

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Clifton Newman, Circuit Court Judge

RECEIVED

MAY - 7 2014

S.C. Supreme Court

BRUCE WILSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001275

SUPPLEMENTAL APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

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P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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2006-CP-400-J 981
 RICHLAND COUNTY
 FILED
 2006 MAY 23 PM 2:22
 RANDY A. SCOTT
 C.C. & G.S.

STATE OF SOUTH CAROLINA
 County of Richland

In the Court of Common Pleas

Bruce Wilson #192733
 Full name and prison number (if any) of Applicant,

vs.
STATE OF South Carolina
 Name of Respondent.

APPLICATION FOR
 POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

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

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Evans Corr. Inst. 610 Hwy 9 west
Bennettsville South Carolina 29512 F-3165

2. Name and location of Court which imposed sentence Richland County General
Sessions Court, Colu. South Carolina.

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

- (a) 2005-GS-40-56: Armed Robbery
- (b) 23 years concurrent
- (c) _____

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

- (a) 1/5/06. 23 years.
- (b) _____
- (c) _____

WBC

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?
NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO.

STATE OF SOUTH CAROLINA

VERIFICATION

County of Richland

I, Bruce Wilson #192733, 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.

X Bruce Wilson

SWORN to and subscribed before me this 8

day of May, 2006

Oscar Brund (L.S.)
Notary Public

My Commission Expires: 08-06-2009

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

I, Bruce Wilson #192733, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

X Bruce Wilson
Applicant

SWORN or affirmed to and subscribed before me this

8 day of May, 2006

Oscar Brund
Notary Public

My Commission Expires 08-06-2009

See Attachments

Post-Conviction Application Line 9 & 10 P.C.R.

Bruce Wilson vs. State of SC.

ISSUE # (1)

Ineffective Assistance of Counsel,
violates 14th and 14th Amendment
Rights. 5th Amend violation ^{compulsory}

(A) Trial Counsel fail To motion Court
For suppression hearing of defendant confession
where defendant asserts that his con-
fession was coerced by a unlawful
police tactic to obtain such statement.
Defendant further asserts that his
statement was given under stress &
duress from surrounding aggravated
circumstances.

Defendant did explain to his trial
counsel that he had given a statement.
The record will not show this honorable
court that his attorney acted in his
best interest, to protect him from such
erroneous tactics.

Further applicant contends that his
attorney had a duty to uphold in
representing him to an objective
standard.

Applicant contends that because he did give statement without his attorneys advice and or consent, Applicant expresses concerns that his Attorneys performance fell below the objective standard of reasonableness. cite: Williams vs. Ariz. Id. Applicant contends that Counsel's conduct for not pursuing defendants claim for motion to suppress would have been successful if pursued by defense Counsel in order to resolve ineffective assistance of Counsel claim for failure to pursue motions to suppress, cite: FEDCOX vs. O'Brien 899 F.2d 735 (8th Cir. 1990). Applicant contends that his Attorney should have moved the court with his motion to suppress his statements, especially when the statements was the main focus of the states case. Applicants moves this Honorable Court for relief from his conviction and sentence where he raises issue of violation of his 6th & 14th Amend Rights. The record will show in support of this issue that his Attorney did in fact

Gender defendant Ineffective assistance of Counsel.

Issue # (2)

Ineffective Assistance of Counsel violation of 6th and 14th Amend. ill part. (B).

Trial Counsel Fail To interview material witness (victim) would of showed inconsistencies of Identification - Inconsistencies such as when The victim picked Applicants co-defendant as to the one that actual Robbed her (at first) and later changed her alleged facts where she later said It was me. etc: Eldridge vs Atkins 665 F.2d 228 (8th Cir. 1981)
Applicant raises Issue of ineffective assistance for his attorney simply fail to interview/investigate the evidence findings from the line-up. evidence findings, (Inconsistencies). would have show lack of Credibility to The States key witness.

Issue # 3.

Applicant Raises Issue of Factual Basis Violation of Rule (1) applied To Content of Appl.

Court lacked Factual Basis To except plea of Guilty To Armed Robbery where Record will show That Defendant did not own up To element of Being Armed, where if Attorney had moved The Court with defendant Records)

The Court would have noticed that Applicant criminal patterns was not That of An (Armed) Robber. But There Again Despite defendants claim To not have been Armed, The Determination of The Court To except A plea of Guilt was and is Adversal To The fundamental Fairness of Criminal Procedures Rule 11. In This Issue, Applicant is no arguing The elements of The SC Code of Law of Armed Robbery, But yet The determining factor of Factual Basis must Be Found By Trial Judge. And without complete

Showing on Record a demonstration of Guilty of All elements of the crime committed. The Trial Judge erred to except a plea of Guilty. Applicant raises issue in violation of SC Criminal procedure Rule 1(A). And seeks to be relieved from conviction & sentence.

Submitted
pro-se' until attorney is appointed to case, where Applicant has submitted his Notice of Motion and his motion to Amend as a matter of reserved law.

This 8th day of May 2006. Bruce Wilson
Bruce Wilson
Applicant.

Summary

In Summary To The above Issues That Applicant raises in The Foregoing Post-Conviction Application, Applicant also contends that his Attorney did in fact rendered Ineffective Assistance of Counsel, a Clear Violation of Applicants 5th 6th 14th Const. Amendment Rights.

Applicant in this case will contend that his Attorney did not render adequate assistance and did not provide him representation within the range of competence required by Attorney in criminal cases. See: Butler v. State, 286 SC 411, 334 SE2d 813 (1985). In Post-Conviction Relief Proceedings, The Applicant raises Issue For Relief pursuant to § 17-27-45(A). And will prove that Counsel's conduct so undermined the proper functioning of Adversarial Process that the Trial court can not be relied upon as having produced a just result. "Strickland vs. Washington, 466 US 668, 101 Sct 2052-64, 80 L Ed 2d 674, 692 (1984) Butler Id

Applicant contends that proper measures of performance is whether the Attorney provided representation within the range of competence required in criminal cases.

The Applicant contends that the Courts presumption that Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment was in error, and was not legal

The Applicant by and through Cherry vs. State 300 SC 115, 386 S.E. 2d 624 (1989). contend and asserts this presumption was made in

error, notwithstanding any other law.
 Applicant contends that Courts Presumption would be overcome in light of the Issues and Facts Presented to this Honorable Court. Cherry vs. State

Applicant contends that the Court has a duty to determine that the two-pronged test in evaluating the Allegations now raised of ineffective Assistance of Counsel was not met. The Fundamental fairness of due Process was not attached to Applicant where his Attorney Performance was so deficient that it prejudiced the Applicant to a degree that through such performance and unprofessional errors, the results of Applicant's Conviction and Sentence was not rendered in a Just manner and Applicant seeks Justice.

Applicant contends that but for this type of representation, Applicant would have insisted on going to trial. Hill vs. Lockhart, 474 US 52 106 S.Ct. 366, 88 L. Ed 2d 203 (1985).

Applicant asserts that this Honorable Court should hear the Allegations raised pursuant § 17-27-45(A). And afford Applicant relief and Conviction should be overturned and remanded for further proceedings as a matter of Law.

Conclusion

Applicant Pray This Honorable Court for relief from This Conviction and Sentence, where he contends The Court rendered The results in violation of his Const. Rights Pursuant to 5th 6th and 14th amendment of The United States Constitution

In The State of South Carolina
In The County of Richland
In The Court Common Plea

Bruce Wilson - vs - State of SC.

Bruce Wilson 192733.
 EVANS Corp. Inst. F3165.
 610 Hwy 9 West.
 Bennettsville SC 29512

Honorable Clerk,
 Barbara Scott.

P.O. Box 2766
 Columbia SC 29202.

RE: Certificate of
 Service and Mailing

Now Comes Applicant in This case, with
 his Certificate of Service and Mailing
 The Following.

(A) Cover letter To The Honorable
 Clerk of Court.

(B) Notice of motion To Amend.

(C) The Motion To Amend.

(D) The Application For Post-Convic-
 tion.

(E) SEE Attachments. Line # 9 & 10

(F) Summary, & Closing

(G) Certificate of Service,
 Copies of Same.

By way of United States Postal Service, Pre Paid and Addressed To As Follows,

Honorable Clerk of Court
Richland County,
P.O. Box 2766.
Columbia South Carolina 29202.

Please FILE The Forgoing Application
clock copy and return in the
envelope that's provided for that
purpose.

Sworn To and Before ~~Sincerely Submitted~~
me This 8 day of ~~May~~ 2006 ~~Bruce Wilson~~
~~Notary Public for South Carolina~~ L.S. ~~Bruce Wilson 192733~~
My Commission Expires ~~05-06-2009~~ ~~Bennettsville SC~~
610 Hwy 9 West
29512.

cc: FILE Enclosures.

In The State of South Carolina
In The County of Richland.
In The Court of Common Pleas

Uniform Post Conviction § 17-27-45(A)
Bruce Wilson vs. State of SC.

