly, I
13 think a T-9 and from down.

14 He has had numerous health problems since
15 that date. He spent almost two months in the
16 hospital before he was released, but he's been
17 in and out of the hospital since then, even
18 though he's been on home detention since his
19 release from the hospital. He's been in and
20 out of the hospital numerous times for various
21 medical procedures, one including surgery to,
22 uh, correct or to help take care of the
23 bedsores that he had that had gotten so bad
24 that they had to go in and basically dig out
25 the infections.

1 He has also had -- he's not able to do
2 therapy because of his condition in his hips.
3 His hips, uh, because he's had to lay in the
4 bed basically 24 hours a day since this
5 incident, his hips have started to grow bones
6 where they are not supposed to be growing
7 bones. So that does not allow him to do any
8 kind of physical therapy.

9 He's basically bedridden. He has to have
10 catheters to help him go to the bathroom.
11 That's the only way he can go to the bathroom.
12 He basically -- he wrote me down his daily
13 schedule. His daily schedule consists
14 basically of him waking up in the morning. Uh,
15 what he calls cure catheter which is taking the
16 catheter out and putting one back in. Takes
17 his medication. Gets a sponge bath. Eats
18 breakfast. Does another catheter. He has to
19 do it every two to four hours. He tries to do
20 some exercises with his arms that he can.
21 That's basically all he can move. From the T-9
22 up, he can move his arms and stuff. So he
23 tries to do some exercises to help keep his
24 arms from going limp or unuseful.

25 After he does some exercises, he changes

1 his dressing. Then he tries to do a little bit
2 more movement with his arms. He takes more
3 medication, does the catheter again and then
4 basically lays there. He's taking 1, 2, 3, 4
5 -- 4 medications to help control his bowel
6 movements. He has to wear -- I know this is
7 embarrassing for him, but he has to wear
8 basically adult diapers to help every part of
9 the day.

10 He takes pain pills, such as Loratabs, to
11 help control the pain. He has some pain in his
12 back. He also takes some urinary tract
13 infection pills because he has a urinary tract
14 infection at least about once a month if not
15 more often.

16 We are here today. He's in this condition
17 because he and Mr. Johnson made stupid
18 mistakes. Decided something very stupid. I
19 told Mr. Evans that when I came in here today,
20 I would probably say some things that he might
21 not like, but that's the point of it. They
22 committed four robberies. You know, probably
23 got a total of less than \$6-700. He would give
24 anything to turn back the clock and go back to
25 the beginning of January 2010 and never had

1 done the first robbery.

2 Obviously, he's in this condition and he'll
3 never be the same. There's no hope. There's
4 no prognosis that he's every going to gain the
5 use of his legs again. He's classified as a
6 paraplegia. Uh, this is a -- obviously very
7 expensive. I've looked -- did some research.
8 And according to the University of Alabama, uh,
9 National Institute of Spinal Cord -- University
10 of Alabama Spinal Cord Institute, it's going to
11 cost to take care of him for the rest of his
12 life almost \$2.2 million just to take care of
13 him. And that's on average based on their
14 research.

15 We're asking -- he's very sorry for what
16 he's done. I mean, he's got a two-year-old son
17 that he's never going to be able to run around
18 with. He's going to have -- he's never going
19 to be able to have children again. He's lost
20 everything just about. He does have -- his
21 spirits are high. He's a very quiet individual
22 since I've known him, but he's a very smart
23 individual even though he made some stupid
24 mistakes back in January of 2010. All these
25 incidents that occurred are about a month's

1 time.

2 It's affected his family very much. His
3 mother is in the third row. She is not able to
4 basically listen to what's going on or take in
5 what's going on. She did write you a letter,
6 Your Honor. She did not want to speak. She
7 did want to write -- give you this letter.

8 **THE COURT:** Did you review it?

9 **MR. SINGLETON:** I've already given it to
10 Mister -- to Solicitor Moyer. Also, in
11 addition to the medication that he takes on a
12 daily basis, he also has a nurse that comes to
13 his house three hours a day to help him to take
14 care of himself. He also gets supplies sent to
15 his house that consists of protective
16 underwear, the blue pads they put on the bed,
17 catheters, wipes and also he gets meals
18 delivered to his house from Meals on Wheels.

19 Obviously, what has happened to him is --
20 we're in a touchy situation because obviously
21 he's committed four robberies. We're asking
22 that you give him some sort of sentence. If he
23 goes to jail, I'm not sure if the jail, you
24 know, can take care of him there. I don't --
25 we don't know what type of system they have

1 down there. He's going to be staying in the
2 medical infirmary. In and out. And they are
3 going to have to brunt the most of the bills
4 for the next 10 or so years, however long you
5 give him. We're asking that you give him some
6 sort of sentence that will allow him to stay in
7 his home and be on home detention because he
8 can't go anywhere.

9 The only time he leaves his house is to go
10 to the hospital. He's scheduled to have
11 surgery -- or they want him to have surgery on
12 his hips to help try to correct the bone growth
13 on his hips so that he can start doing therapy.
14 But that's all in accordance to what you decide
15 here today, Your Honor. He's postponed that
16 doctor's visit to see what happens today.

17 You know, the goals, they say, of sending
18 people to the Department of Corrections is for
19 punishment and also for rehabilitation. You
20 know, he's got a lifetime punishment in my
21 mind, Your Honor. I know, I'm not trying to
22 make light of what he's done or anything like
23 that. But he's going to be paralyzed for the
24 rest of his life. He would give anything, I
25 think, to change positions with Mr. Johnson

1 right now or anybody else in this courtroom if
2 he could stand up and one day be able to play
3 with his two-year-old son. I have a three-
4 year-old. I couldn't imagine not playing with
5 him.

6 He's going to have a lifetime sentence of
7 sitting in that bed basically 24 hours a day
8 except for maybe when he gets -- has to go to
9 the hospital and has to have his friend who is
10 like his brother pick him up from the bed, put
11 him in the wheelchair, roll him to the car and
12 pick him up and put him in the car like he did
13 this morning.

14 Uh, obviously, you have to give him some
15 sort of punishment. And I'm not saying he
16 doesn't need to be punished. But we're asking
17 that you form some sort of sentence that will
18 allow him to not have to go to the Department
19 of Corrections for a very long time, if at all,
20 and let him be on strict home detention because
21 he's not going anywhere, Your Honor, like I
22 said.

23 He's been rehabilitated in my mind. He
24 would give anything to change what happened.
25 He's basically -- I would call him -- usually,

1 when people do this type of stuff -- you know,
2 both of these individuals are young. I'm going
3 to go ahead and say it. They were young punk
4 kids who thought they could get away with it.
5 But if he could do anything, he would change
6 it.