Bruce Wilson #192733 RE: Cover Letter
 Evans Corr. Inst. To: Honorable Clerk
 610 Hwy 9 West.
 Bennettsville SC 29512.

Honorable Clerk of Court.
 Richland County.
 P.O. Box 2766.
 Columbia SC. 29202-2766.

Dear Honorable Clerk,
 I, The undersigned Applicant in this
 foregoing Uniform Post-Conviction
 Application, Pursuant § 17-27-45 (A)
 Does respectfully ask that you
 please file the original copy, check
 the enclosed copy, and mail back to
 me for my records.

Further, I would respectfully ask
 that you please also, check and file
 the enclosed "Notice of Motion" and
 the Motion to Amend my Application.

At A later date; AS A matter of law.
 At This time, I do so make motion
 AS A matter of reserved law.

Also, Please mail To me The Name
 and Address of Appointed Counsel
 For Correspondence Pertaining To
 The Forgoing Issue of Law. My
 request is made by and through
 The 6th Amendment Right of The
 United States Constitution.

Thanking you in advance for your
 help and efforts in this matter
 of Forgoing Law.

Sincerely Submitted

This 8 day of May 2006 / ~~Bruce Wilson~~

Mr Bruce Wilson
 Equal Cor. Inst.
 F3-115
 610 Hwy 9 West
 Bennettsville SC
 29512.

cc: File enclosures.

In The State of South Carolina
 In The County of Richland.
 In The Court of Common
 Pleas.

Bruce Wilson #192733. / RE: "Notice of Motion"
 Applicant. / To Amend said
 -VS- / Application
 STATE OF South Carolina. /
 Respondence /

Now Comes Applicant, Being one Bruce
 Wilson SCDC #192733, with his "Notice
 of Motion" and his Motion To Amend
 his Forgoing Post-Conviction Appl.
 To be Filed with The Honorable Clerk
 of Richland County.

This 8 day of May 2006 Submitted.
 SL Bruce Wilson
 Bruce Wilson

CC: FILE.

In The State of South Carolina
In The County of Richland.
Court of Common Pleas

Bruce Wilson #192733. / RE: Motion To
- vs. / Amend Pursuant
/ § 17-27-45(A)
STATE OF South Carolina,

Now Comes Applicant Bruce Wilson, AT
Evans Corp. Inst. F-3 #165, 610 Hwy 9 west
Bennettsville SC 29512. with this
"Motion To Amend"
Pursuant to § 17-27-45(A).

PLEASE FILE AS A matter of Reserved
law.

Sworn To and Before me Submitted,
This 8 day of May 2006. Bruce Wilson
(1/5) Bruce Wilson,
Notary Public For South Carolina.
My Commission Expires 05-06-2009

CC: FILE Enclosures.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Case No.: 2006-CP-40-2981

Bruce Wilson, #192733,)
)
Applicant,)

v.)

RETURN

State of South Carolina,)
)
Respondent.)

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 23, 2006, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted at the May 2005, term of the Court of General Sessions for Richland County for January 5, 2006, the Applicant started to proceed to trial and then later plead guilty as indicted. The Honorable James W. Johnson, Jr., sentenced him to confinement for a period of twenty-three (23) years. Applicant did not appeal his conviction or sentence.

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

II.

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

1. Ineffective assistance of trial counsel.
2. Court lacked factual basis to accept plea.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that 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, 305 S.E.2d 247 (1983).

IV.

Respondent also alleges that the Court lacked a factual basis to accept his plea. The Uniform Post-Conviction Procedure Act (the Act) requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985). In an application for PCR, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the State would submit that this allegation should be dismissed for failing to meet the requirements of

the Act. In any event, the State submits because this allegation is so vague that it is impossible for the State to more specifically respond.

V.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

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

VII.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT L. BROWN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 14, 2006.

STATE OF SOUTH CAROLINA

)

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

2006-CP-40-2981

Bruce Wilson, 192733

Applicant,

vs

State of South Carolina,

Respondent.

)

)

)

) AFFIDAVIT OF SERVICE BY MAIL

)

)

)

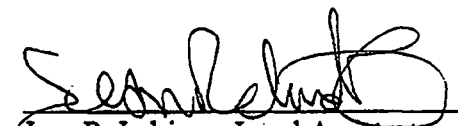
)

)

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

Tara D. Shurling, Esquire
 3614 Landmark Drive, Suite D
 Columbia, SC 29204

DATED this 14th day of December, 2006.


 Jean R. Indriago, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2006-CP-40-2981

Bruce Wilson,)
)
 Plaintiff,)
)
 -VS-) TRANSCRIPT OF RECORD
)
 State of South Carolina,)
)
 Defendant.)
 _____)

August 1, 2007
Columbia, South Carolina

B E F O R E:

HONORABLE JAMES C. WILLIAMS, Circuit Judge.

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

Charlie J. Johnson, Jr., Esquire
Attorney for the Applicant

Robert L. Brown, Assistant Attorney General
Attorney for the State

DIANNE RUTLEDGE
OFFICIAL REPORTER

I N D E X

WITNESSES:

BRUCE WILSON

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KATHERINE H. HUDGINS

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E X H I B I T

NO.	DESCRIPTION	I.D	EV.
A-1	Five (5) Pages of Photo Line-ups		28

1 THE COURT: All right, Mr. Attorney General. Who
2 is first?

3 MR. BROWN: Your Honor, first up is Bruce Wilson
4 against the State of South Carolina.

5 THE COURT: Mr. Wilson, I'm not offended by what
6 you are wearing today. It doesn't matter to me one
7 iota, but we need to go on and get your case heard.
8 Your attorney told me you preferred not to come out
9 with those restraints on, but that's not going to have
10 any impact whatsoever on your case.

11 (Pause.)

12 THE COURT: All right, Mr. Brown.

13 MR. BROWN: May it please the Court. This case
14 comes before the Court by way of an application filed
15 May 23rd, 2006, docketed at 2006-CP-40-2981.

16 Your Honor, by way of background, the applicant
17 was originally indicted in July of 2005 for armed
18 robbery. On January 5th, 2006, a trial was commenced
19 before a Judge and jury, and the applicant was
20 represented by Katherine Hudgins, who is present today
21 in the courtroom.

22 Prior to the conclusion of the trial, the
23 applicant chose to plead guilty to armed robbery, and
24 the Honorable Judge Johnson sentenced the applicant to
25 confinement for twenty-three years. No appeal was

1 taken and at this time the State would yield to the
2 applicant for their case.

3 THE COURT: All right, Mr. Johnson.

4 MR. JOHNSON: Your Honor, I represent Mr. Bruce
5 Wilson in this case. Mr. Wilson is going forward on
6 ineffective assistance of counsel. We did not find
7 any subject matter jurisdiction issues in this
8 matter.

9 THE COURT: All right.

10 MR. JOHNSON: At this time, I'd like to
11 call Mr. Bruce Wilson to the stand.

12 THE COURT: He pled during the trial?

13 MR. JOHNSON: That's correct, Your Honor.

14 THE COURT: All right. Yes, sir, come around,
15 please, sir.

16 BRUCE WILSON, being first duly
17 sworn, testified as follows:

18 THE COURT: Please have a seat there and state
19 your full name. And remember this nice lady has to
20 hear everything and write it down for us, so speak
21 loud enough so she can hear.

22 MR. WILSON: Bruce Wilson.

23 THE COURT: All right, thank you, sir. Mr.
24 Johnson.

25 MR. JOHNSON: Thank you.

1 DIRECT EXAMINATION BY MR. JOHNSON:

2 Q. Mr. Wilson, are you presently incarcerated?

3 A. Yes, sir.

4 Q. Where are you being held at?

5 A. Lee Correctional Institution.

6 Q. What are you being held there for?

7 A. Armed robbery.

8 Q. Armed robbery. What type of sentences did you
9 receive as a result of that?

10 A. Twenty-three years, two twenty-three year
11 sentence to run concurrent.

12 Q. Concurrent. Who represented you as your defense
13 attorney in that matter?

14 A. Ms. Kathleen Huggins.

15 Q. Is she here today?

16 A. Yes, sir.

17 Q. Now, could you please tell this Court -- give the
18 Court a synopsis of basically how you was arrested or
19 how you was -- how these charges were brought against
20 you?

21 A. Well, I first found out about the charges when I
22 see myself in the newspaper and on the t.v. So once I
23 seen myself on the newspaper and the t.v., I turned
24 myself in to Richland County Sheriff's Department on
25 Two Notch Road.

1 Prior to me turning myself in, I was waiting and
2 they said they ain't had no warrants for me, but I
3 kept telling them that I was on t.v. So they checked
4 the computer and they seen I had a prior warrant for
5 failure to appear before a magistrate -- before a
6 magistrate judge, so they arrested me on that.

7 After I was arrested on that, the investigator,
8 McDaniels, had showed up to the police department with
9 some warrants for my arrest for the armed robbery.