7 Unfortunately, that's what a lot of
8 defendants say at the point in time. But
9 obviously, this is very true in this situation.
10 I mean, he's never going to be in trouble with
11 the law again. He has no prior adult record.
12 His medical condition, I believe, if he goes to
13 the Department of Corrections will only get
14 worse. Here, he's, you know, I think he lives
15 two or three miles from the Greenville Memorial
16 Hospital where they take him. So we're asking
17 that you form some sort of sentence that takes
18 all that into account.

19 His cousin is here that would like to
20 address the Court at the appropriate time.

21 **THE COURT:** I'll be glad to hear from the
22 cousin.

23 If you would, state your name please.

24 **SPEAKER:** It's Gwendolyn Miller.

25 **THE COURT:** All right. Ms. Miller, I'll

1 be glad to hear from you.

2 **SPEAKER:** I just want to say he's a --
3 Michael has always been a good child. He's
4 quiet. And he's influenced a lot. I just
5 think he made wrong choices. They both made
6 wrong choices. But I feel like he's suffering
7 in that wheelchair. Y'all don't know the pain
8 and the suffering that the whole family's going
9 through because of them wrong choices that he
10 made.

11 I just feel like he's suffering now for
12 what he's done. That's jail right there, not
13 being able to walk. You know, we take for
14 granted that we just walked in this courtroom.
15 Somebody had to roll him in. I just want you
16 to take into consideration of that.

17 **THE COURT:** Thank you, ma'am.

18 **MR. SINGLETON:** Your Honor, in doing
19 research on his condition, one of the major
20 problems that he also has as far as bedsores
21 and stuff like that is also developing
22 pneumonia. And I'm not trying to say the
23 Department of Corrections is a horrible place
24 to go. I'm sure it's a horrible place to go,
25 but as far as medical-wise, I've had lots of

1 clients who come out of there with infections
2 and stuff. I'm just afraid that if he goes
3 there, he may get sicker.

4 You're in a tough position because you got
5 to punish him. We're asking you to take his
6 medical condition into account. He can't go
7 back and change what happened. And the
8 officers responded to this accordingly. We
9 just ask you to take his no prior -- his lack
10 of prior record as an adult, his current
11 medical condition, his age, that he's 22 years
12 old and form some sort of sentence that you
13 feel is appropriate for him.

14 **THE COURT:** All right. Thank you, Mr.
15 Singleton.

16 Mr. Patel, I'll be glad to hear from you.

17 **MR. PATEL:** Judge, just briefly. Just
18 briefly. Rakeem, he's now 19 years old, Judge.
19 When these incidents happened, I believe he was
20 two months -- a little bit over two months past
21 his 18th birthday. When I met him, he was 18,
22 Judge. I met him on March the 11th of 2010,
23 Judge, and just want to give you some idea of
24 how we got here too. The day that I met him, I
25 was looking over my notes. Immediately, he

1 said, you know, Mr. Patel, I'm guilty. I did
2 this. I don't want a trial. Just see what
3 type of plea offer you could give me. I don't
4 want to spend the rest of my life in prison.
5 And that's basically -- that's what we been
6 working for, Judge, trying to get him some sort
7 of offer.

8 The case has just gotten old and was placed
9 on the trial docket, I think Mark had told me
10 back in February that it was ready -- Mr.
11 Moyer, excuse me -- ready to go on the trial
12 docket. We tried to get him up here and for
13 some reason or another, we just couldn't get
14 him pled by then. But that's why we're here,
15 Judge.

16 As for Rakeem himself, Judge, from the day
17 I met him, like I said, he's always been up
18 front with me that he did this. He's never
19 tried to minimize his responsibility even with
20 the police. When he gave his statement to him,
21 he said on this robbery, this robbery, on A, B,
22 and C, I was holding the gun; on C, D, and F,
23 he was holding the gun. He was always upfront,
24 cooperated with them.

25 On the times that I've met with him, I've

1 had good talks with him. His talks, as well,
2 as Mr. Evans', his spirits -- his spirits have
3 been up. He's been telling me what he wants to
4 do with the rest of his life once he gets done
5 with his sentence. He understands that he's
6 going to get a sentence and it's going to be a
7 significant amount of time. It's going to be a
8 violent sentence. He understands what it all
9 entails now. I think at the time they were
10 committing these robberies, speaking with him,
11 I don't think they clearly understood what -- I
12 -- they knew what they were doing was wrong.
13 Uh, they just didn't realize how serious it
14 actually was.

15 Uh, as soon as he was arrested, he gave a
16 statement that night or the next night. I
17 don't know. Some time soon after, he gave a
18 statement. Cooperated. Mr. Moyer said that.
19 He gave details of each -- of each incident
20 that -- of each incident that they had done
21 even in the past. He basically closed these
22 cases for the Solicitor's office.

23 One thing -- I was reading a statement in
24 preparation for this. And one thing that came
25 out was the last line of the statement. I'm

1 just going to read that out loud. I think that
2 what we did was stupid. I'm hoping that if I
3 cooperate I can have another chance and I don't
4 go to prison for a very long time. He, at that
5 time, knew that, by giving the statement, he's
6 in trouble. He's going to prison. But I think
7 he did what was right in giving that statement,
8 Judge, and cooperating. I'll ask that you take
9 all that into consideration. His age at the
10 time.

11 Uh, he has been -- he has been incarcerated
12 since then. So he's been incarcerated a little
13 over 14 months now. I don't know the exact
14 number of days, but I'm sure Mr. Moyer will let
15 you know. I do know that Rakeem would like to
16 address the court at the appropriate time.

17 **THE COURT:** Mr. Johnson, be glad to hear
18 from you if you'd like to address the court.

19 **MR. JOHNSON:** Yes, sir. I want to say
20 that I apologize to the victims for what I did.
21 I want to let everybody know that there ain't a
22 day that went by since I been incarcerated and
23 I ain't thought about what I did, what I put
24 them through. I'm sorry that it took for this
25 to -- I'm sorry that it took for this to happen

1 for me to change my ways. There's a lot of
2 anger inside of me because of what I did, not
3 because I got caught, but because I did
4 something to jeopardize my freedom and
5 everything I love.

6 At the time, I was weak-minded. I was
7 immature. I've learned from this. This is not
8 the lifestyle that I want to continue. I'm
9 better than that. I do have potential. I plan
10 to use the time that I have to serve to educate
11 myself and become a better person so that when
12 I get out, I can do something positive.

13 I just want you to know that I really
14 learned from this. I made a serious mistake.
15 It won't happen again. I got two kids and I
16 got a family that love me. I wasn't thinking
17 at the time. I'm sorry my homeboy had to be
18 like that. I just ask that you be lenient on
19 me and give me a chance. Give both of us a
20 chance please.

21 **THE COURT:** Thank you, Mr. Johnson.

22 **MR. MOYER:** Your Honor, please --

23 **THE COURT:** Mr. Evans, anything you'd like
24 to tell me, sir?

25 **MR. EVANS:** No, sir.

1 **THE COURT:** Solicitor?

2 **MR. MOYER:** Yes, sir. Oh, I was going to
3 say I believe --

4 **THE COURT:** You have a victim or --

5 **MR. MOYER:** I believe the victim may want
6 to address the court and the investigating
7 officer is also in the courtroom, he may or may
8 not want to address the court as well.

9 **THE COURT:** Is there a prior record on Mr.
10 Johnson?

11 **MR. MOYER:** Uh, Mr. Johnson has an adult
12 record of Criminal Domestic Violence and
13 Loitering to Engage in Drug Activity.

14 **THE COURT:** I'll be glad to certainly hear
15 from the victim and the officer if he'd like to
16 address me in any way.

17 **SPEAKER:** Certainly. Hi, Your Honor, my
18 name is --

19 **THE COURT:** State your name please, sir.

20 **SPEAKER:** My name is Ronald Arnell.

21 **THE COURT:** Yes, sir, Mr. Arnell.

22 **SPEAKER:** And I worked at the gas station.
23 Frankly, I don't think -- I don't feel like
24 they're sorry. They are sitting there saying
25 they are sorry to the business, well, what

1 about the victims? My daughter turned four
2 months the day after I got robbed. That night,
3 when they had a gun to my head, I felt like,
4 you know, I was going to be fatherless. I have
5 two kids myself. I'm married. You know, I
6 don't have my family down here. They are all
7 up north.

8 To do that, rob a store that's like right
9 there in your neighborhood. Not a day goes by
10 I don't go by a gas station where I can't go in
11 afraid that they're going to get robbed or
12 something. I'll sit out there on the cell
13 phone and my wife would go in just in case the
14 same people that's on the video is sitting
15 there when it happened just driving away as he
16 ran out the store. You know, I don't want to
17 see something like that happen to somebody else
18 and you're just sitting out there and they get
19 robbed and they just drive away and don't do
20 nothing. I'm terrified to go in a store. I
21 don't feel they are sorry for what they did.
22 That's it. Thank you very much.

23 **THE COURT:** Thank you, Mr. Arnell.

24 **MR. MOYER:** Investigator Weiner also, I
25 believe, would like to say something to the

1 Court.

2 THE COURT: Yes, sir, Investigator Weiner.

3 SPEAKER: Just briefly, Judge, uh, on
4 behalf of the Sheriff. I think all too often,
5 we see too many young males in here making what
6 they call stupid mistakes. First time, shame
7 on me. Second -- or first time, shame on them.
8 Second time, shame on me. This was four times.
9 Uh, I've heard Mr. Johnson express some apology
10 or sympathy. I've heard nothing from Mr. Evans
11 except for that we should have pity on his
12 condition, which was caused by his actions in
13 the confrontation with the officer giving him
14 verbal commands that he chose to ignore.

15 And, uh, in each of these four incidents, a
16 real live firearm was used. Just a four and a
17 half pound trigger pull away from putting any
18 one of these clerks in that same wheelchair. I
19 think that needs to be considered.

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

21 MR. SINGLETON: Your Honor, may I speak
22 for one second?

23 THE COURT: Yes, sir, Mr. Singleton.

24 MR. SINGLETON: Uh, I respectfully -- you
25 know, I respect the officer and the victim for

1 what they said. Maybe this should be coming
2 from Mr. Evans, but I've -- in meeting with Mr.
3 Evans, he's -- he told me from the get-go about
4 what happened. He is truly sorry for what
5 happened. For them to say that he's not sorry
6 for what happened, I think -- in my numerous
7 times in meeting with him, I know he's sorry
8 for what happened.

9 You know, he may not be willing to say it
10 here in front of the court. That's his
11 prerogative. But I don't want it to go through
12 the court's mind that he's not sorry just
13 because he hasn't said it. I know he's sorry
14 not for the -- not only for the condition that
15 he's in, but also for what happened. He's seen
16 the videos. He saw what happened. He saw what
17 he put this store clerk through. He truly is
18 sorry.

19 **THE COURT:** I have no doubt that both of
20 these gentlemen are sorry for what they did.
21 It's just a tragedy of our time. Prison --
22 there's so many prisons around. There's one
23 prison that I can send people to and there's
24 the other that folks get themselves involved
25 in. Drugs or wanting money or whatever it may

1 be, they are imprisoned in activities they're
2 in.

3 **MR. SINGLETON:** Your Honor, I don't think
4 there's any indication that drugs are involved
5 in these cases.

6 **THE COURT:** I haven't heard anything about
7 drugs. But whatever it is, there's the prison
8 of self-indulgence or whatever it may be. Not
9 caring about other people, selfishness.

10 **MR. SINGLETON:** Yes, sir.

11 **THE COURT:** They all have different bars.
12 Some have physical bars. Some have mental
13 bars. We can all put ourselves in those
14 situations.

15 (WHEREUPON, there is a pause.)

16 **THE COURT:** It's a tragedy that we so
17 often see. I wish I didn't, uh, have to see
18 it. I wish the choices were different that
19 were made. It's unfortunate for the families
20 of these fine young men. The choice they made
21 was so critical for their lives.

22 This is case 2010-GS-23-3321, Mr. Michael
23 Ellis Evans. The sentence of the court on that
24 case be committed to the State Department of
25 Corrections for a period of 185 months. Case

1 3317, sentence is 185 months concurrent. Case
2 3366, 185 months concurrent. 3364, same
3 sentence, 185 concurrent. Case 3319, 5-year
4 sentence concurrent to that previously imposed.

5 As to Mr. Johnson, Case 2010-GS-23-3514,
6 the sentence is committed to the State
7 Department of Corrections for a period of 185
8 months. Case 3514, second indictment is for 5-
9 year on the weapon charge concurrent. Case
10 3353, 3355, 3357, all 185 months again to be
11 concurrent. Case 23-3359, 5-year sentence to
12 be concurrent. Wish the best to both of you
13 young men and certainly to the victims.

14 **MR. PATEL:** Thank you, Your Honor.

15 **MR. MOYER:** Thank you, Your Honor.