10 Q. For the armed robbery. Now, did you give any
11 statements to the police prior to talking to your
12 attorney or prior to being appointed an attorney?

13 A. Yes.

14 Q. What was the statements that you gave to the
15 police?

16 A. I had gave a statement about one armed robbery at
17 the time they arrested me about -- well, about a
18 robbery, but it was not -- well, no -- well, that
19 wasn't I was there for.

20 Q. Okay, but it was not related to the armed robbery
21 that you originally pled guilty to or went to trial
22 on; is that correct?

23 A. Yes, sir, it wasn't related.

24 Q. Well, how did you become involved in the charges
25 that you are now being held on?

1 A. Franklin Dixon -- Franklin Dixon -- the victim
2 identified Franklin Dixon, and Franklin Dixon gave a
3 statement saying I was the one who did it, commits the
4 robberies.

5 Q. Okay. Franklin Dixon was what, a co-defendant?

6 A. Yes.

7 Q. So there was two individuals that apparently
8 robbed -- what type was it, a store, a bank, or what?

9 A. Yeah, it's a convenience store.

10 Q. A convenience store?

11 A. Yes.

12 Q. Where was the store located?

13 A. On Farrow Road.

14 Q. On Farrow Road?

15 A. At the corner of Farrow and Park Lane.

16 Q. So what was the circumstances of the robbery?

17 Two individuals went into the store?

18 A. Yes, two -- they see two individuals went into
19 the store and one asked for cigarettes and the other
20 ran around the corner -- around the counter.

21 Q. And how did it become armed robbery?

22 A. The victim stated that the one who came around
23 the counter was armed with a knife.

24 Q. Now, did they indicate that that was -- that they
25 -- was the police saying that you was the individual

1 that came around the corner?

2 A. No. Matter of fact, the victim had picked
3 Franklin Dixon out as the one who had come around the
4 counter and robbed.

5 Q. Did the victim ever positively identify you as
6 being the person that was in the store with Mr. Dixon?

7 A. After -- after -- after she had identified him as
8 the one that was robbing her twice, then the
9 investigator arrested him and he gave a statement
10 about me. Then they took her -- my photo line-up of
11 me, a photo line-up of me, and she picked me out
12 saying I was the one who robbed her twice.

13 Q. All right. Now, so -- so now you have the
14 problem with the photo line-up that was used; is that
15 correct?

16 A. Yes, sir.

17 Q. You have them before you there, right?

18 A. Yes, sir.

19 Q. Could you please tell the Court what is your
20 objection to this photo line-up?

21 A. Okay. The photo line-up consists of -- all
22 right, how they went about achieving this, the
23 identification of either one of us, first ---

24 MR. JOHNSON: Your Honor, may I approach the
25 witness?

1 THE COURT: Yes, sir.

2 A. All right, this is how it went. They -- during
3 the course of the robbery, some lottery tickets got
4 took, right, and so the people who Franklin Dixon sold
5 the lottery tickets to, they got -- got caught with
6 the tickets. It was a Mr. Lamont Wright and Kevin
7 Green. They had a photo line-up. They did their
8 photo line-up first. Right? They picked Franklin
9 Dixon out as the one selling them the lottery tickets.
10 Okay, so they picked him out of the photo line-up.

11 Q. Which one is Franklin Dixon?

12 A. Right there.

13 Q. Now, what number is Franklin Dixon located?

14 A. Number 6. Everybody is Number 6 on the -- in all
15 this five photo line-ups. And in all five photo line-
16 ups, everybody who's supposed to be associated with
17 this -- this crime is Number 6, you know what I mean,
18 so ---

19 MR. JOHNSON: Your Honor, may I approach?

20 THE COURT: Yes, sir.

21 A. And Franklin Dixon goes by the name of Cookie.
22 Okay, they couldn't -- the investigators didn't know
23 which Cookie because they got two Cookies. They got
24 -- one stays in Greenview. Well, both of them be in
25 Greenview. One named Willie Goins and one named

1 Franklin Dixon. So they take -- I think -- let me see
2 -- Kevin -- okay. Lamont -- Lamont Wright the one
3 picked out the right -- the right Cookie, the Franklin
4 Dixon. And so they go and get a warrant for him and
5 arrest him.

6 Q. That's on the second picture?

7 A. Yes, Lamont Wright, the one that's circled.

8 Q. All right. What was his location?

9 A. He's the one who went and tried to cash one of
10 the lottery tickets.

11 Q. Okay, but his picture was located at Number 6?

12 A. Number 6. Kevin -- him and Kevin -- him and
13 Kevin Green was together. Kevin Green tried to cash
14 one, too, also, and he -- his spot number is Number 6
15 also.

16 Q. So those -- Kevin Green was the individual that
17 tried to ---

18 A. Cash the lottery tickets.

19 Q. And his location was Number 6 as well?

20 A. Yes. Okay, and then when they did the other two
21 photo line-ups for him, for Lamont Wright, which
22 Cookie it was, they had -- it was another -- it was
23 two more photo line-ups, one of Franklin Dixon and one
24 of -- one of Willie Goins. Both of them is in Number
25 6.

1 Q. Is that these two here?

2 A. Yes -- no. One -- that's -- no, that was mine.
3 That's Willie Goins. I already gave you -- Franklin
4 Dixon is on. That's Willie Goins, Number 6 right
5 there.

6 Okay, and -- okay, once they arrested Franklin
7 Dixon, they take him to police headquarters and he
8 mentions my name, so they get him to pick a photo
9 line-up. When he did, he picked me out of the photo
10 line-up, yes.

11 Once he picked me out of the photo line-up, they
12 take my photo line-up and take it to the convenience
13 store and get the -- Gloria Newman to pick the photo
14 line-up again.

15 Q. And where was your picture?

16 A. Number 6, the same place as Franklin Dixon, the
17 same place as where she picked the original photo
18 line-up -- when she did the first photo line-up.

19 Q. Okay, so now -- but you had a hearing on this
20 matter; is that correct?

21 A. No, I did not.

22 Q. You didn't?

23 A. No.

24 Q. There was no hearing prior to the trial ---

25 A. There was no -- it was no hearing prior to going

1 to trial or anything. Matter of fact, when Ms. --
2 when Ms. Huggins first came to see me at Evan
3 Correctional Institution, she said the only problem --
4 she said, You don't have a bad case. The only thing's
5 wrong with your case is your statement -- like that.
6 And I was like, Well, what about my statement?

7 She was like, You confessed to being there, you
8 know what I mean.

9 I said, Yes, I did. I say, I confessed to being
10 there, but I confessed that it wasn't a armed robbery,
11 you know what I mean, and then I told ---

12 Q. All right, so -- well, let's look at your
13 statement. You gave -- you eventually gave a
14 statement where you told them you was present?

15 A. Yes.

16 Q. And do you confess to being a participant in the
17 -- in the crime?

18 A. Yes.

19 Q. And your argument was that it wasn't a armed
20 robbery?

21 A. Yes.

22 Q. What evidence did you have that you could -- that
23 you gave your attorney or that -- to assist her in
24 proving that it wasn't a armed robbery?

25 A. Well, the video tape itself shows that it wasn't

1 a weapon. You could not -- it's not a weapon present,
2 you know what I mean. Plus, okay, and then I told her
3 -- I asked -- I told her how they came about getting
4 my statement.

5 Q. All right. How did they come about getting your
6 statement?

7 A. Okay, the day -- the night I turned myself in, I
8 had gave a statement then, but it wasn't to none of
9 the armed robberies what they had brought up, you know
10 I mean. It was about a robbery at a place on -- I
11 think November -- in November.

12 There was a robbery with a place in November, but
13 it still wasn't a armed robbery like I told Sergeant
14 -- Investigator McDaniels, you know what I mean. And
15 so I went -- when they took me to -- took me to Bluff
16 Road, they turned around three days later and Sergeant
17 Scott McDowell came and got me from Bluff Road and
18 took me back to headquarters to question me some more.

19 So when he got me to -- he asked me what's going
20 on.

21 So I was like, I don't know what you're talking
22 about.

23 He was like, Well, I read your statement. Your
24 co-defendant done gave you up, you know what I mean.
25 He say, The only thing you can do now is help yourself

1 by telling the truth.

2 I was like, Man, I don't know what you talking
3 about.

4 He was like, Well, I can let you see the
5 statement where the co-defendant done gave you up. He
6 said, I got you on the video tape. I see you robbing
7 this place, and this, and that, the other.

8 So I say, Let me see the video tape then.

9 So he act like he was looking for the video tape,
10 but he was like, Oh, they must have -- must have
11 already sent them in, the evidence, like that.

12 I said, Okay, whatever, like that.

13 So he was like -- let me see how it went, how it
14 come about. So he was like, he say, You sure you
15 don't want to help yourself?

16 I was like, Man.

17 He was like, Do -- do -- do you have anybody you
18 want to talk to, you know what I mean, who can help
19 you see if you want to go about, you know what I mean,
20 giving a statement?

21 Q. So who did they call?

22 A. So I said, yeah, I wanted to talk to my -- my old
23 lady, you know what I mean. It was her -- that day
24 was her birthday, on September the 23rd.

25 Q. So your old lady, your girlfriend?

1 A. Yes, so ---

2 Q. And what was her name?

3 A. Thelma Addison.

4 Q. Did they call Thelma Addison?

5 A. Yes.

6 Q. And did she come down to the precinct?

7 A. Yes.

8 Q. What happened when she got there?

9 A. Okay, I prodded on and went to the precinct.

10 They put me in the holding cell. So when they put me
11 in the holding cell and she got there, when they
12 brought me out and brought me -- they put us in a
13 office by ourself. But when I came in the office, she
14 was already crying, and I was asking her, Why are you
15 crying, you know what I mean, What's the reason for
16 you crying?

17 And she was like, The investigator done told me
18 you facing forty something years if you don't give
19 them a statement. You need to help yourself, and
20 this, and that, and the other.

21 I was like, A statement for what? I said, I
22 ain't do nothing, you know what I mean.

23 She was like, Baby, you need to help yourself,
24 you know what I mean. If you don't, you're going to
25 get all this time.

1 Q. So as a result of that, what did you do?

2 A. So as a result of that, I agreed to give a
3 statement, so I had gave a statement.

4 Q. And in that statement, what did you say?

5 A. I said, Yes, it was a crime committed, but it was
6 not armed robbery because no one -- nobody was armed.

7 Q. And as a result of that, you were charged with
8 the armed robbery; is that correct?

9 A. Yes, I was charged with the armed robbery.

10 Q. Now, you also had -- apparently you had a second
11 armed robbery charge?

12 A. I had -- in all, I had four.

13 Q. Four. Now, how many times did you meet with Ms.
14 Huggins prior to ---

15 A. I met -- Ms. Huggins came to see me one time.
16 Okay, when she came to see me -- when she first got
17 there and came to see me, she -- the first thing she
18 talk about was pleaing. I told her, I'm not pleaing
19 to armed robbery, you know what I'm saying. I said,
20 Yeah, I'll plea to strong arm robbery because that's
21 what I did, you know what I mean. That's -- that was
22 the crime. I said, But I'm not pleaing to armed
23 robbery because I did not commit a armed robbery.

24 So she was like, Well, I'm going to talk to the
25 solicitor and see if the solicitor will let you plea

1 to strong arm robbery, so that's how it went. So ---

2 Q. So apparently the solicitor decided for whatever
3 reason that they wouldn't allow you to plead to strong
4 arm, right?

5 A. Exactly.

6 Q. So then did you go to -- that's when you decided
7 to go to trial?

8 A. Yes.

9 Q. From that first time that you met with her to the
10 day of the trial, how many times did you meet with her
11 between?

12 A. She called me down here to the courthouse, I
13 believe it was in October -- September or October.
14 She called me down here to see did I want to take the
15 plea with Judge Manning. When I got down here, I told
16 her, I said no, I didn't. I had told you before --
17 before you sent me down here, I refused to plead to a
18 strong arm robbery. So they -- so I ended up, they'd
19 taken me back. They took me back, you know what I
20 mean. I didn't stay down here long. They just took
21 me straight back.

22 Then, I believe, two months -- two months later,
23 November -- November I came -- they -- came back down
24 here to view the video tapes. That was the only times
25 I seen her until prior to going to trial.

1 Q. Prior to the trial. So the day of the trial, you
2 went to trial?

3 A. Yes.

4 Q. Now, during the trial, apparently half-way
5 through or during the trial you decided to plead
6 guilty?

7 A. Yes.

8 Q. Why did you decide to plead guilty?

9 A. Okay, this -- this is how it happened. All
10 right, as trial -- as the trial commenced, the
11 solicitor start showing the video tape.

12 And then she's saying, Well, you can see the butt
13 of the knife right here and what-not.

14 I'm like, I ain't seeing that. So I'm talking to
15 her. I was like, What butt of the knife?

16 She was like, Oh, yeah, you can see the -- you
17 can see the butt of the knife.

18 I say, What you mean, you can see the butt of the
19 knife? You done viewed the video tapes just as well
20 as I viewed the video tapes. You can't see no knife
21 because there wasn't no knife. In the video tapes,
22 the person who is standing in the front literally
23 turns around, hands plain as day. You can't see no
24 knife. Now you saying you can see a knife, but you
25 done wrote me and state -- and state that you done

1 viewed the video tapes. You cannot see no weapon.

2 Q. All right. So what is it that you want her to
3 do?

4 A. So I want her to represent me, you know what I
5 mean. It seems like she just didn't want to -- you
6 know what I mean, want to do her job, because at first
7 I tried to file before the trial, during -- before
8 trial even started, you know what I mean.

9 Q. Before the trial started, you made a motion or
10 you told the Judge that you wanted a new attorney?

11 A. Yes.

12 Q. And that's part of the record on the transcript;
13 is that correct?

14 A. Yes.

15 Q. And that was denied?

16 A. Yes.

17 Q. Can you articulate to the Judge now your reasons
18 for wanting a new attorney at that time?

19 A. At that time, I didn't know -- I didn't know the
20 legal format or the legal terms how to go about
21 getting a new representation, you know what I mean. I
22 felt like -- like I had told him, she wasn't going to
23 represent me to her fullest ability because of the
24 ways actually she was showing all the way to the point
25 of trial, okay. And he kept asking me, Well, what

1 didn't she do?

2 Okay, for one, you know what I mean -- don't get
3 me wrong. I done -- I done been to courts before and
4 what-not and done been charged before. I never had a
5 preliminary hearing. She didn't put in no kind of
6 motion or anything to suppress anything, you know what
7 I mean. It was like she really wasn't putting --
8 ain't had no proper defense for me, you know what I
9 mean, and ---

10 Q. So you felt like she should have had -- at least
11 made a motion to suppress your statement?

12 A. A motion to suppress my statement.

13 Q. And a motion to suppress the photo I.D.?

14 A. Yeah, the photo -- they say it's a coincidence.
15 How can it be a coincidence? Five different photo
16 line-ups and everybody is Number 6? It ain't that
17 much coincidence in the world.

18 Q. Now, as a result of that, half-way during the
19 trial and your discussion with her after the video was
20 shown, that's when you decided to plead guilty, or
21 what kind of discussion did you have? How did you
22 come to the decision to plead guilty?

23 A. Okay. Okay. We went to -- on January the 5th,
24 we went to recess. During the course of recess, some
25 kind of way the issue was raised that the plea is

1 still open, like that. And at that time, my
2 girlfriend came in. And I -- when she came in, I was
3 wondering why she was there because my attorney ain't
4 even get her for my case. And come to find out, the
5 solicitor had called her for a witness, because when I
6 got on the stand I start to bring her up about how
7 they got my statement.

8 So when the -- the day -- when the court ended,
9 they subpoena her to court for -- as their witness.
10 So when she came in at recess, I was looking over
11 there at her.

12 She was telling me, Don't look over there at her
13 because they going to say I'm badgering the witness.

14 I say, How I'm badgering the witness? That's my
15 girlfriend, you know.

16 And she was like, Well, that's their witness.

17 So I'm like, Their witness? Witness for what?

18 She was like, I don't know.

19 I was like, Well, why didn't you tell me they was
20 going to use her for a witness?

21 She say, I just found out today, like that.

22 So some kind of way, I was -- I wanted to speak
23 to her, so she walked over there. She asked the
24 solicitor.

25 And the solicitor was like Nah, and my old --

1 well, my girlfriend was like yeah, she wanted to speak
2 to me.

3 So she came and sat beside us, well, sat beside
4 me right there and we was talking.

5 And then there was like, The plea is still open.

6 And my girlfriend was like, Baby, you going to
7 take the plea or what you going to do?

8 I was like, Nah. I didn't commit this armed
9 robbery. I'm not pleading guilty to this armed
10 robbery.

11 So Ms. Huggins was like, Well, you know -- you
12 know if they find you guilty, you're going to get a
13 life sentence.

14 I was like, A life sentence?

15 She was like, Yeah.

16 I was like -- so my old lady was like, Baby, you
17 might as well take the time, take the twenty, because
18 they say it's from twenty to thirty. Say, At least
19 you'll get out if you take the time.

20 I was like, Man, I didn't do it.

21 She was like, Regardless. You rather do twenty
22 or thirty years or stay in jail for the rest of your
23 life?

24 Q. So you were led to believe at that time that you
25 was facing a life sentence?

1 A. A life sentence, yes.

2 Q. And because of that, is that why you decided to
3 plead guilty?

4 A. Yes, I did.

5 Q. Now, have you found out later on that you wasn't
6 facing a life sentence?

7 A. Yes. I found -- once I got back to the
8 institution and I had a man who worked in the law
9 library that asked me, How you came out?