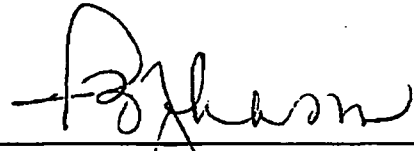
16 **(WHEREUPON, the proceedings conclude at**
17 **approximately 2:05 p.m.)**

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 17th day of November, 2011.

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



Teresa B. Johnson

Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Full name and prison number (if any) of Applicant,)

Michael Eric Lewis # 346001)

State of South Carolina)

2011-CP-23- 06933

APPLICATION FOR)

POST-CONVICTION RELIEF)

ENTERED COMPUTER)

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 KIRKPATRICK Reception & Detention Center
2. Name and location of Court which imposed sentence GREENVILLE COUNT. COURT HOUSE 305 E. NORTH ST. GREENVILLE, S.C. 29601
3. Name(s) of co-defendant(s) (if any) RAKEL J. JOHNSON
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) SENTENCE WAS IMPOSED MAY 12, 2011
 - (b) (TERM) 15 YRS. 5 MONTHS 85%

Revised 3/2003

SCANNED

- (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?
NONE
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. NONE
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. NONE
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. NONE
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NONE
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My Reasoning For the F.C.R. was
- (b) "INEFFECTIVE ASSISTANCE OF COUNSEL."
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL.
- (b) _____
- (c) _____

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

- (a) LAWYER FAILED TO PERFORM A PRETRIAL IN-
- (b) VESTIGATION. VIOLATION OF 4TH AMENDMENT. DUE
- (c) PROCESS OF LAW.

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

- (a) any petition in a State Court under South Carolina Law? NONE
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NONE
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NONE
- (d) any other petitions, motions or applications in this or any other Court? NO.

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

- (a) the specific nature thereof:
- i. NONE
- ii. "
- iii. "
- iv. "
- (b) the name and location of the Court in which each was filed:
- i. NONE
- ii. "
- iii. "
- iv. "
- (c) the disposition thereof:
- i. NONE
- ii. "
- iii. "

- iv. _____
- (d) the date of each such disposition:
- i. NONE
- ii. "
- iii. "
- iv. "
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. NONE
- 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?

NONE

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

- (a) which grounds have been presented:

- i. NONE
- ii. "
- iii. "

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

- i. NONE
- 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) WASN'T INFORMED BY COUNSEL. Violation
- (b) OF 4TH AMENDMENT. DUE PROCESS OF LAW.
- (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.
- (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? NONE

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

- (a) the name and address of each attorney who represented you:
- i. MR. MAX SINGLETON (ATTORNEY AT LAW)
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. MR. SINGLETON (ATTORNEY) REPRESENTED ME AT
- ii. SENTENCING.
- iii. _____

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

I'd like my plea with drawn.

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

NONE.

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

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

Michael Evans

SWORN to and subscribed before me this 7th
day of September, 2011.

[Signature] (L.S.)
Notary Public

My Commission Expires: My Commission Expires
October 8, 2014

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

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

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

Michael Evans
Applicant

SWORN or affirmed to and subscribed before me this
7th day of September, 2011.

[Signature]
Notary Public

My Commission Expires
My Commission Expires: October 8, 2014

PCR

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Michael Ellis Evans,)
S.C.D.C. No. 346001,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-23-6933

RETURN

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE, S.C.
MAR 2 2012
2012 FEB -3 AM 9:23
JW

In response to the post-conviction relief application filed October 20, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the June 2010 term of the Greenville County Grand Jury for four (4) counts of armed robbery (2010-GS-23-3317, -3321, -3364, -3366) and conspiracy (2010-GS-23-3319). Max B. Singleton, Esquire represented the Applicant.

On May 17, 2011, the Applicant pled guilty. The Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of one hundred and eighty-five (185) months for each count of armed robbery and five (5) years for conspiracy. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The plea transcript will be forwarded upon receipt.

Copy mailed to
Applicant Evans
Attorney
on Feb 13 / 2012

SCANNED

Ant. Att. n

II.

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

1. Ineffective assistance of counsel:
 - a. "Lawyer failed to perform a pretrial investigation."
 - b. "Violation of 4th Amendment."
 - c. "Due Process of Law."

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel.

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

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

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

By:


Attorneys for Respondent

Jan. 30, 2012

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

MICHAEL ELLIS EVANS, 346001

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-23-6933

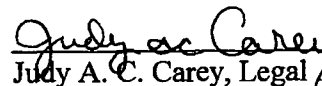
AFFIDAVIT OF SERVICE BY MAIL

2012 FEB -3 AM 9:23
 FILED-CLERK OF COURT
 GREENVILLE, S.C.
 2012 FEB 3 2012

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

Michael Ellis Evans, 346001
Evans Correctional Institution
Post Office Box 2951202
Bennettsville SC 29512

DATED this 30th day of January, 2012.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2013-CP-23-6933
	)	
	)	
MICHAEL ELLIS EVANS	)	
	)	ORIGINAL
	)	
APPLICANT)	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA	)	
RESPONDENT)	)	

August 28, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

RODNEY RICHEY, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

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There were no exhibits.

Certificate of Reporter 20

1 THE COURT: Yes, ma'am.

2 MS. RATIGAN: Thank you, Your Honor, may it please
3 the Court. This is the case of Michael Evans vs. The
4 State of South Carolina. The docket number is
5 2011-CP-23-6933. Mr. Evans was indicted for four counts
6 of armed robbery and four counts of conspiracy. He was
7 represented on those charges by Mr. Singleton. On May
8 17th of 2011 he pled guilty before Judge Welmaker. He
9 received concurrent sentences of 185 months for each count
10 of armed robbery. That turns out to be 15 years and five
11 months. And a concurrent sentence of five years for
12 conspiracy. He did not file an appeal. The State is
13 ready to proceed.