10 I was like, Well, I pleaded and I got twenty-
11 three.

12 He was like, Well, why you pleaded, you know.

13 And I said, Because they say I can get a life
14 sentence.

15 He said, Well, do you have another -- did you
16 ever have another violent crime on your record?

17 I said, Nah. This is my first time ever having a
18 violent offense.

19 He said like, Well, they couldn't give you a life
20 sentence.

21 And I was like, Nah, that ain't what my lawyer
22 said.

23 He was like, Yeah. They couldn't give you a life
24 sentence -- like that. He said, The only way you can
25 get a life sentence is the two-strike law, you know

1 what I'm saying, if you have two -- you done been
2 found guilty of a armed robbery and a violent crime
3 beforehand.

4 I was like, Well ---

5 He was like, you know what I'm saying, -- that's
6 when he said, Well, you need to put in for your PCR.
7 He helped me with the PCR, and that's how I got here
8 today.

9 Q. So your issues are -- and correct me if I'm wrong
10 -- your issues are that your attorney did not do a
11 suppression motion to suppress your statement due to
12 the undue influence that you feel that you received
13 from your wife, as well as the police? That's one of
14 the issues; is that correct?

15 A. Yes.

16 Q. The other one is that you feel that she did not
17 make any motion to suppress the witness I.D. by all
18 the pictures being located in the sixth spot? You
19 feel that that was unduly prejudiced; is that correct?

20 A. Exactly.

21 Q. The other issue is that as far as pleading
22 guilty, you felt that you pled guilty due to receiving
23 wrong advice from your attorney as to the time that
24 you were facing?

25 A. Yes.

1 Q. And that if you had known that you was not
2 facing a life sentence, would you have pled guilty?

3 A. No, I would not.

4 Q. Are there any other issues you want to make --
5 make the Court aware of?

6 A. Yes -- no. No, sir.

7 Q. Are you sure?

8 A. Yes.

9 MR. JOHNSON: I have nothing further, Your Honor.

10 THE COURT: Cross examination, Mr. Brown.

11 CROSS EXAMINATION BY MR. BROWN:

12 Q. Did Mr. Johnson give you a copy of your
13 transcript?

14 A. Yes.

15 Q. What page does your guilty plea begin on?

16 THE COURT: You say the page of his guilty plea?

17 MR. JOHNSON: What page is the guilty plea?

18 MR. BROWN: It's 227.

19 MR. JOHNSON: Thank you.

20 THE COURT: It's page 227.

21 Q. Your guilty plea begins on Page 227 of your
22 transcript, correct?

23 A. Yes, sir.

24 Q. What's contained on Pages 1 through 226?

25 A. 1 through 26?

1 Q. Through 226. Everything that happened before
2 your guilty plea, what was that? Didn't you have some
3 pre-trial motions?

4 A. Yes, there was.

5 Q. And your attorney argued that your confession
6 should be suppressed, didn't she?

7 A. Yes, she did.

8 Q. And the Judge ruled that it should come in,
9 correct?

10 A. Yes, he did.

11 Q. And she argued that the identification should be
12 suppressed, but the Judge disagreed, correct?

13 A. Are you going to let me fully answer that
14 question?

15 Q. Absolutely.

16 A. Okay. Yes, she did bring it up, but she only --
17 she brought it up, but she didn't bring it up fully.
18 She only brought up my I.D., my photo line-up, and
19 Franklin Dixon photo line-up, not all five of the
20 photo line-ups. That's difference.

21 Q. Okay. So you're saying that the difference is
22 these other three that were in spot Number 6?

23 A. Everybody -- everybody who was involved with the
24 whole -- because it went -- it went from -- it came --
25 it initiated from Green and -- and -- and -- and Green

1 and Wright. It initiated from them. So, of course,
2 they should have been -- they should have been in the
3 photo -- she should have -- supposed to have mentioned
4 them in the photo line-up also, because it -- it went
5 up.

6 It started from Green and Wright, their photo
7 line-up, from Green and Wright to -- to Dixon, to
8 Dixon and -- and -- and Goins, to me. Of course,
9 their photo line-up should have been mentioned.

10 Q. Now, you testified a few minutes ago that you
11 admit that you committed a crime, correct?

12 A. Yes, it was a crime committed.

13 Q. You committed a strong arm robbery according to
14 you, correct? There just wasn't a weapon?

15 A. Yes, there was not a weapon used.

16 Q. Okay. You knew there wasn't a weapon, correct?

17 A. Yes.

18 Q. Yet you still chose to plead guilty knowing that
19 you were innocent?

20 A. Because she -- she led me to believe that if I --
21 she led me to believe if I'm guilty -- if I'm found
22 guilty I'm going to get a life sentence.

23 Q. How many armed robberies have you been charged
24 with?

25 A. Four.

1 Q. Armed robbery is a violent, serious crime, isn't
2 it?

3 A. Yes, it is.

4 Q. And that's four different charges, correct?

5 A. Yes, they are.

6 MR. BROWN: No further questions.

7 THE COURT: Redirect?

8 MR. JOHNSON: I have nothing further, Your Honor.

9 THE COURT: Thank you, sir. You can step down,
10 sir.

11 (The witness leaves the witness stand.)

12 MR. JOHNSON: Your Honor, we have nothing
13 further.

14 THE COURT: All right. Mr. Brown.

15 MR. JOHNSON: Oh, Your Honor, before -- I would
16 like to make the pictures part of the -- part of the
17 record.

18 THE COURT: Why don't you just staple them
19 together and make one exhibit. That would be
20 satisfactory, I think.

21 MR. JOHNSON: Thank you, Your Honor.

22 THE COURT: Without objection.

23 (FIVE (5) PAGES OF PHOTO LINE-UPS MARKED
24 IN EVIDENCE AS APPLICANT'S EXHIBIT 1.)

25 MR. BROWN: The State would call Katherine

1 Hudgins.

2 THE COURT: Come around, Ms. Hudgins.

3 KATHERINE H. HUDGINS, being
4 first duly sworn, testified as follows:

5 THE COURT: Please have a seat and state your
6 full name.

7 MS. HUDGINS: Katherine Hudgins.

8 DIRECT EXAMINATION BY MR. BROWN:

9 Q. Ms. Hudgins, do you recall your representation of
10 Mr. Wilson?

11 A. I do.

12 Q. How did you come to represent him?

13 A. I was appointed to represent Mr. Wilson.

14 Q. Could you tell the Court how long your
15 representation lasted of Mr. Wilson?

16 A. I can refer to my notes.

17 Q. Please do.

18 A. I know that I initially wrote to Mr. Wilson. He
19 was at Evans Correctional, I believe, at the time. I
20 wrote him in April of 2005, so it was sometime prior
21 to that that I was appointed by the Court.

22 Q. Do your notes reflect how long -- how many times
23 you met with him over the course of your
24 representation?

25 A. I think he was fairly accurate. I think I did

1 travel to Evans. That initial letter, I sent him a
2 copy of all of his discovery material. I traveled out
3 to Evans Correctional and met with him and we went
4 over all of the material. And just as Mr. Wilson
5 stated, his contention was that this was not an armed
6 robbery but rather a strong armed robbery.

7 We met again. He had asked me to try to
8 negotiate a strong armed robbery. I did that.
9 Unfortunately, the solicitor was not willing to go
10 along with the strong armed robbery plea negotiations.
11 And at that point, I can't remember -- at one point
12 Mr. Wilson had indicated that he was willing to
13 consider a plea on the armed robbery charges. And we
14 had scheduled a plea in front of Judge Manning, I
15 believe.

16 The State wasn't going to get up and ask for any
17 amount of time. It was going to be a straight-up plea
18 to armed robbery. And at that point Mr. Wilson
19 decided that he wanted to go to trial.

20 Q. And you obviously, from the record, began a
21 trial?

22 A. We did. We picked a jury. I think we picked two
23 juries actually, picked a jury. We went forward with
24 pre-trial motions and a Jackson v. Denno hearing. We
25 had a Neal v. Biggers hearing. We did challenge the

1 photo line-up and we did challenge the fact that both
2 Mr. Dixon and Mr. Wilson were placed in the Number 6
3 position on the photo line-up. I did argue that
4 strenuously.

5 I can't recall if I argued the other two
6 identifications because I think there were only -- I
7 think there were only two identifications, one
8 containing Mr. Dixon and one containing Mr. Wilson.
9 So I'm not sure if I argued those other two. But I
10 certainly argued that both the co-defendant and Mr.
11 Wilson were contained in the Number 6 position on the
12 photo line-up.

13 Q. Before we get much further into what went on at
14 the trial, did you have a preliminary hearing in this
15 case?

16 A. No, we did not. I believe -- and I don't
17 remember exactly what happened. As sometimes often
18 happens, the clients are indicted prior to the
19 preliminary hearing being held. I don't remember that
20 that's exactly the case, but that happens a lot.

21 Q. Do they have a right to a preliminary hearing
22 once they've been indicted?

23 A. No.

24 Q. Is there ever much to gain from a preliminary
25 hearing?

1 A. Prior to indictment, yes. Post-indictment, no.

2 Q. Now, how far had you gotten into the trial when
3 Mr. Wilson decided he wanted to plead guilty?

4 A. And I apologize; I should have reviewed the
5 transcript before I came over. We had had all of the
6 pre-trial hearings and I believe -- I believe a couple
7 of witnesses had taken the stand if I'm not -- I may
8 be mistaken on that.

9 Q. When he decided to plead guilty, had -- do you
10 recall how that came about?

11 A. He's right. His girlfriend did come in and talk
12 to him at length. Judge Johnson was very lenient in
13 allowing him to talk with her and -- and try to
14 determine what was in his best interest.

15 I did tell him that if he were -- I didn't tell
16 him that this charge -- because he was only being
17 tried on the one armed robbery charge; there were
18 four. I did not advise him that this one armed
19 robbery charge carried a life sentence.

20 What I did tell him, and I reviewed my notes
21 after hearing his testimony, that Assistant Solicitor
22 Campbell had indicated to me that if he was found
23 guilty on this armed robbery, that she would go
24 forward and seek life without parole on the next armed
25 robbery that she called to trial.

1 Q. So the life without parole is not based on any
2 prior conviction he had; it would be based on this one
3 going forward?

4 A. That's correct and that's what my notes reflect,
5 and that's what I told Mr. Wilson.

6 Q. Were these armed robberies, the four armed
7 robbery charges, were they so closely in time as to be
8 considered one event or did they try each of these
9 four individually to get a life without parole?

10 A. I would certainly argue that they should be
11 considered one, but I think that in the long run they
12 would have prevailed because they were separate
13 incidents months apart.

14 Q. Now, I assume and I'm going to ask you, did y'all
15 discuss what charges he was facing?

16 A. Yes.

17 Q. And specifically you indicated that he was going
18 to trial only on the one armed robbery, but you were
19 familiar with the other charges he was facing?

20 A. That's correct. I had viewed the video tapes. I
21 believe there were video tape -- I've got three video
22 tapes in my file. I believe there were three video
23 tapes that we both watched together. One of the
24 incidents did not have a video tape, but he had given
25 a statement implicating himself in three of the four.

1 Q. Did you indicate or did you discuss with him the
2 elements that the State would have to prove for armed
3 robbery?

4 A. Yes.

5 Q. And one of those elements was that a weapon was
6 -- had to be present?

7 A. That's correct, and Mr. Wilson is correct. The
8 video tape is very unclear. I mean, you can't -- I
9 mean, it's not like there's a knife that you can see
10 very clearly in the video tape.

11 After the pre-trial hearing that we had, it
12 became apparent to me what the solicitor was going to
13 argue at trial is that the way that the individual was
14 hold -- the individual that they alleged to be Mr.
15 Wilson, the way he was holding his hand, it looked
16 like he could have been garnishing a weapon. That
17 concerned me.

18 But I did not see a -- he's right; I did not see
19 a weapon in the video tape and he did not see a weapon
20 in the video tape when we watched it.

21 Q. Did you discuss that that would be the State's
22 burden to prove that there was a weapon?

23 A. Yes.

24 Q. What is the law in South Carolina? You're
25 familiar with the law in South Carolina on armed

1 robbery?

2 A. Yes.

3 Q. What did they have to prove as far as the weapon
4 is concerned?

5 A. If to a reasonable person it appears that the
6 person is armed. And at one point there was some
7 statements that he had given indicating that there was
8 a crack pipe in his hand. I believe that was in one
9 of the statements, so ---

10 Q. But that was something that y'all discussed?

11 A. We discussed that, yes.

12 Q. Did you discuss with him -- you were obviously in
13 the middle of the trial. Did you discuss with him
14 about pleading guilty what rights he was going to be
15 waiving?

16 A. Yes, thoroughly.

17 Q. There's evidence and testimony that he moved to
18 relieve you?

19 A. Yes.

20 Q. Were y'all able to communicate during your
21 representation?

22 A. As the trial went on, things got better. It was
23 very difficult at first. Mr. Wilson was not happy
24 that I was not able to get the strong arm robbery plea
25 that he had wanted. There was some difficulty at

1 first. He had initially refused to dress in street
2 clothes. I was concerned about that and the effect
3 that would have upon the jury.

4 I do feel like though as time went on and we went
5 through the pre-trial hearings, he did finally agree
6 to dress in street clothes and I believe he did -- we
7 were able to communicate. so I don't think that was a
8 problem.

9 Q. What was your defense to this specific armed
10 robbery that you had proceeded to trial on?

11 A. That he was not armed.

12 Q. So it was kind of a -- did you know or anticipate
13 whether the strong arm would have been a lesser
14 included or ---

15 A. That's what we were going for.

16 Q. And you indicated that he always maintained that
17 he had participated in this crime, just without a
18 weapon?

19 A. That's correct. I believe, and there were four
20 -- he gave statements to three and indicated on one of
21 the four that he did not remember that incident at
22 all.

23 Q. Were there any negotiations as far as his plea
24 goes?

25 A. Yes, the one that he did not give a statement

1 implicating himself in is the one that the State
2 agreed to dismiss is my recollection.

3 Q. Did you force him to plead guilty?

4 A. Not at all.

5 Q. What type of investigation -- just briefly, what
6 type of investigation did you do or did you employ any
7 type of investigation prior to his trial?

8 A. I did not employ an investigator in the course of
9 this -- preparing for this trial. Basically it was
10 going through the statements, going through -- going
11 through the discovery materials, going through the
12 incident reports, and it was going to be a matter of
13 cross examination basically about whether or not he
14 was armed.

15 Q. So this was kind of -- the evidence that you were
16 given was it is what it is?

17 A. Basically. Now, Mr. Wilson is correct, and we
18 talked about this thoroughly. The clerk in the
19 convenience store did initially I.D. the co-defendant,
20 Mr. Dixon. And, obviously, that was going to be good
21 room for cross examination of this clerk about what
22 she really did see.

23 Q. And these were things that you discussed with Mr.
24 Wilson?

25 A. Absolutely.

1 Q. And you indicated that that was your plan of
2 attack, if you will?

3 A. Yes.

4 MR. BROWN: No further questions at this time,
5 Your Honor.

6 THE COURT: Cross exam.

7 MR. JOHNSON: Thank you, Your Honor.

8 CROSS EXAMINATION BY MR. JOHNSON:

9 Q. When your client decided to plead guilty, you did
10 tell him that he was looking at a life sentence?

11 A. Not on this particular charge. What I did tell
12 him is if he was convicted of this charge, that the
13 State would be seeking life without parole on the
14 second, third, or fourth armed robberies.

15 Q. Now, are you sure that he understood it that way?

16 A. It was on -- and I believe that it's on the
17 record when he entered his plead what Judge Johnson
18 was talking about. I may be wrong, but that's my
19 recollection.

20 Q. But life -- a life sentence was mentioned to him;
21 is that correct?

22 A. In terms of if we were to go to trial and he was
23 convicted on this case, any subsequent trial on the
24 armed robbery charges the State was going to seek life
25 without parole.

1 Q. But my question is you're not sure whether he
2 understood it that way? I mean, that could -- that
3 could have been the way that you thought you was
4 explaining it to him, but were you sure that he
5 understood it that way?

6 A. Perhaps I wasn't clear. I thought it was pretty
7 clear, but ---

8 Q. Now, you gave him a letter, I guess, dated -- or
9 sent him a letter August 19th of 2005?

10 A. Correct.

11 MR. JOHNSON: Your Honor, may I approach?

12 A. I've got a copy of the letter, Mr. Johnson.

13 Q. You've got a copy, okay. And in that letter you
14 indicated to him in the letter that you looked at two
15 tapes or three tapes?

16 A. I've got three tapes in my folder, in my file
17 here. It looks like I looked at ---

18 Q. I think it's like the fourth paragraph. And in
19 that paragraph you indicated that you did not see a
20 knife in any of the tapes?

21 A. I did not see a weapon in this tape either.

22 Q. In this tape either?

23 A. That's correct.

24 Q. So there was evidence that -- at least the
25 evidence that you had and from your observation of

1 that evidence, there was evidence that he did have a
2 knife?

3 A. It's -- you can't see a knife in the video.

4 Q. So, therefore, when you told him that he was
5 looking at a life sentence, actually there was no
6 evidence that you were aware of that if it could have
7 been proven -- there was no evidence that you were
8 aware of at that time that would indicate that he was
9 armed?

10 A. Well, the clerk gave a statement that he had a
11 knife, and it's included in the police incident
12 report. And I had every reason to believe that the
13 co-defendant was going to testify that he had a knife.

14 Q. But the clerk gave a statement that he had a
15 knife, when in actuality she identified the other
16 defendant as being the person that came around the
17 corner?