14 THE COURT: Okay, Mr. Richey.

15 MR. RICHEY: We're ready to proceed.

16 THE COURT: All right. Good enough.

17 MR. RICHEY: We call Ms. Evans.

18 THE COURT: Please, come forward to be sworn,
19 Ms. Evans.

20 THE CLERK: Please, place your left hand on the Bible
21 and raise your right hand.

22 SHARON EVANS, after being duly sworn, testified
23 as follows:

24 THE CLERK: Thank you, you may be seated. Please,
25 state your full name for the record.

1 THE WITNESS: Sharon Elaine Evans.

2 DIRECT EXAMINATION

3 BY MR. RICHEY:

4 Q Ms. Evans, do you know Michael Ellis Evans?

5 A Yes, sir.

6 Q How do you know him?

7 A He's my son.

8 Q Okay. You understand we're here today on the
9 Post-Conviction Relief case, right?

10 A Yes, sir.

11 Q And it is your son's allegation that his lawyer did
12 not properly represent him, do you understand that?

13 A Yes, sir.

14 Q Were you the person that hired the lawyer?

15 A Yes, sir.

16 Q Okay. Did you -- tell me how you did that.

17 A He had sent a letter through the mail. It was
18 originally for Rakeem Johnson. But I called him on behalf
19 of my son. And he--

20 Q Go ahead.

21 A And he came to the house and talked to us and
22 everything about the case.

23 Q And is that when you hired him?

24 A Yes, sir.

25 Q Okay. And after you hired him, did you have any

SHARON EVANS-DIRECT BY MR. RICHEY

1 subsequent conversations with him about your son's case?

2 A Yeah, a little bit.

3 Q Okay. When you say a little bit, what's a little
4 bit?

5 A He just -- okay, the first time he was like, you
6 know, about taking the case, what he probably could do and
7 stuff like that. Most times when I had a conversation it
8 was where to send his money, something like that. It
9 wasn't just talking about his case.

10 Q What did you say, it was what?

11 A Where to send the money.

12 Q Okay.

13 A I'm sorry.

14 Q That's fine. Your son, he pled guilty to the charge,
15 is that correct?

16 A Yes, sir.

17 Q Were you ever part of any conversation that your son
18 and lawyer had in regards to what sentence he would get or
19 what would happen in his case?

20 A Yes, sir.

21 Q And on those conversations, what did you believe was
22 going to happen?

23 A That he was going to get 10 years house arrest.

24 Q Ten years house arrest?

25 A Yes, sir.

SHARON EVANS-DIRECT BY MR. RICHEY

1 Q Why did you believe that?

2 A Because that's what he said.

3 Q Did he discuss with you about a recommendation to the
4 Judge or anything?

5 A I'm not sure what that means so I'm just going to say
6 what he said, okay? He said--

7 Q No, I'll explain what that means.

8 A Okay.

9 Q If you don't understand the question that's fine.

10 A Okay.

11 Q Did y'all have any discussions about the Judge did
12 not have to sentence him to 10 years house arrest?

13 A No. He said that -- the day that he came there he
14 said that he had talked to the Judge and the Solicitor and
15 this is what Michael was going to get, 10 years house
16 arrest.

17 Q Okay.

18 A And signed the plea thing.

19 Q Okay. Did he talk to you anything about that the
20 Judge could sentence him to more than 10 years?

21 A No, sir.

22 Q Did he tell you that the minimum was 10? Did he say
23 anything to that extent?

24 A (The witness shook her head.)

25 Q You got to answer yes or no.

SHARON EVANS-DIRECT BY MR. RICHEY

1 A Oh, I'm sorry, no. Like I say, it was just skraight
2 [verbatim] saying 10 years house arrest is what he going
3 to get. First he had said something about probation.
4 That was before that date that he signed the paper.

5 Q Okay.

6 A But like I say, but he said that he was trying for
7 the 10 years house arrest. And--

8 Q Okay.

9 A This is what we thought.

10 Q And did you advise your son to accept?

11 A Yes, sir. Because I thought was a Godsend, you know.

12 Q Okay.

13 MR. RICHEY: All right, thank you. Answer any
14 questions the Attorney General may have for you.

15 CROSS-EXAMINATION

16 BY MS. RATIGAN:

17 Q Did Mr. Singleton promise that he would get the 10
18 years house arrest or that that was what he was going to
19 try for?

20 A He said that's what he could get.

21 Q Okay. That's what he could get?

22 A Yeah, I put this right. That's what he would get.

23 Q Okay. So, if he went to court that day he would
24 absolutely get the 10 years house arrest?

25 A Yeah.

SHARON EVANS-CROSS BY MS. RATIGAN

1 MS. RATIGAN: Okay, that's all I have, Your Honor.

2 THE COURT: Thank you, ma'am. I appreciate you being
3 here, you can step down.

4 THE WITNESS: Okay.

5 MR. RICHEY: We call Mr. Singleton.

6 THE CLERK: Mr. Singleton, please, place your left
7 hand on the Bible, raise your right hand.

8 MAX SINGLETON, after being duly sworn, testified
9 as follows:

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

12 THE WITNESS: Max B. Singleton.

13 DIRECT EXAMINATION

14 BY MR. RICHEY:

15 Q Mr. Singleton, do you recall representing Michael
16 Evans?

17 A Yes, sir.

18 Q And do you recall what -- do you recall what charges
19 you represented him on?

20 A On all the charges that he was indicted on that
21 Ms. Ratigan labeled that she stated earlier.

22 Q Was -- robbery charges?

23 A Yeah, I think he had multiple robbery charges at
24 convenient stores.

25 Q And you heard the earlier testimony, did they retain

MAX SINGLETON-DIRECT BY MR. RICHEY

1 you to represent him?

2 A Yes, sir.

3 Q Okay. During the course of your representation, did
4 you go over the discovery with Mr. Evans?

5 A Yes, sir, I met with him a number of times at his
6 house, probably, I say anywhere between four to six times
7 at his house. I met with him one time when he was in his
8 wheelchair, one time when he was in his bed. A couple of
9 times he was in his wheelchair. And one time he was in
10 his bed, specifically, I remember meeting with him. And I
11 think I might have met with his mother on one occasion
12 because he was too ill to sit or meet or something like
13 that. So, I would say it was around four times or
14 something like that.

15 Q When you talked with him, did you discuss with him
16 the maximum and minimum sentences that he could receive
17 for these armed robberies?

18 A Yeah. All my clients I discuss with them the minimum
19 they could receive on the sentence and the maximum. And
20 what probably some Judges could run it concurrent or
21 consecutive.

22 Q So, you discussed with him that he could get up to 30
23 years on these robberies?

24 A Yes, sir.

25 Q Okay. And you heard his mother's discussion about 10

MAX SINGLETON-DIRECT BY MR. RICHEY

1 years house arrest. Did you discuss with them, first of
2 all about house arrest?

3 A Yeah, I told him my goal was to try to get house
4 arrest because of his condition, that he was paralyzed.
5 And he had a lot of health problems. And he was currently
6 on house arrest as a condition of his bond. He and I
7 discussed that that was short of dismissal or reducing the
8 charges. And I believe the solicitor was Mark Moyer, I
9 believe, at the time. But that was -- that the best that
10 he could get would be house arrest. And I thought that he
11 might have a chance and get house arrest since he was on
12 house arrest at that time. And he told me that The State
13 was paying for his house arrest at that time.

14 Q So, you didn't promise him he would get house arrest?

15 A No, I didn't promise him anything. Because I don't
16 know what -- because there was no negotiated plea with
17 Mark Moyer. Mark Moyer told me what his recommendation
18 was going to be and I believe it was 15 years. And I told
19 him I was going to argue as best I could, that given his
20 health condition and I think lack of prior record, that
21 hopefully that he would get home detention or whatever.

22 Q Okay. So, if -- the mother's belief was wrong,
23 correct?

24 A Yes. I mean, every time we talked about that, that
25 was our goal was to try to get home detention. I did not

MAX SINGLETON-DIRECT BY MR. RICHEY

1 promise -- I never promise a client anything unless it's,
2 you know, a negotiated settlement. Because my
3 understanding of negotiated settlements is that if it's
4 negotiated by the solicitor and the attorney, that's what
5 the Judge has to go by. You know, recommendation is --
6 just a recommendation they can go higher or lower.

7 MR. RICHEY: No other questions. Answer any
8 questions that the Attorney General has for you.

9 CROSS-EXAMINATION

10 BY MS. RATIGAN:

11 Q So, you went over all the evidence with Mr. Evans?

12 A Yes. I remember specifically the day that he got
13 shot was, by the police, was right after the robbery. I
14 forgot what the name of the store was but he was -- it was
15 a robbery that they said it was two people, that they
16 walked around the side of the store, down the steps and up
17 and the car that was waiting for them. And apparently one
18 of the officers followed them and shot him in the back.

19 Q And did you -- pardon me, did you discuss with
20 Mr. Evans what The State would have to prove to find him
21 guilty of these charges?

22 A Yes, Your Honor -- I mean, yes, ma'am.

23 Q And did you -- I believe the Co-Defendant, Rakeem
24 Johnson, he gave a statement in this case, is that
25 correct?

MAX SINGLETON-CROSS BY MS. RATIGAN

1 A I gave the evidence to his civil attorney but I
2 believe he did give a statement. And I believe one of his
3 Co-Defendants pled with him that same day that we pled.

4 Q Did you discuss with your client the impact that the
5 Co-Defendant's statement would have on the defense's case?

6 A I always do that with my clients.

7 Q Okay. And I believe you testified you had discussed
8 with Mr. Evans the sentence ranges on these charges?

9 A I discuss with all my clients.

10 Q And did you make any kind of representation as to
11 what you thought the Judge would give him that day?

12 A No. I told him and his family that my goal was to
13 try to get him home detention based on his physical
14 condition. Because he was having a lot of health
15 problems. I think he was having problems with his bones
16 growing out, he was, you know, a lot of physical problems.
17 And I was hoping that he would get that because of his
18 condition. You know, Ms. Evans said that I spoke to the
19 attorney, the solicitor and the Judge and that's what they
20 said they would give him. I've never spoken to a Judge
21 before a plea hearing about what they would get.

22 Q Did you receive and any letters or phone calls from
23 Mr. Evans or his family after the plea asking about, you
24 know, why didn't he get house arrest?

25 A I believe so. Like I told them in the beginning that

MAX SINGLETON-CROSS BY MS. RATIGAN

1 there was no promise to that. That that was my goal of
2 what to do. Then I eventually gave the file to his civil
3 attorney which is...

4 Q So, did they contact you or not? I'm sorry, I'm
5 confused.

6 A I believe they did contact me.

7 Q They did contact you?

8 A And I told them like I told them before there was no
9 promise, there was no guarantee of what he would get.
10 Unless there's a negotiated settlements, there's no
11 guarantee to what he would get. A negotiated sentence.

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

13 THE COURT: All right, any redirect, sir?

14 MR. RICHEY: No other questions. We call Michael
15 Evans.

16 THE COURT: All right, thank you, sir, you can step
17 down.

18 THE CLERK: Place your left hand on the Bible, raise
19 your right hand.

20 MICHAEL EVANS, after being duly sworn, testified
21 as follows:

22 THE CLERK: Please state your full name for the
23 record.

24 THE WITNESS: Michael Ellis Evans.

25 DIRECT EXAMINATION

MICHAEL EVANS-DIRECT BY MR. RICHEY

1 BY MR. RICHEY:

2 Q Mr. Evans, you have filed a Post-Conviction Relief
3 case against your lawyer who represented you, correct?

4 A Yes, sir.

5 Q Who was that?

6 A Max B. Singleton.

7 Q You're going to have to speak up.

8 A Max B. Singleton.

9 Q Okay. And you do not believe that he effectively
10 represented you in this case, is that correct?

11 A No, sir.

12 Q Okay. One of the essential issues here is about this
13 10 years house arrest, deal, okay. Can you explain to me
14 where the -- you were promised 10 years house arrest by
15 the lawyer?

16 A Well, the first meeting, like my mother said, it was
17 a paper plan.

18 He said, I'm going to get you 10 years house arrest.

19 The next meeting I remember having was the day of
20 court when he said, You're going to get 10 years house
21 arrest. And he showed me the video tape of the so called
22 robbery. Which never showed my face or nothing. And he
23 was like, You're going to get 10 years house arrest, sign
24 these papers. And that's what I did.

25 Q Okay. You heard Mr. Singleton's testimony that he

MICHAEL EVANS-DIRECT BY MR. RICHEY

1 says that he told you all that he was going to try to,
2 that there was no promises, that the Judge could sentence
3 you to what -- basically what's within the range.

4 A No, sir, he ain't tell us that. He ain't say
5 anything about the Judge saying you can get anywhere from
6 10 or more years, none of that. He just said, 10 years
7 house arrest. And then he asked about my medical
8 condition, situation and stuff. And he said he was going
9 to put that in there but I was going to get 10 years house
10 arrest.

11 Q Okay. And so, you pled under the assumption that you
12 were going to get 10 years house arrest?

13 A Yes, sir.

14 Q Okay. Now, how had you known that you were not going
15 to get 10 years house arrest, what would have happened
16 then?

17 A I would have went to trial like I wanted to.

18 Q Okay. Did you discuss going to trial with
19 Mr. Singleton?

20 A Not exactly. I said -- I asked could I go to trial
21 about it. And he was like, no need, I'll get 10 years
22 house arrest.

23 Q Okay. Going over this transcript, there's certain
24 ways you answered these questions in this transcript.
25 That you were satisfied that he had done everything you

MICHAEL EVANS-DIRECT BY MR. RICHEY

1 asked him to do. Why did you give the Court these answers
2 in this transcript?