18 A. That's correct.

19 Q. So that statement was related to the other
20 defendant?

21 A. That's correct.

22 Q. So there was actually no statement saying that he
23 had a knife?

24 A. That's correct.

25 Q. So there was no evidence in looking at the video

1 that you saw and any other evidence that you had that
2 anybody else indicated he had a knife?

3 A. You could not see a knife in the video.

4 Q. So do you understand -- would you agree then that your
5 statement to your client concerning whether there was
6 a life -- that he was facing a life sentence if he
7 didn't take a plea -- well, let me ask you this. If
8 he went forward with this plea, as he went forward on
9 a plea, what would have prevented them -- do you have
10 some negotiations they weren't going to bring any
11 other charges on him? He had other -- he was charged
12 with other robberies?

13 A. Correct.

14 Q. With the plea, did you have a negotiated sentence
15 with the solicitor that they were going to drop all
16 the other charges?

17 A. No. It was going to be a plea for concurrent
18 time ---

19 Q. For ---

20 A. --- to three of the four charges.

21 Q. To three of the four charges, and that they would
22 drop the fourth charge?

23 A. That's -- I think that's what I indicated in my
24 letter, yeah. Based on the fact that the State does
25 not have a confession from you on the 6/29 incident,

1 the solicitor will drop this charge.

2 Q. So you actually pled him to an armed robbery
3 charge with no personal knowledge of yourself that he
4 was actually armed?

5 A. The video does not show a knife. However, the
6 way the solicitor was arguing to the Judge during the
7 pre-trial hearing, I could see where a jury would have
8 believed that the individual that was standing there
9 was armed. Correct, you could not see a knife. After
10 the individual approached, if I recall -- and I did
11 not review the video tapes before I came in -- and
12 this is included in my letter as well to Mr. Wilson.
13 After he approaches her, she backs up and clearly
14 states, Please don't hurt me.

15 I believe that that was extremely damaging. I
16 indicated that to him in my letter, and it comes after
17 there is some movement down here at the hand.

18 You can't see a weapon though. I mean, that's
19 clear. I believe a jury could have believed that this
20 person was armed.

21 Q. So then when you asked -- when he pled guilty --
22 when he pled guilty, he had told you that he didn't
23 have a knife, correct?

24 A. That's correct.

25 Q. Under what grounds then were you able to get him

1 to plead guilty to something that he admits and you
2 admit -- well, that he admits that he didn't do?

3 A. Well, during the guilty plea he admitted he was
4 guilty of armed robbery.

5 Q. Right, but did you advise him that he could not
6 plead to something that he didn't do?

7 A. Yes, because his whole defense was whether he was
8 armed or not, so we went around and around about that.
9 I mean, that was his defense.

10 Q. So how did you finally convince him to plead to
11 something if he was adamant that he didn't do it?

12 A. He came to that conclusion.

13 Q. As far as the I.D., the photo I.D., there was
14 other I.D.s made, I guess. The whole case was based
15 on, I guess, two individuals that had the lottery
16 tickets?

17 A. Correct.

18 Q. They were identified by a clerk, but you didn't
19 get those photos, those photographs?

20 A. I think I have the photographs. I was more
21 concerned with the identification of Mr. Wilson and
22 Mr. Dixon.

23 Q. Do you now see then that if you had used the
24 photograph how it could have helped your case as far
25 as the suppression of the witness I.D.?

1 A. It certainly adds to the argument that placing
2 all of the individuals in spot Number 6. I should
3 have -- because if I'm not mistaken, there are only
4 two photo line-ups. They were just showed to
5 different individuals, and I think that could have
6 certainly added to my argument that placing both Mr.
7 Dixon and Mr. Wilson in spot Number 6 was -- made the
8 identification inherently unreliable.

9 Q. And the copies of the pictures that was given
10 -- did you see the pictures?

11 A. I haven't reviewed them.

12 MR. JOHNSON: Your Honor ---

13 A. Thank you. The Clerk has -- the Clerk handed
14 them to me, Mr. Johnson.

15 Q. Those pictures came out of the discovery, of
16 your discovery, or a copy of the discovery that was
17 sent ---

18 A. Okay.

19 Q. --- to him from you, so you had possession of the
20 photos?

21 A. Correct.

22 Q. But you did not use those in your suppression
23 hearing?

24 A. Oh, okay, I see what you're talking about. No, I
25 did not. There are more than two photo line-ups.

1 Q. Right. There was a full line-up for each
2 individual?

3 A. Right, and I only used the photo line-up that
4 contained Mr. Wilson and the photo line-up that
5 contained Mr. Dixon.

6 Q. In looking at those photo line-ups now, do you
7 see how that could have helped your case?

8 A. Perhaps they are but I'm not sure in this ---

9 Q. In all this, the individuals are in the sixth
10 spot?

11 A. I see that on the fourth page of Exhibit Number
12 1, but I don't see that on the -- and it's certainly
13 true of Wilson and Dixon, certainly, and I argued
14 that.

15 Q. Now, so you did have the other -- because they
16 were in your discovery, you did have possession of the
17 photos at that time?

18 A. And I -- yes.

19 Q. Now, as far as this statement, were you there or
20 do you have any knowledge of the meetings he had with
21 his girlfriend prior to his statement being given?

22 A. Oh, no. I wasn't involved in the case at that
23 point.

24 Q. Once you found out about the statement, did you
25 investigate as to how that statement was given?

1 A. My investigation involves talking with Mr. Wilson
2 about how that statement was given, and that's what I
3 based the Jackson v. Denno.

4 Q. And because you didn't have an investigator, you
5 didn't talk to the girlfriend, did you?

6 A. Did not talk to the girlfriend.

7 Q. So you don't know what type of conversation she
8 might have had with the police prior to going there?

9 A. Given the fact that the State subpoenaed her, I'm
10 not sure that she would have been very helpful. And
11 Mr. Wilson never asked me to subpoena her either.

12 Q. But at the time though, you did not talk to this
13 girlfriend prior to the trial, nor did you have an
14 investigator ---

15 A. No.

16 Q. --- for anyone talk to her prior?

17 A. In fact, she wasn't called until after Mr. Wilson
18 took the stand. He's correct.

19 Q. So when you give that statement, you're just
20 making an assumption that she might have not have been
21 available to you?

22 A. I never had any reason to believe that Mr. Wilson
23 wanted me to subpoena her. I believed that we could
24 go forward on the Jackson v. Denno based on his
25 testimony.

1 Q. Can you understand why talking to her might have
2 been helpful to your case if you could have found that
3 the police maybe threatened her, or maybe used her, or
4 told her something to persuade your client?

5 A. Yes.

6 Q. Now ---

7 MR. JOHNSON: One moment, Your Honor.

8 Q. Do you remember when you met him at the
9 institution the first time you met with him? Well ---

10 A. I think so.

11 Q. --- but you did go to see him?

12 A. I did.

13 Q. And he did not mention to you that they used her
14 to talk to him to convince him to give a statement?

15 A. Well, at some point we certainly discussed that
16 because it was raised during the Jackson v. Denno. I
17 don't remember exactly when. It was probably --
18 that's probably right. It was probably during that
19 time.

20 Q. And just one follow-up. Do you remember telling
21 him when you met with him that the only thing -- one
22 of the major things hurting his case was his statement
23 or his confession?

24 A. Yeah. I don't remember saying that, but I -- if
25 he says I said that, I wouldn't deny saying that.

1 That was a critical part, you know. The statement and
2 the video tapes were critical parts of the State's
3 case against Mr. Wilson.

4 Q. But your own investigation or your own
5 investigation or preparation for this case was just
6 reading the material that was given to you in
7 discovery?

8 A. Right. I didn't see the need for any outside
9 investigation.

10 Q. You didn't try to talk to the clerk or no one?

11 A. No.

12 MR. JOHNSON: No other questions, Your Honor.

13 MR. BROWN: No questions, Your Honor.

14 THE COURT: Thank you, ma'am. You can step down.

15 (The witness leaves the witness stand.)

16 THE COURT: Anything else from the State?

17 MR. BROWN: No, Your Honor. We rest.

18 THE COURT: All right, briefly.

19 MR. JOHNSON: Thank you, Your Honor.

20 Very briefly, Your Honor. Our issues are basically
21 three, the suppression hearing as it relates to the
22 photo I.D.s. We think there was adequate evidence or
23 additional evidence that could have been given at a
24 suppression hearing that we felt that could have
25 persuaded or would have persuaded a court to rule in

1 favor of suppression of the photo I.D. identification.
2 But basically with all the photos being located in the
3 sixth position, we felt that that was extremely
4 prejudicial to my client.

5 The second issue is related to the statement or
6 the confession. We think that he was unduly
7 influenced by the use of his girlfriend on numerous
8 occasions, such as using her to get the statement,
9 then also bringing her into court that day and
10 subpoenaed to be to court, and that that should have
11 been explored further.

12 As it relates to my client deciding to plead
13 guilty, it is our belief that the statement given to
14 him that he was facing a life sentence was an
15 incorrect assessment of the law. When you advise your
16 client as far as a plea, you advise your client as it
17 relates to that particular situation.

18 To anticipate being convicted of another case
19 further down the road and being found guilty, anyone
20 that pleads guilty to a manslaughter is facing a life
21 sentence the next time, but I think under that
22 situation that my client was advised wrongly. He was
23 not facing a life sentence.

24 There was strong evidence known to the attorney
25 at that time that would indicate that he was not

1 involved in a armed robbery. And, therefore, to just
2 assume that he would be found guilty, I think, was
3 giving my client wrong advice.

4 As a result, he pled guilty based on wrongful
5 advice given to him by his defense attorney at that
6 time.

7 As a result, I think that his PCR should be
8 granted under those grounds.

9 THE COURT: Thank you, sir. Mr. Brown.

10 MR. BROWN: Just briefly, Your Honor. I think
11 the issue here is whether the guilty plea was knowing
12 and voluntarily entered. They had the suppression
13 hearing. The suppressions were denied. It was clear
14 that that evidence was going to come into the trial
15 and the Judge gave an analysis as to why the
16 confession and the photos were coming in. He found it
17 to be coincidental.

18 Your Honor, as to the issue on the life without
19 parole, I think Mr. Johnson's analogy is a little bit
20 misleading. Anybody who is facing a manslaughter is
21 facing life the next time. This guy, this individual
22 -- I apologize -- this applicant had four armed
23 robberies pending at that time.

24 And so I think that advice was accurate in that
25 if you're convicted of this armed robbery, you have

1 three more that were separate and distinct offenses.
2 If you are convicted of those, you are facing life
3 without parole.

4 The fact that he had these four pending that
5 could give him life without parole, I think that Ms.
6 Hudgins was under a duty to advise him that he
7 potentially was facing life without parole. I think
8 she may have been ineffective if she didn't tell him
9 that.

10 Your Honor, as to the issue regarding -- I
11 apologize. I'll have to refer to my notes. As far as
12 the suppression and using the girlfriend to further
13 investigate the confession, the applicant has not
14 presented her testimony to show how it would have been
15 beneficial. It may have been detrimental.

16 They're asking this Court to speculate as to what
17 effect it would have had to that he was coerced.
18 There's been no testimony presented here today that --
19 in any addition to what was presented to the Presiding
20 Judge at the trial. It's all speculative without her
21 testimony to know exactly what effect it would have
22 had to show that he was coerced.

23 The State feels that PCR should be denied and
24 he's not met his burden of proof.

25 THE COURT: All right. I'll review the file and

1 especially the transcript, and I will issue a ruling
2 within the next week.

3 Mr. Wilson, I want you to understand that if I
4 rule in your favor, all that will mean is that you are
5 back where you started, facing four armed robbery
6 charges. If the State were to convict you on any two
7 of the four, it would be mandatory life in prison.
8 You understand that?

9 MR. WILSON: Yes, sir, I have the understanding
10 of it.

11 THE COURT: You're not just dealing with this one
12 case. You're dealing with all four of them.

13 MR. WILSON: Yes, sir, I know.

14 THE COURT: All right. Thank you very much.

15 MR. WILSON: Thank you.

16 THE COURT: I'll give you a ruling within a week.

17 MR. JOHNSON: Thank you, Your Honor.

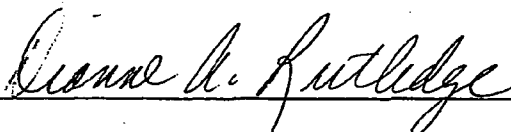
18 MR. BROWN: Thank you, Your Honor.

19 (End of transcript of record.)
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25

1 I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL
2 COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE
3 STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
4 FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
5 THE RECORD OF THE PROCEEDINGS HAD AND EVIDENCE
6 INTRODUCED IN THE HEARING OF THE CAPTIONED CASE,
7 RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND
8 COUNTY, SOUTH CAROLINA ON THE 1ST DAY OF AUGUST 2007.

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

11
12 NOVEMBER 8, 2007
13

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15 _____

16 COURT REPORTER
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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Bruce Wilson, #192733,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Case No.: 2006-CP-40-2981

FILED
01 SEP 18 AM 8:14
BARBARA A. SCOTT
BANCORP & GS

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 23, 2006. The Respondent made its Return on December 14, 2006. An evidentiary hearing into the matter was convened on August 1, 2007, at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Charlie J. Johnson, Esquire. The Respondent was represented by Robert L. Brown of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Karen Hudgins, Esquire. This Court also had before it a copy of the transcript of the Applicant's guilty plea, the records of the Richland County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted at the July 2005 term of the Richland County Grand Jury for armed robbery (05-GS-40-56). On January 5, 2006, the Applicant proceeded to trial by jury. The



Applicant was represented by Katherine Hudgins, Esquire. Prior to the conclusion of the trial, the Applicant chose to plead guilty as indicted. The Honorable James W. Johnson, Jr., sentenced Applicant to confinement for a period of twenty three (23) years. The Applicant did not appeal his conviction or sentence.

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

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

1. Ineffective assistance of trial counsel.
2. Court lacked factual basis to accept plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

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



(2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

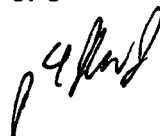
Courts use a two pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to Call Witness

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). Applicants must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why



he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) *overruled on other grounds by* U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985). This Court finds that Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial, Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

Summary of Testimony

The Applicant testified he turned himself in to the Police after images of him were presented on local news broadcasts regarding a recent robbery. The Applicant testified that the police called he common-law wife and she was used to pressure him to make a statement. Regarding Trial Counsel, the record show that during the trial (which became a guilty plea), Applicant petitioned for new counsel. That he wanted to proceed to trial, but when he saw his wife in the stands and she pressured him into taking a plea he conceded. Applicant also testified that Trial Counsel threatened him with life without the possibility of parole if was to continué/proceed to trial. Applicant also testified that Trial Counsel did nothing to attack the State's identifications, lineups, and statements/confessions.

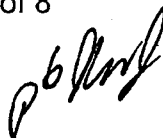
Applicant also testified that since he had no weapon, the Court lacked a factual

basis to accept his plea. Trial Counsel conceded that the security footage of the incident was grainy at best and a weapon is not clearly visible, nevertheless Counsel testified she felt the jury could conclude there was a knife based on the victim's testimony. Additionally, the trial transcript details the charges and a knife was used; the Applicant testified that he plead guilty because he was guilty.

Trial Counsel testified that she did not advise him he was facing a life sentence on the single armed robbery, it was the possibility only based on the subsequent charges, as he had no priors. Also, Trial Counsel testified there were ample challenges in the preliminary matters prior to the jury being present. Trial Counsel testified she informed Applicant that he could not plea to something he did not commit. Trial Counsel testified she did not call the wife to testify, but wife was subpoenaed by the Solicitor.

This Court finds in regards to the allegations of ineffective assistance of counsel, the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in their representation, and that trial counsel's conduct does not fall below the objective standard of reasonableness. Further, this Court also finds that the record in this case fully demonstrates that the Applicant understood the nature of his plea, and that his plea was made freely and voluntarily.

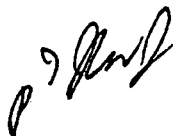
Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant.

A handwritten signature in black ink, appearing to be "P. B. [unclear]", is written over the page number.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

All Other Allegations

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

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CONCLUSION

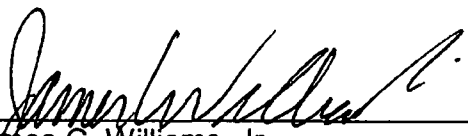
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

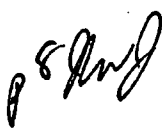
AND IT IS SO ORDERED!



 James C. Williams, Jr.
 Presiding Circuit Court Judge

Sept 13, 2007
Georgetown, South Carolina

FILED
 07 SEP 18 AM 8:46
 BARBARA A. SCOTT
 C.C.C. & G.S.



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

Case No.: 2006-CP40-2981

RICHLAND COUNTY
FILED
2007 SEP 18 AM 8:59
BARBARA A. SCOTT
C.C.C. & G.S.

Bruce Wilson #192733

versus

State of South Carolina

Plaintiff.

Defendant.

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. nonsuit) Rule 43(k), SCRCP(Settled); Other -
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Other :

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by Court

Dated at Columbia, South Carolina, this day of , 2007.

PRESIDING JUDGE

This judgment was entered on the day of , 2007, and a copy mailed first class this 18th day of September, 2007, to attorneys of record or to parties (when appearing pro-se) as follows:

Charlie Johnson

Brian T. Petrano

Attorney(s) for Plaintiff(s):

Attorney(s) for Defendant(s):

s/BARBARA A. SCOTT
CLERK OF COURT