3 A I went by his advice was to tell them I was satisfied
4 and he did everything and all that. Truthfully, he never
5 showed me any statements of my Co-Defendant, Rakeem
6 Johnson or victim statements, police reports or any of
7 that. So, I just went by what he told me to do.

8 Q Okay. Were you ever provided any discovery in the
9 case?

10 A No, sir.

11 Q Did you ever see it?

12 A No, sir.

13 Q You saw -- what was this video that you saw?

14 A It was on a CD-ROM he put in his computer and he
15 showed me that. No statements or anything.

16 Q Okay. So, you were -- you were alleging that you
17 were, in fact, innocent of these robberies?

18 A Yes, sir.

19 Q Okay.

20 MR. RICHEY: Okay, thank you. Answer any questions
21 Ms. Ratigan may have.

22 CROSS-EXAMINATION

23 BY MS. RATIGAN:

24 Q So you only had two meetings with Mr. Singleton?

25 A Two meetings that I recall.

MICHAEL EVANS-CROSS BY MS. RATIGAN

1 Q And aside from looking at that video you never saw
2 any of the other evidence?

3 A No, ma'am.

4 Q And your testimony is he never told you you can
5 get -- he never told you can get anywhere from 10 to 30
6 years, he never told you that before?

7 A I learned I could get 10 to 30 years by being in
8 prison. I never knowed [verbatim] I could get that
9 before.

10 Q And your testimony today is that he promised you you
11 would get that 10 years of house arrest?

12 A Yes, ma'am. And he also said he would put in my
13 lawsuit but he never did.

14 Q Well why did you tell Judge Welmaker that day that
15 you had not been made any promises?

16 A Because at the time I didn't know that was considered
17 a promise. Talking to people, like different counsel and
18 stuff in prison, they told me that it's considered a
19 promise.

20 Q So, at the time you didn't feel like a promise had
21 been made but then you started kind of reading up on it
22 and you feel like a promise was made and broken?

23 A Yes, ma'am.

24 Q And your testimony today is that your innocent of the
25 charges?

MICHAEL EVANS-CROSS BY MS. RATIGAN

1 A I believe I'm innocent of the charges as well as I
2 believe the courts can't prove beyond a reasonable doubt
3 that I actually did it.

4 Q Okay. Well, why did you tell Judge Welmaker that day
5 that you were guilty?

6 A My lawyer's advice.

7 Q And you never told the Judge that day that you were
8 pleading guilty because you thought you'd get that 10
9 years house arrest?

10 A No, ma'am. I -- he didn't tell -- no one told me to
11 let the Judge know, that's what I was told. It was just
12 plead guilty to these charges. And that he was going to
13 say a couple of things I wun't [verbatim] going to agree
14 with but just stay quiet. And that's what I did.

15 Q Okay.

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

17 MR. RICHEY: That's all the questions.

18 THE COURT: All right, sir.

19 MR. RICHEY: That's all from us, Your Honor.

20 THE COURT: Thank you, Mr. Evans.

21 Okay, anything from the State?

22 MS. RATIGAN: We would just rest on the plea
23 transcript, Your Honor.

24 THE COURT: Okay, good enough.

25 Well, this is what I'm going to do. I'm going to

1 take it under advisement. I've got the application here,
2 the sentencing sheet and also the transcript of record.
3 So, I'm going to review that in context with the testimony
4 I've heard today and I'll get back to you.

5 MR. RICHEY: Thank you, Your Honor.

6 THE COURT: All right, good luck to you, Mr. Evans.

7 MS. RATIGAN: Thank you, Your Honor.

8 (WHEREUPON, the proceedings were concluded.)

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CERTIFICATE OF REPORTER

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the
Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on the
28th day of August, 2013.

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

February 23, 2014



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Michael Ellis Evans,
S.C.D.C. No. 346001,

Applicant,

v.

State of South Carolina,

Respondent.)

IN THE COURT OF COMMON PLEAS

C.A. No. 2011-CP-23-6933

ORDER OF DISMISSAL2013 OCT 10 AM 10:11
FILED-CLERK OF COURT
GREENVILLE CO S C
PAUL B. WICKENS

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 20, 2011. The Respondent made its return on January 30, 2012. An evidentiary hearing into the matter was convened on August 28, 2012 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Sharon Evans and the Applicant's plea counsel, Max B. Singleton, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the June 2010 term of the Greenville County Grand Jury for four (4) counts of armed robbery

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R-35

(2010-GS-23-3317, -3321, -3364, -3366) and conspiracy (2010-GS-23-3319). He was represented by Max B. Singleton, Esquire.

On May 17, 2011, the Applicant pled guilty. The Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of one hundred and eighty-five months for each count of armed robbery and five years for conspiracy. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. "Lawyer failed to perform a pretrial investigation."
 - b. "Violation of 4th Amendment."
 - c. "Due Process of Law."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

Ineffective Assistance of Counsel

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

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he

RS

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

The Applicant stated he recalls having only two meetings with plea counsel. The Applicant stated they did not review either the evidence or the possible sentence ranges he faced. The Applicant stated plea counsel promised him that he would receive a sentence of ten years on house arrest if he pled guilty. The Applicant stated plea counsel never told him he could receive a longer sentence. The Applicant stated he would have gone to trial if he had known he would not receive a sentence of ten years on house arrest. The Applicant stated he admitted his guilt and told the plea judge he was satisfied because plea counsel told him to do so. The Applicant admitted, however, that he did not tell the plea judge he had been promised a sentence of ten years on house arrest in exchange for a guilty plea to these charges.

Sharon Evans, the Applicant's mother, stated plea counsel told him the Applicant would receive a sentence of ten years on house arrest and that the judge and assistant solicitor had agreed to this sentence. Evans stated plea counsel never told them the plea judge could give the Applicant more than a ten year sentence.

Plea counsel testified he had four meetings with the Applicant at the Applicant's home. Plea counsel testified he reviewed the discovery materials and sentencing ranges with the

Applicant, explained what the State would have to prove at trial, and discussed the impact of his co-defendant's statement on their case. Plea counsel testified he and the Applicant discussed that their goal was to have the Applicant sentence to house arrest because he was paralyzed and already on house arrest. Plea counsel testified he never spoke to the plea judge before the hearing and that he never promised the Applicant he would receive a sentence of house arrest (because it was not negotiated plea). Plea counsel testified he did not make any representations to the Applicant about what sentence the plea judge would render.

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

The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.21). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.18-21).

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the sentence he would receive if he pled guilty. This Court notes plea counsel testified he told the Applicant that he would argue to the plea judge that his health and lack of prior convictions should merit a sentence of house arrest. This Court also notes, however, that plea counsel testified he did not make any promises or representations about the sentence the Applicant would receive if he pled guilty. This Court finds plea counsel's testimony is credible and supported by the record. The plea transcript indicates the Applicant

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C-13 S

was advised of the maximum sentences he could receive on these charges. (Plea transcript, p.22). The Applicant told the plea judge that no promises had been made to him to entice him to plead guilty. (Plea transcript, p.20). The Applicant told the plea judge he had understood the judge's questions and given truthful answers. (Plea transcript, pp.21-22). The Applicant never stated he is pleading guilty in exchange for a sentence of ten years of house arrest. While plea counsel did argue to the plea judge that a sentence of home detention may be more appropriate due to the Applicant's medical state, he never told the plea judge that the Applicant's decision to plead guilty was predicated upon such a sentence. (Plea transcript, p.29-31). This Court finds and concludes the plea transcript refutes the Applicant's allegation that plea counsel misadvised him about the sentence he would receive. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007).

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

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

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this

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R-39

matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

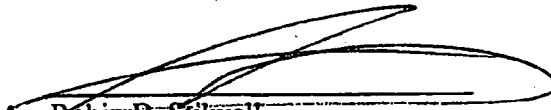
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation.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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 4 day of OCT, 2013.


 Robin B. Stilwell
 Presiding Judge
 Thirteenth Judicial Circuit

O'VILLE, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
IN THE 13TH JUDICIAL CIRCUIT

2011-CP-23-6933

Michael Evans, SCDC# 346001,
Applicant,

v.

State of South Carolina

Respondent.

SUPPLEMENTAL ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 NOV 6 PM 3:04

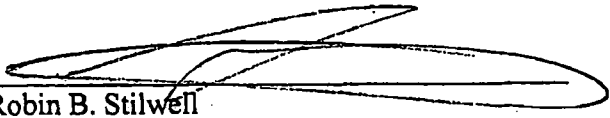
This matter comes before the Court by way of an application for post-conviction relief filed October 20, 2011. A hearing was convened at the Greenville County Courthouse on August 28, 2013. After the hearing, an Order of Dismissal was prepared by Karen Ratigan and signed on October 4, 2013 by this court. In that Order, the hearing date was listed as August 28, 2012. It has come to the court's attention the hearing date was actually on August 28, 2013.

WHEREFORE, IT IS ORDERED:

1. That the Order of Dismissal shall be altered and amended to state the hearing date was August 28, 2013.
2. That all other provisions of the order shall remain in effect.

AND IT IS SO ORDERED this 23 day of OCTOBER, 2013

Greenville, South Carolina


Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

WITNESSES

Alvin King *AKS*

Greenville County Sheriff's Office

2/25/2010

ARREST WARRANT NUMBER

M179087

ACTION OF GRAND JURY

TRUE BILL

Wm J. Federoff

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23- 003317

LMJM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2010

5-17-11

THE STATE

VS.

MICHAEL ELLIS EVANS

Indictment for

0139

ARMED ROBBERY

VIOLATION § 16-11-0330

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on **JUN 22 2010** the Grand Jurors of Greenville

County present upon their oath:

That MICHAEL ELLIS EVANS did in Greenville County, on or about the 20th day of January, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Money, belonging to SPINX, from the person or presence of Rosemary Blackman. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

David Weiner

DS

Greenville County Sheriff's Office

2/24/2010

DOCKET NO. 2010-GS-23-

LMM

003319

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June TERM 2010

5-17-11

THE STATE

VS.

MICHAEL ELLIS EVANS

ARREST WARRANT NUMBER

M179085

ACTION OF GRAND JURY

TRIPPLE
Ann D. J. J. J. J.

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0049

CONSPIRACY

VIOLATION § 16-17-0410

Foreperson of Petit Jury

Date:

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on

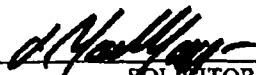
JUN 22 2010

the Grand Jurors of Greenville

County present upon their oath:

That MICHAEL ELLIS EVANS did in Greenville County, on or about the 23rd day of February, 2010, willfully and unlawfully combine with Rakeem Johnson for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: Armed Robbery. This is in violation of §16-17-0410 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

David Weiner

DS

Greenville County Sheriff's Office

2/24/2010

DOCKET NO. 2010-GS-23-

003321

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June TERM 2010

5-17-11

THE STATE

VS.

MICHAEL ELLIS EVANS

ARREST WARRANT NUMBER

M179064

ACTION OF GRAND JURY

TRUEBILL
LMM

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0139

Indictment for

ARMED ROBBERY

VIOLATION § 16-11-0330

Foreperson of Petit Jury

Date:

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on **JUN 22 2010** the Grand Jurors of Greenville
County present upon their oath:

That MICHAEL ELLIS EVANS did in Greenville County, on or about the 23rd day of February, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Money, belonging to Citgo, from the person or presence of Ronald Ardale and/or Samuel Bernhardt. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Alvin King *AB*

Greenville County Sheriffs Office

2/25/2010

DOCKET NO. 2010-GS-23-

003364

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June TERM 2010

S-17-11 THE STATE

VS.

MICHAEL ELLIS EVANS

ARREST WARRANT NUMBER

M179103

ACTION OF GRAND JURY

TRUE BILL

Lmm J. J. J. J. J.

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for
0139

ARMED ROBBERY

VIOLATION § 16-11-0330

Foreperson of Petit Jury

Date:

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

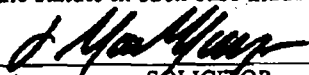
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on **JUN 22 2010** the Grand Jurors of Greenville
County present upon their oath:

That MICHAEL ELLIS EVANS did in Greenville County, on or about the 26th day of January, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Money, belonging to Lil Cricket, from the person or presence of Diane Fortin. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Alvin King *Q87*

Greenville County Sheriff's Office

2/25/2010

DOCKET NO. 2010-GS-23-

003366

LMH

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June TERM 2010

5-17-11 THE STATE

vs.

MICHAEL ELLIS EVANS

ARREST WARRANT NUMBER

M179099

ACTION OF GRAND JURY

TRUE BILL

Wm. J. J. J.

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0139

ARMED ROBBERY

VIOLATION § 16-11-0330

Foreperson of Petit Jury

Date:

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on **JUN 22 2010** the Grand Jurors of Greenville
County present upon their oath:

That MICHAEL ELLIS EVANS did in Greenville County, on or about the 21st day of January, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Money, belonging to SPINX, from the person or presence of Dell Hall. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR