

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lancaster County
Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

CHRISTOPHER J. FRANCIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER) IN THE COURT OF GENERAL SESSIONS
02-GS-29-562, 563

STATE OF SOUTH CAROLINA)
VS.) TRANSCRIPT OF RECORD
CHRISTOPHER JOSEPH)
FRANCIS)

OCTOBER 9, 2002
LANCASTER, SOUTH CAROLINA

B E F O R E:

THE HONORABLE KENNETH GOODE

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

TOM HOLLAND, ASSISTANT SOLICITOR
LANCASTER, SOUTH CAROLINA

ATTORNEY FOR THE STATE

ROSS BURTON, PUBLIC DEFENDER
LANCASTER, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

I N D E X

WITNESS

DIRECT

CROSS

RE-DIRECT

RE-CROSS

NO TESTIMONY TAKEN

E X H I B I T S

EXHIBIT NO.	DESCRIPTION	ID	EV
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NO EXHIBITS

1 CHRISTOPHER FRANCIS HORTON, DULY SWORN BY THE
2 CLERK

3 MR. HOLLAND - YOUR HONOR, MAY IT PLEASE THE
4 COURT.

5 THE COURT - YES, SIR, MR. HOLLAND.

6 MR. HOLLAND - WE HAVE DOCKET NUMBER 2002-GS-29-
7 562, STATE VS. CHRISTOPHER JOSEPH FRANCIS, INDICTED FOR
8 ARMED ROBBERY, ALSO 2002-GS-29-563, STATE VS. CHRISTOPHER
9 JOSEPH FRANCIS FOR POSSESSION OF A FIREARM DURING THE
10 COMMISSION OF A VIOLENT CRIME. YOUR HONOR, THE DEFENDANT
11 IS PLEADING GUILTY TO THE ABOVE CHARGES. BOTH ACTIONS
12 HAVE BEEN TRUE BILLED BY THE LANCASTER GRAND JURY, AND THE
13 RECOMMENDATION OF THE STATE IS FOR THE TEN YEAR MINIMUM
14 MANDATORY SENTENCE.

15 THE COURT - THANK YOU. IS THAT YOUR
16 UNDERSTANDING OF THE PLEA NEGOTIATIONS, MR. BURTON?

17 MR. BURTON - YES, SIR, YOUR HONOR, BUT MAY I
18 ADDRESS THE COURT BEFORE YOUR HONOR STARTS QUESTIONING MR.
19 FRANCIS?

20 THE COURT - YES, SIR.

21 MR. BURTON - I HAVE NEGOTIATED WITH THE
22 SOLICITOR AND I'VE BEEN ABLE TO NEGOTIATE THE MINIMUM
23 SENTENCE THAT THE STATUTE ALLOWS YOUR HONOR TO IMPOSE ON
24 MR. FRANCIS. HOWEVER, WHEN YOU'RE QUESTIONING MR.
25 FRANCIS, MR. FRANCIS MAY NOT EXPRESS TOTAL SATISFACTION

1 WITH MY SERVICES. HE --- YOU KNOW, HE'S NOT PLEASED WITH
2 THE SENTENCE, ALTHOUGH HE HAS NEVER FAILED TO ADMIT HIS
3 GUILT TO ME IN THIS CASE. AND, YOU KNOW, MY ADVICE TO HIM
4 HAS BEEN IT'S FAR AND AWAY IN HIS BEST INTEREST TO PLEAD
5 GUILTY TODAY, YOUR HONOR. I JUST WANTED TO MAKE THE COURT
6 AWARE --- AWARE OF THAT FACT.

7 THE COURT - ALL RIGHT, THANK YOU, MR. BURTON,
8 AND WE'LL DEAL WITH THAT WHEN I COME TO THAT PORTION OF
9 THE PLEA, AND I APPRECIATE YOUR BRINGING THAT TO MY
10 ATTENTION. BUT, MR. BURTON, YOU DO REPRESENT THE
11 DEFENDANT, MR. CHRISTOPHER JOSEPH FRANCIS?

12 MR. BURTON - YES, YOUR HONOR, I DO.

13 THE COURT - AND HAVE YOU EXPLAINED TO MR.
14 FRANCIS THE CHARGES CONTAINED IN HIS INDICTMENTS, THE
15 POSSIBLE PUNISHMENT AND HIS CONSTITUTIONAL RIGHTS,
16 INCLUDING THE RIGHT TO A JURY TRIAL ON EACH CHARGE?

17 MR. BURTON - YES, YOUR HONOR.

18 THE COURT - IN YOUR OPINION, DOES MR. FRANCIS
19 UNDERSTAND EACH CHARGE, THE PUNISHMENT APPLICABLE TO EACH
20 AND HIS CONSTITUTIONAL RIGHTS?

21 MR. BURTON - YES, YOUR HONOR, HE DOES.

22 THE COURT - AND HOW DOES HE INDICATE THAT HE
23 DESIRES TO PLEAD, GUILTY OR NOT GUILTY?

24 MR. BURTON - HE DESIRES TO PLEAD GUILTY, YOUR
25 HONOR.

1 THE COURT - AND DO YOU AGREE WITH HIS DECISION
2 TO PLEAD GUILTY?

3 MR. BURTON - YES, ABSOLUTELY, YOUR HONOR.

4 THE COURT - AND HAS MR. FRANCIS BEEN ORDERED TO
5 SUBMIT TO A MENTAL EXAMINATION TO DETERMINE HIS COMPETENCY
6 TO STAND TRIAL, AND IF NOT, DO YOU FEEL ONE IS NECESSARY?

7 MR. BURTON - HE HAS NOT, YOUR HONOR, TO MY
8 KNOWLEDGE BEEN ORDERED TO SUBMIT TO SUCH A TEST, HOWEVER,
9 IN MANY, MANY CONVERSATIONS WITH HIM, I'M CERTAIN THAT HE
10 DOES NOT NEED SUCH A ---

11 THE COURT - ALL RIGHT. THANK YOU, SIR.

12 AND YOU ARE CHRISTOPHER JOSEPH FRANCIS?

13 MR. FRANCIS - YES, SIR.

14 THE COURT - MR. FRANCIS, BEFORE I CAN ACCEPT
15 YOUR PLEA OF GUILTY, IT'S NECESSARY FOR ME TO BE CERTAIN
16 THAT YOUR PLEA OF GUILTY IS MADE FREELY AND VOLUNTARILY,
17 AND THEREFORE, I NEED TO ASK YOU SOME QUESTIONS. IF AT
18 ANY TIME DURING THIS QUESTIONING YOU DO NOT UNDERSTAND THE
19 QUESTIONS OR THE WORDS THAT I USE, YOU SHOULD STOP ME AND
20 I'LL EXPLAIN THEM TO YOU. YOU MAY CONSULT WITH YOUR
21 ATTORNEY, MR. BURTON, ABOUT ANY MATTER AT ANY TIME DURING
22 THIS QUESTIONING. DO YOU UNDERSTAND?

23 MR. FRANCIS - YES, SIR.

24 THE COURT - THANK YOU, SIR.

25 HOW OLD ARE YOU, MR. FRANCIS?

1 MR. FRANCIS - TWENTY-TWO.

2 THE COURT - SIR?

3 MR. FRANCIS - TWENTY-TWO.

4 THE COURT - YOUR VOICE IS SO DEEP, IT'S HARD TO
5 UNDERSTAND YOU.

6 MR. FRANCIS - TWENTY-TWO.

7 THE COURT - WHEN YOU GET THIS BEHIND YOU, YOU
8 NEED TO CONSIDER EITHER A BROADCASTING JOB OR A BASE IN A
9 MUSICAL GROUP. YOU HAVE A VERY MELODIOUS VOICE.

10 HOW FAR DID YOU GO IN SCHOOL, MR. FRANCIS?

11 MR. FRANCIS - I GRADUATED AND WENT TO COLLEGE
12 FOR TWO YEARS AT CLEMSON, BUT I DIDN'T FINISH.

13 THE COURT - AND YOU WENT TO COLLEGE HOW LONG?

14 MR. FRANCIS - TWO YEARS.

15 THE COURT - TWO YEARS? WHERE'D YOU GO TO
16 COLLEGE?

17 MR. FRANCIS - CLEMSON.

18 THE COURT - AND WHAT TYPE WORK DO YOU DO, MR.
19 FRANCIS?

20 MR. FRANCIS - WELL, BEFORE THIS HAPPENED I
21 WASN'T EMPLOYED AT THE TIME. I WAS SUPPOSED TO BE GOING
22 TO JOB CORP BUT IT GOT MESSED UP BECAUSE I HAD HAD A
23 CHARGE, A PRIOR CHARGE THAT WASN'T SUPPOSED TO BE ON MY
24 RECORD, AND IT WAS STILL ON THERE AND I WASN'T ABLE TO GET
25 THAT CLEARED OFF BEFORE ALL THIS HAPPENED.

1 THE COURT - MR. FRANCIS, HAVE YOU EVER BEEN
2 TREATED FOR THE ABUSE OF ALCOHOL OR DRUGS OR FOR MENTAL
3 ILLNESS?

4 MR. FRANCIS - YES, SIR.

5 THE COURT - WHICH OF THOSE, PLEASE SIR?

6 MR. FRANCIS - WELL, I'M NOT CRAZY OR NOTHING,
7 BUT I WAS SEEING A THERAPIST WHILE I WAS IN --- IN THE
8 COUNTY.

9 THE COURT - YOU NEED TO SPEAK JUST A LITTLE MORE
10 LOUDLY, PLEASE.

11 MR. FRANCIS - I WAS IN THERAPY WHILE I WAS IN
12 THE COUNTY FOR DEPRESSION.

13 THE COURT - AND WHEN WAS THAT, PLEASE, SIR?

14 MR. FRANCIS - WHILE --- SINCE I'VE BEEN IN THE
15 COUNTY JAIL. I'VE BEEN IN COUNTY JAIL SINCE MARCH THE
16 13TH.

17 THE COURT - OKAY. AND YOU'RE STILL IN THAT
18 COUNSELING.

19 MR. FRANCIS - YES, SIR.

20 THE COURT - AND DOES IT IN ANY WAY AFFECT YOUR
21 ABILITY TO UNDERSTAND WHAT WE'RE DOING TODAY?

22 MR. FRANCIS - NO. NO, SIR.

23 THE COURT - OKAY. YOU'RE JUST DEPRESSED AFTER
24 YOU'VE BEEN IN JAIL?

25 MR. FRANCIS - NO. IT'S BEEN LONGER THAN THAT.

1 THE COURT - SIR?

2 MR. FRANCIS - IT'S BEEN LONGER THAN THAT. I
3 HADN'T BEEN WANTING TO --- BECAUSE YOU KNOW PEOPLE, YOU
4 KNOW WHAT I'M SAYING, THINK YOU CRAZY AND STUFF, YOU KNOW.
5 I DON'T BE WANTING TO TALK ABOUT IT, SO I NEVER WENT TO
6 GET ANY HELP.

7 THE COURT - BUT YOU UNDERSTAND WHAT WE'RE DOING
8 TODAY?

9 MR. FRANCIS - YES, SIR, I UNDERSTAND.

10 THE COURT - HAVE YOU TAKEN ANY MEDICATION, DRUGS
11 OR ALCOHOL WITHIN THE LAST TWENTY-FOUR HOURS, MR. FRANCIS?

12 MR. FRANCIS - WELL, MY THERAPIST, SHE --- I WAS
13 SEEING HER FOR A WHILE AND SHE WAS LIKE --- SHE COULDN'T
14 DO MUCH FOR ME FOR MY DEPRESSION BECAUSE I WAS IN JAIL.
15 YOU KNOW WHAT I'M SAYING? AND SHE RECOMMENDED THAT I GET
16 ON SOME MEDICATION. I DON'T KNOW THE NAME OF IT, BUT
17 THAT'S THE ONLY MEDICATION I BEEN TAKEN. IT DON'T WORK
18 TOO GOOD, THOUGH.

19 THE COURT - AND DOES IT AFFECT YOUR
20 UNDERSTANDING OF WHAT'S GOING ON TODAY?

21 MR. FRANCIS - NO, SIR.

22 THE COURT - AND THIS IS PRESCRIPTION MEDICATION.

23 MR. FRANCIS - YES, SIR.

24 THE COURT - AND, MR. BURTON, DO YOU AGREE THAT
25 MR. FRANCIS KNOWS AND UNDERSTANDS WHAT HE'S DOING TODAY?

1 MR. BURTON - ABSOLUTELY, YOUR HONOR.

2 THE COURT - AND, MR. FRANCIS, I ASK YOU, ARE YOU
3 AWARE OF ANY PHYSICAL, EMOTIONAL OR NERVOUS PROBLEM THAT
4 WOULD KEEP YOU FROM UNDERSTANDING WHAT WE'RE DOING TODAY?

5 MR. FRANCIS - NO, SIR.

6 THE COURT - MR. FRANCIS, YOU'VE HEARD MR.
7 BURTON, YOUR ATTORNEY, TELL ME THAT HE HAD EXPLAINED TO
8 YOU THE CHARGE AGAINST YOU, THE POSSIBLE PUNISHMENT AND
9 YOUR CONSTITUTIONAL RIGHTS AND THAT YOU UNDERSTAND THESE
10 THINGS. IS THAT CORRECT?

11 MR. FRANCIS - YES, SIR.

12 THE COURT - YOU'RE CHARGED IN TWO BILLS OF
13 INDICTMENT, MR. FRANCIS. YOU'RE CHARGED IN INDICTMENT
14 2002-GS-29-562 WITH ARMED ROBBERY. YOUR INDICTMENT
15 STATES, SPECIFICALLY, THAT YOU DID IN LANCASTER COUNTY ON
16 OR ABOUT MARCH THE 13TH OF 2002 WHILE ARMED WITH A DEADLY
17 WEAPON, TO-WIT: A RIFLE, FELONIOUSLY TAKE FROM THE PERSON
18 OR PRESENCE OF BRENDA HORTON BY MEANS OF FORCE OR
19 INTIMIDATION GOODS OR MONIES OF THE HEATH SPRINGS
20 TELEPHONE COMPANY, TO-WIT: APPROXIMATELY, SEVEN HUNDRED
21 AND SIXTY-NINE DOLLARS IN CASH, ALL IN VIOLATION OF 16-11-
22 330 OF CODE OF LAWS OF THE STATE OF SOUTH CAROLINA, AND
23 FOR THIS I COULD SENTENCE YOU UP TO THIRTY YEARS. DO YOU
24 UNDERSTAND THE CHARGE AND THE POSSIBLE PUNISHMENT?

25 MR. FRANCIS - YES, SIR.

11

1 THE COURT - YOU'RE ALSO CHARGED IN INDICTMENT
2 2002-GS-29-563. THIS IS AN INDICTMENT FOR POSSESSION OF
3 A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME. YOUR
4 INDICTMENT STATES, SPECIFICALLY, MR. FRANCIS THAT YOU DID
5 IN LANCASTER COUNTY ON OR ABOUT MARCH THE 13TH OF 2002,
6 WHILE COMMITTING THE CRIME OF ARMED ROBBERY AGAINST THE
7 HEATH SPRINGS TELEPHONE COMPANY, A CRIME OF VIOLENCE, HAVE
8 IN YOUR POSSESSION VARIOUS HANDGUNS OR RIFLES ALL IN
9 VIOLATION OF 16-23-490 OF THE CODE OF LAWS OF SOUTH
10 CAROLINA, AND FOR THIS, I COULD SENTENCE YOU UP TO FIVE
11 YEARS IN ADDITION TO THE THIRTY THAT WE MENTIONED EARLIER.
12 DO YOU UNDERSTAND THE CHARGE AND THE POSSIBLE PUNISHMENT?

13 MR. FRANCIS - YES, SIR.

14 THE COURT - MR. FRANCIS, WHEN YOU PLEAD GUILTY,
15 YOU GIVE UP CERTAIN IMPORTANT CONSTITUTIONAL RIGHTS.
16 FIRST YOU GIVE UP YOUR RIGHT TO REMAIN SILENT, THAT IS
17 YOUR RIGHT AGAINST SELF-INCRIMINATION, YOUR RIGHT TO SAY
18 NOTHING AT ALL. YOU CANNOT BE COMPELLED TO TESTIFY OR TO
19 PROVIDE EVIDENCE AGAINST YOURSELF. SECOND, YOU GIVE UP
20 YOUR RIGHT TO HAVE A JURY TRIAL, THAT IS YOUR RIGHT TO
21 HAVE A JURY DECIDE WHETHER OR NOT YOU ARE GUILTY BEYOND A
22 REASONABLE DOUBT. THE JURY WOULD BASE THEIR DECISION UPON
23 EVIDENCE WHICH THE STATE PRESENTS AND ON ANY EVIDENCE YOU
24 MIGHT WISH TO INTRODUCE. AT A TRIAL YOU WOULD BE PRESUMED
25 TO BE INNOCENT. THE STATE WOULD HAVE TO PRODUCE EVIDENCE

1 THAT WOULD CONVINCE ALL TWELVE MEMBERS OF THE JURY THAT
2 YOU WERE GUILTY BEYOND A REASONABLE DOUBT. THIRD, YOU
3 WOULD GIVE UP YOUR RIGHT TO CONFRONT AND BE CONFRONTED BY
4 THE WITNESSES AGAINST YOU, THAT IS THE RIGHT TO SEE, HEAR
5 AND CROSS EXAMINE ANY WITNESSES THAT MAY BE CALLED AGAINST
6 YOU DURING THE TRIAL AND THE RIGHT TO SUBPOENA AND CALL
7 WITNESSES IN YOUR OWN BEHALF. DO YOU UNDERSTAND THESE
8 CONSTITUTIONAL RIGHTS, MR. FRANCIS?

9 MR. FRANCIS - YES, SIR.

10 THE COURT - DO YOU UNDERSTAND THAT WHEN YOU
11 PLEAD GUILTY, YOU GIVE UP THESE CONSTITUTIONAL RIGHTS?

12 MR. FRANCIS - YES, SIR.

13 THE COURT - IS THAT WHAT YOU WANT TO DO?

14 MR. FRANCIS - YES, SIR.

15 THE COURT - DO YOU UNDERSTAND THAT YOU WILL NOT
16 GET A JURY TRIAL IF YOU PLEAD GUILTY?

17 MR. FRANCIS - YES, SIR.

18 THE COURT - UNDERSTANDING THE NATURE OF THE
19 CHARGE AGAINST YOU AND THE CONSEQUENCES OF THE GUILTY
20 PLEA, I ASK YOU AGAIN, HOW DO YOU WISH TO PLEAD TO THIS
21 CHARGE, GUILTY OR NOT GUILTY?

22 MR. FRANCIS - GUILTY.

23 THE COURT - DO YOU UNDERSTAND THAT WHEN YOU
24 PLEAD GUILTY, YOU ADMIT THE TRUTH OF THE CHARGE THAT IS
25 MADE AGAINST YOU?

1 MR. FRANCIS - YES, SIR.

2 THE COURT - YOU MAY HAVE DEFENSES TO THE CHARGE
3 AGAINST YOU. I DON'T KNOW WHETHER YOU DO OR NOT. DO YOU
4 UNDERSTAND THAT IF YOU PLEAD GUILTY, YOU WILL WAIVE OR
5 GIVE UP ANY DEFENSES TO THIS CHARGE?

6 MR. FRANCIS - YES, SIR.

7 THE COURT - YOU MAY HAVE GIVEN AN INCRIMINATING
8 STATEMENT IN THIS CASE. IF YOU PLEAD GUILTY, DO YOU
9 UNDERSTAND THAT YOU WILL WAIVE AND GIVE UP THE RIGHT TO
10 CONTEST OR CHALLENGE WHETHER SUCH STATEMENT OR STATEMENTS
11 WERE FREELY AND VOLUNTARILY GIVEN IN ACCORDANCE WITH YOUR
12 CONSTITUTIONAL RIGHTS.

13 (DISCUSSION IS HELD BETWEEN MR. FRANCIS AND MR.
14 BURTON WHICH WAS NOT REPORTED)

15 MR. FRANCIS - YES, SIR, I UNDERSTAND.

16 THE COURT - THANK YOU. MR. FRANCIS, HAS ANYONE
17 PROMISED YOU ANYTHING OR HELD OUT ANY HOPE OF REWARD TO
18 GET YOU TO PLEAD GUILTY?

19 MR. FRANCIS - NOT FOR MY GUILT --- FOR MY
20 CONFESSION, YES, SIR. NOT FOR MY GUILT, THOUGH.

21 THE COURT - JUST THE PLEA NEGOTIATIONS THAT WERE
22 ANNOUNCED ON THE RECORD. THAT'S WHAT YOU'RE REFERRING TO.

23 MR. BURTON - NO, SIR, HE'S REFERRING TO THE
24 STATEMENT THAT HE GAVE TO THE POLICE, THAT HE BELIEVES
25 THAT THE POLICE HAD OFFERED HIM SOME REWARD IF HE ADMITTED

1 TO IT. AND HE DID ADMIT TO IT, BUT HE'S NEVER --- HE'S
2 NEVER DENIED IT TO ME, YOUR HONOR. THAT'S WHAT HE'S
3 TALKING ABOUT.

4 THE COURT - OKAY. AND YOU COMMITTED THIS CRIME.

5 MR. FRANCIS - YES, SIR, IT WAS A ACCIDENT, BUT
6 I DID.

7 THE COURT - SIR?

8 MR. FRANCIS - IT WAS A ACCIDENT, BUT I DID. NO
9 DOUBT ABOUT THAT. I DID IT.

10 THE COURT - HAS ANYONE THREATENED YOU OR USED
11 FORCE TO GET YOU TO PLEAD GUILTY?

12 MR. FRANCIS - NO, SIR.

13 THE COURT - HAVE YOU HAD ENOUGH TIME TO MAKE UP
14 YOUR MIND AS TO WHETHER OR NOT YOU WANT TO PLEAD GUILTY?

15 MR. FRANCIS - NOT REALLY, NO, SIR. I MEAN I
16 JUST --- I BEEN SITTING IN JAIL SEVEN MONTHS AND I'M ---
17 THIS IS ONLY MY SECOND TIME COUNTING YESTERDAY OF ME
18 TALKING TO HIM. YOU KNOW WHAT I'M SAYING? AND I BEEN
19 SITTING AROUND WAITING. I WAS TRYING TO GET OTHER THINGS
20 DONE OR MAYBE GET A --- GET OUT --- START WORKING SO I CAN
21 PAY FOR A PAID LAWYER OR SOMETHING MAYBE, BUT THAT NEVER
22 HAPPENED.

23 THE COURT - YES, SIR, BUT YOU --- YOU'VE HAD
24 ENOUGH TIME TO MAKE UP YOUR MIND AS TO WHETHER OR NOT YOU
25 WANT TO PLEAD GUILTY, HAVEN'T YOU?

1 MR. FRANCIS - WELL, YES, SIR.

2 THE COURT - AND YOU'RE PLEADING GUILTY OF YOUR
3 OWN FREE WILL AND ACCORD, AREN'T YOU?

4 MR. FRANCIS - YES, SIR.

5 THE COURT - NOW, OTHER THAN THE NUMBER OF VISITS
6 THAT MR. BURTON HAS MADE TO SEE YOU AT THE JAIL, ARE YOU
7 SATISFIED WITH THE MANNER THAT HE'S ADVISED AND
8 REPRESENTED YOU?

9 MR. FRANCIS - YES, I RECKON SO.

10 THE COURT - AND DO YOU FEEL LIKE YOU NEED MORE
11 TIME TO SPEAK WITH MR. BURTON?

12 MR. FRANCIS - I WOULD LIKE --- WOULD LIKE THAT
13 VERY MUCH, YES, SIR. THIS IS MY LIFE HERE. YOU KNOW WHAT
14 I'M SAYING?

15 THE COURT - YES, SIR. AND, NOW, IF YOU NEED
16 MORE TIME TO SPEAK WITH HIM, WE CAN ARRANGE FOR THAT RIGHT
17 NOW. BUT YOU'VE SPOKEN WITH HIM ---

18 MR. FRANCIS - YES, I'VE SPOKEN WITH HIM, BUT ---
19 I --- TELL --- AS FAR AS HE'S TELLING ME THAT AIN'T
20 NOTHING HE CAN DO, SO ---

21 THE COURT - WELL, HE CAN'T --- HE CAN'T CHANGE
22 THE LAWS. I MEAN I DON'T WANT TO ---

23 MR. FRANCIS - I UNDERSTAND THAT.

24 THE COURT - BUT THE MINIMUM SENTENCE ON THE
25 OFFENSE THAT YOU ACKNOWLEDGE THAT YOU DID IS TEN YEARS,

1 AND HE'S PREVAILED ON THE SOLICITOR TO GO WITH THE MINIMUM
2 SENTENCE. NOW, I'LL BE HAPPY TO GIVE YOU ADDITIONAL TIME
3 TO TALK WITH HIM, BUT REALLY THERE'S --- THERE --- I MEAN
4 HE'S DONE WHAT APPEARS TO THE COURT --- I CAN'T SPEAK FOR
5 YOU, BUT I MEAN HE'S DONE A --- HE'S DONE A GOOD JOB. SO
6 HE'S DONE ALL THAT HE CAN. I MEAN HE GOT YOU THE MINIMUM
7 SENTENCE. SO DO YOU NEED MORE TIME TO TALK WITH HIM?

8 MR. FRANCIS - NOT REALLY, NO, SIR.

9 THE COURT - AND YOU --- BUT WHEN YOU TALKED TO
10 HIM, YOU UNDERSTOOD YOUR TALKS.

11 MR. FRANCIS - I UNDERSTAND THEM. YES, SIR.

12 THE COURT - ALL RIGHT, THANK YOU.

13 MR. FRANCIS, HAVE YOU UNDERSTOOD MY QUESTIONS?

14 MR. FRANCIS - YES, SIR.

15 THE COURT - IS THERE ANYTHING AT ALL THAT YOU
16 WOULD LIKE TO ASK ME ABOUT WHAT WE'VE JUST BEEN OVER?

17 MR. FRANCIS - NO, SIR.

18 THE COURT - NOW, YOU UNDERSTAND THAT YOU HAVE A
19 RIGHT TO APPEAL YOUR GUILTY PLEA AND THE SENTENCE OF THE
20 COURT AND THAT YOU OR YOUR LAWYER MUST DO THIS WITHIN TEN
21 DAYS?

22 MR. FRANCIS - YES, SIR.

23 THE COURT - ALL RIGHT, THANK YOU VERY MUCH, MR.
24 FRANCIS.

25 MR. SOLICITOR, IF I CAN HAVE A BRIEF ACTUAL

1 BASIS FOR THIS PLEA?

2 MR. HOLLAND - THANK YOU, YOUR HONOR. THIS
3 INCIDENT OCCURRED ON MARCH 13TH, 2002. ON THAT DAY THE
4 DEFENDANT DID ENTER THE HEATH SPRINGS TELEPHONE COMPANY.
5 HE WAS ARMED WITH WHAT WAS --- APPEARED TO BE --- WHAT
6 APPEARED TO THE VICTIM, BRENDA HORTON, WHO IS PRESENT IN
7 THE COURTROOM TODAY ---

8 THE COURT - IS THIS MS. HORTON HERE IN THE
9 PURPLE OUTFIT?

10 MR. HOLLAND - YES, SIR.

11 THE COURT - MS. HORTON, I WANT TO TAKE ---
12 EXCUSE ME, MR. HOLLAND FOR INTERRUPTING YOU, BUT I MUST
13 THANK YOU FOR TAKING TIME FROM YOUR SCHEDULE TO BE HERE.
14 IS THIS YOUR SON THAT'S WITH YOU TODAY?

15 MS. HORTON - IT'S MY HUSBAND.

16 THE COURT - OH, OKAY.

17 MR. HORTON - THANK YOU.

18 THE COURT - I JUST --- BUT THANK YOU VERY MUCH
19 FOR COMING. IT'S VERY IMPORTANT TO THIS COURT TO HAVE THE
20 INPUT OF THE VICTIMS IN THESE MATTERS, AND I THANK YOU FOR
21 TAKING TIME FROM YOUR SCHEDULE TO BE HERE, AND AT THE
22 APPROPRIATE TIME, IF YOU WOULD LIKE TO ADDRESS THE COURT,
23 WE WILL BE HAPPY TO HEAR FROM YOU.

24 YES, SIR, MR. HOLLAND. I'M SORRY.

25 MR. HOLLAND - YOUR HONOR, THE VICTIM INDICATED

1 THAT A BLACK MALE --- SHE COULD NOT IDENTIFY THE VICTIM,
2 BECAUSE HE WAS COVERED HEAD-TO-TOE IN BLACK CLOTHING ---
3 ENTERED --- ENTERED THE TELEPHONE COMPANY, WHICH
4 COINCIDENTALLY IS IN A BUILDING THAT IS ALSO A BANK ON THE
5 OTHER SIDE OF IT, WHICH TRUTH BE KNOWN, I BELIEVE THAT WAS
6 THE INTENDED TARGET OF THE ROBBERY, IS THE BANK, NOT THE
7 TELEPHONE COMPANY, BUT THE --- NONETHELESS, THE DEFENDANT
8 CAME IN, POINTED A SHOTGUN AT THE VICTIM, SAID GIVE ME ALL
9 THE MONEY; THE VICTIM COMPLIED, PUT THE MONEY ON THE
10 COUNTER. THE DEFENDANT DID TAKE THE MONEY AND EXIT THE
11 STORE. A BANK EMPLOYER --- SHE RAN DOWN THE HALL, TOLD A
12 BANK EMPLOYEE WHAT HAPPENED. THE BANK EMPLOYEE SAW A
13 WHITE OLDER MODEL VEHICLE AND GAVE A PARTIAL PLATE OF ---
14 I THINK IT WAS 520 --- GAVE THAT TAG NUMBER OUT. A BOLO
15 WAS ISSUED. THE POLICE WENT TO THE SCENE --- OR WENT
16 TOWARD THE AREA. THEY BASICALLY --- A CAPTAIN OF
17 DETECTIVES PASSED THE DEFENDANT COMING FROM THE TELEPHONE
18 COMPANY. WHEN HE MADE A U-TURN TO CATCH UP WITH HIM, HE
19 HAD TURNED OFF ON A SIDE ROAD. ANOTHER INVESTIGATOR WAS
20 IN THE AREA, BECAUSE THEY WERE CONVERGING ON THE AREA ---
21 SAW THE CAR IN THE --- PARKED BEHIND THE DEFENDANT'S
22 HOUSE. THE INVESTIGATOR SAT THERE AND WATCHED THE ---
23 WHILE HE WAS WATCHING THE DEFENDANT CAME OUT OF HIS HOUSE,
24 TOOK THE PLATES OFF THE CAR, THREW IT --- THREW THE PLATES
25 INTO THE WOODS, WENT BACK IN THE HOUSE. THE DEPUTY

1 INVESTIGATOR WENT AROUND TO THE HOUSE --- IT WAS PARKED IN
2 THE FRONT OF THE STREET. THE DEFENDANT, ACTUALLY, CAME
3 OUT AND STARTED TALKING TO HIM, DURING --- ASKING HIM WHAT
4 WAS GOING ON, WHAT'S WRONG. THE OFFICER TOLD HIM WHAT WAS
5 GOING ON AND WHAT HAD HAPPENED. THE DEFENDANT CONSENTED
6 TO SEARCH OF HIS CAR. TWO SHOTGUNS WERE FOUND PLUS SOME
7 MASKS AND OTHER, I GUESS, CLOTHING WERE FOUND IN THE
8 VEHICLE. CONSENT TO SEARCH HIS HOUSE WAS OBTAINED, AND
9 SEVEN HUNDRED AND SIXTY-NINE DOLLARS WHICH IS A TOTAL
10 AMOUNT OF MONEY THAT WAS TAKEN FROM THE TELEPHONE COMPANY
11 WAS FOUND UNDER THE MATTRESS OF THE DEFENDANT'S BED. THE
12 DEFENDANT VOLUNTARILY WENT TO THE POLICE STATION WITH THE
13 POLICE OFFICER. THE POLICE OFFICER READ HIM HIS RIGHTS ON
14 THE --- HAD A RIGHTS FORM, CHECKED OFF EACH --- THE
15 DEFENDANT INITIALED EACH OF THE ---

16 THE COURT - OKAY. LET ME JUST STOP YOU RIGHT
17 THERE, MR. HOLLAND BEFORE WE GET TO THAT STATEMENT,
18 BECAUSE APPARENTLY HE'S GOT A PROBLEM WITH THE STATEMENT.

19 UP TO THIS POINT, MR. FRANCIS, YOU'VE HEARD THE
20 SOLICITOR STATE THE FACTS THAT LED TO YOUR ARREST AND,
21 ULTIMATELY, TO YOUR INDICTMENT TO THIS CHARGE. DO YOU
22 AGREE THAT THE FACTS STATED BY THE SOLICITOR ARE
23 MATERIALLY ACCURATE AND CORRECT?

24 MR. FRANCIS - NOT ALL THE WAY, NO, SIR.

25 THE COURT - ALL RIGHT. AND IN WHAT PARTICULARS

1 DO YOU DISAGREE WITH WHAT THE SOLICITOR SAID?

2 MR. FRANCIS - WELL, UM, I DON'T RECALL, BECAUSE
3 I HONESTLY TO TELL YOU THE TRUTH, I --- I WASN'T TRYING TO
4 GO INTO THE BANK. I DIDN'T KNOW WHAT I WAS --- WHERE I
5 WAS GOING WHEN I WENT INTO THAT BUILDING. AND ---

6 THE COURT - WERE YOU INTOXICATED?

7 MR. FRANCIS - I WAS UNDER --- I WAS --- I TOOK
8 A PILL, BECAUSE LIKE I TOLD YOU EARLIER ABOUT MY
9 DEPRESSION, I DON'T --- YOU KNOW WHAT I'M SAYING? WASN'T
10 GETTING ANY HELP FOR IT. I WAS REALLY --- I WASN'T
11 FEELING TOO HOT. I SAW A OLD FRIEND. WELL, I WOULDN'T
12 SAY HE'S A FRIEND. A FRIEND WOULDN'T DO YOU LIKE THAT,
13 BUT I SAW HIM --- HE SAW I --- I WENT TO BURGER KING THAT
14 MORNING TO GET SOMETHING TO EAT. I WAS --- MY MIND WAS
15 NOT ON ROBBING ANYTHING. HE GAVE --- HE OFFERED ME A
16 PILL; HE SAID IT WAS A X. THAT'S WHAT I BELIEVED WHAT IT
17 WAS. I'VE NEVER TAKEN ECSTASY BEFORE. THAT'S WHAT I
18 BELIEVED IT WAS, AND I TOOK IT THINKING IT WAS GOING TO
19 MAKE ME FEEL BETTER, SO I TAKE THE PILL; I GO HOME, AND I
20 HAVE, I GUESS, A BAD REACTION TO IT. I'M --- I WAS DOING
21 ALL KIND OF CRAZY THINGS, AND I RODE --- I WAS JUST RIDING
22 AROUND IN MY CAR, AND I WAS LIKE --- I SAW THE BUILDING,
23 BECAUSE I HAD SEEN IT BEFORE, AND I DIDN'T KNOW WHAT IT
24 WAS. I DIDN'T KNOW IF A BANK, TELEPHONE COMPANY, AND THE
25 POLICE STATION IS RIGHT ACROSS THE STREET FROM IT. YOU

21

1 KNOW WHAT I'M SAYING? AND --- AND I SAW IT, AND I WAS
2 LIKE, WELL, I'M GOING TO GO IN HERE AND GET ME AN
3 APPLICATION. THAT WAS THE FIRST THING ON MY MIND, BECAUSE
4 I AM MESSED UP. I WAS DRESSED IN ALL BLACK, BUT THAT'S --
5 - THAT'S FOR OTHER REASONS. YOU KNOW WHAT I'M SAYING?
6 BECAUSE I WAS MESSED UP ON DRUGS, AND I WENT IN THERE AND
7 BY THE --- BY THE TIME I GOT IN THERE, I WAS LIKE, WELL,
8 I'M JUST GOING TO TAKE SOME MONEY, AND THAT'S --- THAT WAS
9 WHERE MY HEAD WAS AT, BECAUSE I WAS ON THEM DRUGS. THAT'S
10 NOTHING I WOULD EVER DO.

11 THE COURT - AND YOU HAD TAKEN THE GUN IN WITH
12 YOU?

13 MR. FRANCIS - YES, SIR. I DIDN'T POINT IT AT
14 HER EITHER. I WAS HOLDING IT.

15 THE COURT - NO, OKAY. WELL, I MEAN BUT YOU HAVE
16 IT WITH YOU.

17 MR. FRANCIS - YES, I WALKED IN THERE AND I ASKED
18 HER FOR IT. I DIDN'T POINT IT IN HER FACE LIKE, YES, YES,
19 GIVE ME THE MONEY AND ALL THAT. IT WASN'T NONE OF THAT.
20 AND I'D LIKE TO SAY, TOO, MS. HORTON, I'M SORRY, AND I
21 WANTED TO KNOW IF OFFICER HILTON GAVE YOU THAT LETTER THAT
22 I SENT YOU? DID YOU GET THE ONE THAT I SENT IN THE MAIL?

23 MS. HORTON - I GOT THE ONE IN THE MAIL.

24 MR. FRANCIS - OH. I JUST WANTED TO KNOW. THANK
25 YOU.

1 THE COURT - THAT WAS VERY NICE, MR. FRANCIS, TO
2 DO THAT.

3 SO WITH THOSE EXCEPTIONS, YOU AGREE WITH THE
4 FACTS STATED BY MR. HOLLAND?

5 MR. FRANCIS - AND --- AND I DON'T KNOW NOTHING
6 ABOUT HIM SEEING ME PASSING ME, BECAUSE IF HE WOULD'VE SAW
7 ME PASSING ME, COMMON SENSE WOULD'VE TELL ME TO TURN ---
8 IT WAS ABOUT --- ACCORDING TO THE POLICE, WHAT THEY TOLD
9 ME --- BECAUSE I --- ONCE I GOT BACK HOME, I PASSED OUT ON
10 MY BED. I TOOK OFF ALL MY CLOTHES AND I PASSED OUT ON MY
11 BED, AND I WOKE UP --- IT WAS --- ACCORDING TO THE POLICE
12 IT WAS ABOUT THIRTY MINUTES LATER. THAT'S WHAT THEY TOLD
13 ME. AND THEN THAT'S WHEN --- WHEN I CAME OUTSIDE THAT'S
14 WHEN DETECTIVE HILTON, THE ONE THAT SEEN ME, HE SEEN ME
15 COME UP, AND I SAW HIM PULL IN FRONT OF MY HOUSE, AND I
16 WAS WONDERING WHAT HE WAS DOING THERE, BECAUSE BY THAT
17 TIME, I DIDN'T KNOW WHAT I JUST DID. HONEST TO GOD TRUTH
18 I DID NOT KNOW WHAT I DID. AND HE PULLED --- HE PULLS UP
19 AND I SEE HIM, AND I HAD GOT A LETTER IN THE MAIL TO ---
20 A COUPLE OF WEEKS AGO --- I MEAN BEFORE THAT HAPPENED
21 TELLING THEM THAT THEY WANTED MY LICENSE PLATE TURNED IN,
22 BECAUSE I HADN'T PAID MY PROPERTY TAXES ON MY CAR. I
23 FIGURED HE WAS COMING TO GET MY LICENSE PLATE, AND I WAS -
24 -- AND I WAS MESSED UP, BECAUSE I HAD A PRIOR CHARGE ON MY
25 RECORD. THEY DROPPED IT JUST NOW, BUT I WASN'T ABLE TO GO

1 TO JOB CORP AND SO --- I --- LIKE I'M NOT FIXING TO GIVE
2 YOU MY LICENSE PLATE SO I CAN'T DRIVE AND TRY TO GET A
3 JOB. YOU KNOW WHAT I'M SAYING? SO I TOOK MY LICENSE
4 PLATE OFF RIGHT IN HIS FACE AND THREW IT. NOW, IF I WAS
5 IN MY RIGHT MIND, I KNOW DARN WELL, I DONE JUST WENT AND
6 ROBBED SOMEWHERE, WHY I'M GOING TO DO THAT AND THEN GO TO
7 THE POLICE LIKE I AIN'T DID NOTHING WRONG.

8 THE COURT - AND WITH THOSE EXCEPTIONS, YOU AGREE
9 WITH WHAT THE SOLICITOR SAID?

10 MR. FRANCIS - EVERYTHING ELSE IS RIGHT.

11 THE COURT - ALL RIGHT, I FIND THAT THERE IS A
12 SUBSTANTIAL FACTUAL BASIS ---

13 MR. HOLLAND - JUST --- IF YOU WILL, YOUR HONOR,
14 ON --- AS FAR AS THE CONFESSION GOES, JUST FOR THE FACT
15 THAT THERE'S BEEN SOME ALLEGATIONS THAT HE MAY HAVE BEEN
16 INTOXICATED, I TALKED WITH THE INVESTIGATOR. THE FIRST
17 PART HE DID SIGN --- HE INDICATED HIS --- PUT HIS INITIALS
18 BY EACH OF HIS RIGHTS, WAS READ HIS RIGHTS, GAVE A FREE
19 AND VOLUNTARY STATEMENT. I SPOKE WITH THE INVESTIGATOR
20 WHO STATED THAT HE WAS NOT UNDER THE INFLUENCE WHEN HE
21 TALKED TO HIM. HE WAS COHERENT AND STONE COLD SOBER. THE
22 --- JUST FOR YOUR, I GUESS --- THE PERTINENT PART OF HIS
23 STATEMENT HE SAID --- AT FIRST SAYS HE DIDN'T WANT A
24 LAWYER BECAUSE HE DIDN'T DO ANYTHING. HE SAYS, NO,
25 BECAUSE I DIDN'T REALLY --- I DON'T REALLY NEED ONE,

1 BECAUSE I DIDN'T DO IT. AND THEN THE NEXT QUESTION IS
2 TELL ME WHAT HAPPENED IN HEATH SPRINGS. WHAT --- THE
3 ANSWER IS I WAS SUPPOSED TO GO TO COURT IN A COUPLE OF
4 WEEKS ON A SUSPENSION CHARGE AND NEEDED SOME MONEY. I
5 DIDN'T HAVE ANY WAY TO GET IT AND I DON'T KNOW WHAT GOT ME
6 IN --- GOT INTO ME, BUT I GOT UP THIS MORNING; I WENT AND
7 GOT SOMETHING TO EAT; WHEN I GOT BACK ALL I THOUGHT ABOUT
8 WAS THE MONEY I NEEDED; I STARTED RIDING AROUND AND ENDED
9 UP DOWN THERE. I DIDN'T EVEN KNOW WHAT KIND OF PLACE IT
10 WAS. I DIDN'T REALLY INTEND TO ROB ANYBODY. THEN HE
11 TALKS ABOUT HAVING PUTTING ON THE COAT AND TAKING THE GUN
12 INTO THE STORE. HE NEVER MENTIONS IN THE STATEMENT BEING
13 UNDER THE INFLUENCE OF ANY DRUGS.

14 MR. FRANCIS - THEY DIDN'T ASK ME.

15 MR. HOLLAND - THAT DIDN'T START COMING UNTIL
16 SOME OF THE LETTERS THAT HE SENT, AND I DO WANT TO BRING -
17 -- HE SENT LETTERS TO THE VICTIM AND ALSO SENT LETTERS TO
18 THE SOLICITOR'S OFFICE ADMITTING TO EVERYTHING THAT HE DID
19 BUT ADDED THE FACT THAT HE WAS UNDER --- HE TOOK SOME
20 DRUGS, SO WE DO HAVE MULTIPLE CONFESSIONS. EVEN IF THIS
21 ONE IS --- WAS --- WOULD BE DEEMED INVOLUNTARY, WHICH I DO
22 NOT THINK IT WAS BECAUSE THE OFFICER COULD TESTIFY THAT HE
23 WAS NOT UNDER THE INFLUENCE. THE OTHER ONES THAT HE WROTE
24 FROM JAIL CERTAINLY WERE VOLUNTARILY AND NO ONE HAD
25 PROMPTED HIM TO GIVE THOSE CONFESSIONS.

1 THE COURT - WELL, I THINK EVEN WITHOUT REGARD TO
2 HIS SIGNED CONFESSIONS THAT THERE IS A SUBSTANTIAL FACTUAL
3 BASIS FOR THE PLEA, AND I FIND THAT MR. FRANCIS' DECISION
4 TO PLEAD GUILTY IS FREELY, VOLUNTARILY, KNOWINGLY AND
5 INTELLIGENTLY MADE, AND HE'S HAD THE ADVISE AND COUNSEL OF
6 A VERY COMPETENT ATTORNEY WITH WHOM HE INDICATES
7 SATISFACTION. THE DEFENDANT'S PLEA OF GUILTY IS ACCEPTED.

8 MR. BURTON, I'LL BE HAPPY TO HEAR FROM YOU, AND
9 I NOTICE THAT WE HAVE A NUMBER OF FAMILY MEMBERS. IT
10 LOOKS LIKE SISTERS OF MR. FRANCIS, AND I GUESS A BROTHER
11 BACK THERE, AND I'LL BE HAPPY TO HEAR FROM THE FAMILY.
12 IT'S VERY IMPORTANT FOR THIS COURT TO KNOW THAT THERE'S A
13 SUPPORT STRUCTURE, AND I THANK EACH OF YOU FOR TAKING TIME
14 FROM YOUR SCHEDULE TO BE HERE. I DON'T KNOW WHERE YOU'D
15 RATHER BE TODAY, BUT I KNOW THAT IT'S SOME PLACE OTHER
16 THAN HERE. I THANK EACH AND EVERY ONE OF YOU FOR COMING.

17 YES, SIR, MR. BURTON, I'LL HEAR FROM YOU AND THE
18 FAMILY MEMBERS AND IF THERE'S ANYTHING ADDITIONALLY MR.
19 FRANCIS WOULD LIKE TO SHARE WITH THE COURT.

20 MR. BURTON - YES, SIR. BESIDES MR. FRANCIS,
21 I'LL INTRODUCE HIS MOTHER, THE LADY IN THE FUZZY JACKET.

22 THE COURT - I THOUGHT THAT WAS HIS SISTER.

23 MR. BURTON - OKAY, LET ME --- WELL, HER SISTER
24 IS ACTUALLY THE ONE TO HER RIGHT. THE LADY IN THE BEIGE
25 IS MR. FRANCIS' GRANDMOTHER. THE GENTLEMAN IS HIS UNCLE,

1 AND THE LADY IN THE GLASSES IS HIS AUNT, YOUR HONOR. AND
2 I BELIEVE ONE OR TWO OF THEM WOULD LIKE TO ADDRESS THE
3 COURT AFTER I'M FINISHED, AND I'LL BE VERY BRIEF.

4 MR. FRANCIS, HE'S A VERY YOUNG MAN. HE WAS
5 TWENTY-ONE WHEN THIS HAPPENED. HE'S GOT HIS WHOLE LIFE IN
6 FRONT OF HIM, YOUR HONOR, AND YOU KNOW WHEN HE --- IF HE
7 BEHAVES HIMSELF IN JAIL, EVEN WITH THIS SENTENCE, HE'LL
8 STILL GET OUT OF JAIL A YOUNG MAN. AND, YOU KNOW, HE'S
9 TOLD ME AND HE'LL TELL YOU, YOU KNOW, THAT THIS IS OUT OF
10 CHARACTER FOR HIM, AND HE'LL HAVE A CHANCE TO PROVE THAT
11 TO SOCIETY ONCE HE'S RELEASED FROM JAIL, BUT I MEAN HE
12 KNOWS HE HAS TO --- HE HAS TO ACCOUNT FOR THIS BEHAVIOR.
13 ONE THING THAT I EXPECT TO SEE IN A CASE OF ARMED ROBBERY
14 AND GUN CHARGES THAT I DON'T SEE IN THIS CASE IS A
15 CRIMINAL RECORD. HE HAD PREVIOUSLY ONE GUN CHARGE THAT
16 WAS DISMISSED, BUT OTHER THAN THAT, I DON'T KNOW OF ANY
17 CRIMINAL RECORD AT ALL THAT MR. FRANCIS HAS. HIS FAMILY -
18 -- AND I HAVEN'T BEEN PROVIDED WITH A RAP SHEET, SO THAT'S
19 EVIDENCE OF THAT. HIS FAMILY SAYS HE'S NEVER BEEN IN
20 TROUBLE ANYMORE. AND, YOU KNOW, HIS FAMILY ---

21 THE COURT - HE COMPLETED TWO YEARS OF COLLEGE AT
22 A GOOD COLLEGE.

23 MR. BURTON - YES, SIR. AND MR. FRANCIS, WHILE
24 HE HAS NEVER DENIED TO ME THE FACTS OF THE CASE THAT
25 CONSTITUTE THE CRIME ARE NOT PRESENT, HE'S ALWAYS SAID TO

27

1 ME THAT --- THAT IT JUST WASN'T HIM THAT DAY, THAT JUST --
2 - THAT WAS NOT TYPICAL BEHAVIOR. AND HIS FAMILY HAS SAID
3 THAT TO ME YESTERDAY AND TODAY WHEN I --- WHEN I'VE TALKED
4 TO THEM, AND I DON'T ALWAYS BELIEVE WHAT MY CLIENTS TELL
5 ME, YOUR HONOR, BUT IN THIS CASE I REALLY DO BELIEVE THAT
6 MR. FRANCIS' MOTIVATION WAS NOT TO COMMIT A CRIME. IT WAS
7 --- HE WAS UNDER THE INFLUENCE OF SOME DRUGS AND THAT
8 CAUSED HIM TO DO THE --- THAT'S THE ONLY RATIONAL
9 EXPLANATION I CAN THINK OF, AND I'VE AGONIZED OVER, YOU
10 KNOW, WHY WOULD A YOUNG MAN LIKE THIS WHO HADN'T DONE THAT
11 BEFORE DO IT NOW, AND TO --- THAT'S THE ONLY THING I CAN
12 COME UP WITH, YOUR HONOR. AND I DON'T BELIEVE MR. FRANCIS
13 IS A BAD YOUNG MAN. HE'S TREMENDOUSLY REMORSEFUL TO ---
14 AND I KNOW HE FEELS BAD ABOUT WHAT HAPPENED TO THE VICTIM,
15 AND IT WAS REPREHENSIBLE WHAT HAPPENED TO THAT --- THAT
16 SWEET LADY THERE, AND, YOU KNOW, HE UNDERSTANDS THAT, AND
17 HE'S VERY REMORSEFUL ABOUT IT, YOUR HONOR.

18 THE COURT - AND HE CERTAINLY SEEMS TO BE.

19 MR. BURTON - YES, SIR. AND THAT'S ABOUT ALL I
20 WANT TO SAY, BUT I'D LIKE TO START WITH HIS MOM AND GIVE
21 OTHER FAMILY MEMBERS A CHANCE TO BRIEFLY ADDRESS THE
22 COURT.

23 THE COURT - BE HAPPY TO HEAR FROM ANY OF YOU
24 THAT WOULD LIKE TO ADDRESS THE COURT.

25 MS. WITHERSPOON - HELLO, I'M SANDRA WITHERSPOON.

1 I'M CHRIS' MOM, AND I WAS TELLING MR. BURTON THAT MY SON
2 HAS LED AN EXEMPLARY LIFE UNTIL THIS HAPPENED, AND HE'S
3 TALKED TO ME AND ALL HE COULD SAY THAT DAY WHEN I TALKED
4 TO HIM WHEN THIS INCIDENT HAPPENED, MOM, I'M SORRY, MOM,
5 I'M SORRY, BECAUSE HE KNOW HOW I RAISED HIM. AND I DIDN'T
6 RAISE HIM TO BE A CRIMINAL. I DIDN'T RAISE HIM TO BE A
7 STATISTIC. I RAISED HIM TO BE A GREAT MAN. I RAISED HIM
8 IN THE FEAR AND ADMONITION OF THE LORD. I LIVE FOR JESUS
9 AND THAT'S ALL I DO. AND ANYBODY THAT KNOWS ME CAN TELL
10 YOU THAT. AND THAT'S HOW I RAISED MY KIDS, AND THEY'RE
11 NOT SAINTS. ONE DAY THEY WILL BE, BECAUSE I STILL BELIEVE
12 IN EVERYTHING THAT I'VE EVER PRAYED ABOUT THIS BOY. C.J.
13 WAS DESPERATE FOR MONEY, AND HE WAS NOT THINKING. HE
14 WASN'T WORKING; HE HAD HAD A HARD TIME GETTING A JOB, BUT
15 I BELIEVE IF HE HAD STAYED IN SCHOOL AND DIDN'T --- YOU
16 KNOW, WENT BACK AFTER HIS --- WHAT DO YOU CALL IT --- THE
17 SCHOOL BREAK, NONE OF THIS WOULD'VE EVER HAPPENED. HE WAS
18 GOING FOR COMPUTER SCIENCE. THE BOY HAS A MIND THAT'S
19 MIND-BLOWING. HE'S BEEN BLOWING MY MIND SINCE HE WAS A
20 ITTY-BITTY GUY. YOU KNOW, HONOR ROLL SINCE HE'S BEEN IN
21 SCHOOL. HE NEVER WENT TO KINDERGARTEN. WE STARTED HIM IN
22 FIRST GRADE. HE'S BEEN ON THE HONOR ROLL FROM THE SECOND
23 GRADE STRAIGHT THROUGH HIGH SCHOOL. I NEVER GAVE CLEMSON
24 UNIVERSITY ONE CENT FOR HIS EDUCATION, BECAUSE ALL OF IT
25 WAS AWARDED TO HIM. HE GOT ACADEMIC SCHOLARSHIPS AND

29

1 AWARDS TO GO TO SCHOOL. WE NEVER HAD TO DO ANYTHING
2 EXCEPT PACK HIS CLOTHES AND TAKE HIM TO SCHOOL. I MEAN
3 THIS IS CHRIS. THAT'S THE CHILD THAT I RAISED, AND HE GOT
4 DESPERATE AND HE WASN'T THINKING. WHEN I TALKED TO THE
5 OFFICER --- I BELIEVE HIS NAME WAS BAILEY --- DETECTIVE --
6 - IT STARTED WITH A B. I BELIEVE IT WAS BAILEY. RED-
7 HEADED GUY. I DON'T REMEMBER. I THINK --- I CAN'T
8 REMEMBER HIS NAME, BUT I THOUGHT IT WAS BAILEY. IT
9 STARTED WITH A B. BUT WHEN I TALKED TO HIM, AND HE SAID,
10 THIS IS THE EASIEST CASE WE'VE EVER DONE. HE SAID WE'VE
11 HAD NOTHING BUT COOPERATION FROM HIM. THEY DIDN'T FIND
12 THE MONEY AS A MATTER OF FACT WITH HIM THERE. I GAVE THEM
13 PERMISSION TO COME INTO MY HOUSE AND WE WENT STRAIGHT TO
14 IT IN FIVE MINUTES, AND I SAID THE BOY DIDN'T KNOW WHAT HE
15 WAS DOING, BECAUSE IF HE DID, YOU WOULDN'T HAVE COME IN
16 HERE AND FOUND IT JUST LIKE THAT. WHO DOES THAT? SEE, HE
17 DIDN'T KNOW WHAT HE WAS DOING. I'M TOTALLY CONVINCED THAT
18 WHEN HE TOLD ME ABOUT THIS SUBSTANCE, THIS STUFF THAT ---
19 IT SCARED ME FIRST OFF, BECAUSE PEOPLE DIE FROM THAT STUFF
20 FROM WHAT I HEAR. I --- YOU KNOW, I UNDERSTAND IT'S
21 SOMETHING EXTREMELY POTENT, AND I WAS JUST THANKING GOD
22 THAT HE WAS STILL ALIVE, YOU KNOW, AND I SAID THIS IS NOT
23 MY SON, AND ANYBODY THAT CAN TELL YOU --- ANYBODY THAT
24 KNOWS ME KNOWS MY KIDS, AND THEY TELL YOU, NO, SANDRA
25 DIDN'T RAISE NOBODY TO DO ANYTHING LIKE THAT. YOU KNOW,

1 AND --- ALL I KNOW TO DO IS JUST --- I TOLD HIM I SAID,
2 CHRIS, YOU'RE TRULY AT THE MERCY OF THE COURT AND ALL
3 WE'VE BEEN DOING IS PRAYING, SO YOU IN --- YOU IN GOD'S
4 HAND AND YOU'RE AT THE MERCY OF THIS COURT, BUT HE'S NOT
5 A CRIMINAL. I PROMISE YOU HE'S NOT A CRIMINAL.

6 THE COURT - THANK YOU, MS. WITHERSPOON. IT
7 CERTAINLY SEEMS THAT YOU DID AN ADMIRABLE JOB AS A MOTHER.

8 MS. WITHERSPOON - AND DID IT BY MYSELF.

9 THE COURT - WHICH MAKES IT EVEN MORE ADMIRABLE.
10 MY HAT'S OFF TO YOU. I'M SORRY WE FIND OURSELVES MEETING
11 UNDER THESE CIRCUMSTANCES.

12 THANK YOU. IS THERE ANYONE ELSE IN THE FAMILY
13 THAT WOULD LIKE TO ADDRESS THE COURT.

14 YES, MA'AM?

15 MS. FRANCIS - YOUR HONOR, MY NAME IS DONNA
16 FRANCIS, AND I AM CHRIS' AUNT, AND I'M ALSO A LICENSED
17 MINISTER, BUT I'VE SEEN SUCH A --- I'VE SEEN --- CHRIS HAS
18 ALWAYS BEEN SO SMART. IT'S LIKE HE THINKS LONG BEFORE YOU
19 START THINKING, HE'S ALREADY THOUGHT IT, YOU KNOW. HE'S -
20 -- HIS MIND IS ALWAYS BUSY. IT'S ALWAYS WORKING. HE'S
21 JUST ALWAYS BEEN LIKE THAT ALL HIS LIFE, AND HE'S ALWAYS
22 STAYED BUSY DOING SOMETHING. I WAS SO PROUD OF HIM WHEN
23 HE WAS ACCEPTED TO GO TO CLEMSON. AND HE DID A GREAT JOB.
24 HE WAS DOING A GREAT JOB IN CLEMSON, AND WE WERE REALLY
25 LOOKING FORWARD FOR HIM TO EVEN GET A JOB, YOU KNOW, EVEN

31

1 WITH MY BROTHER. YOU KNOW, WE THOUGHT ABOUT --- BECAUSE
2 HE WORKS WITH COMPUTERS AND EVERYTHING, AND WE THOUGHT
3 MAYBE THAT WOULD BE A GOOD PLACE FOR HIM, YOU KNOW, JUST
4 TO START OUT, YOU KNOW. BUT AS FAR AS HIS CHARACTER IS
5 CONCERNED, HE'S NEVER BEEN A VIOLENT PERSON. HE'S NEVER
6 EVEN BEEN A PERSON WHO WOULD EVEN THINK ABOUT DOING A
7 WHOLE LOT WRONG. HIS MOTHER DIDN'T HAVE TO DO A WHOLE LOT
8 OF SPANKING HIM. HE WAS CORRECTED, AND YES, HE DID GET
9 SPANKINGS, BUT HE WAS JUST NOT THAT KIND OF A CHILD. WHEN
10 HE WAS TOLD TO DO SOMETHING, HE MIGHT'VE BEEN SLOW ABOUT
11 IT SOMETIMES, BUT HE DID IT. YOU KNOW, WE DIDN'T HAVE TO
12 WORRY ABOUT THINGS LIKE THAT. ALTHOUGH THERE WAS A LITTLE
13 SMALL PERIOD WHEN HE WAS IN HIS OLDER TEENAGE YEARS, I
14 THINK IN HIS HIGH SCHOOL YEARS, HE HAD SOME FRIENDS THAT
15 WERE A LITTLE ROUGH, YOU KNOW, AND WE WORRIED ABOUT THAT
16 AND WE PRAYED THROUGH THAT AND --- BUT I MEAN EVEN IN MY
17 LIFE I WENT THROUGH THAT KIND OF A THING.

18 THE COURT - I THINK THAT'S THE RIGHT OF PASSAGE.

19 MS. FRANCIS - RIGHT. BUT I BELIEVE, YOU KNOW,
20 HE CAME INTO HIS OWN AND HE REALIZED THOSE ARE NOT THE
21 KIND OF PEOPLE THAT HE NEEDED TO BE WITH, YOU KNOW, AND HE
22 CONTINUED ON IN SCHOOL, AND I JUST WANTED TO SAY THAT I
23 KNOW HE IS NOT A LIAR; HE'S NOT A THIEF. HE DOESN'T EVEN
24 --- HE DOESN'T REALLY THINK THAT WAY, YOU KNOW. THAT WAS
25 TOTALLY OUT OF CHARACTER FOR HIM EVEN TO HAVE A WEAPON.

1 I MEAN EVEN TO GET HIGH ON THIS ECSTASY. THAT'S NOT HIM,
2 YOU KNOW. HE'S JUST NOT THAT KIND OF A PERSON, YOU KNOW.
3 SO I JUST WANTED TO ASK MERCY AND JUST WANTED TO LET YOU
4 KNOW THAT HE IS A GOOD GUY. HE REALLY IS. YOU KNOW, IT'S
5 NOT BECAUSE I'M HIS AUNT AND I LOVE HIM SO, YOU KNOW, HE
6 REALLY IS A GOOD GUY, YOU KNOW, AND THIS IS KIND OF
7 UNFORTUNATE WHAT HE HAS GONE THROUGH.

8 THE COURT - WELL, I THANK YOU VERY MUCH FOR
9 TAKING TIME TO BE HERE.

10 ANY OTHER FAMILY MEMBERS THAT WOULD LIKE TO
11 ADDRESS THE COURT?

12 YES, MA'AM.

13 MS. BRACE - SIR, MY NAME IS FRANCIS BRACE, AND
14 I'M HIS GRANDMOTHER. THEY LIVE NEXT-DOOR TO ME. I WAS
15 THE ONLY ONE AT HOME. BUT FIRST I WANT TO SAY I'M JUST
16 SORRY FOR THE EXTRA EFFORT IT HAS TAKEN TO DEAL WITH HIM
17 APPROACHING HIS PLEA AND APOLOGIZE TO THE YOUNG LADY OF
18 THE COURT --- I MEAN OF THE TELEPHONE COMPANY.

19 THE COURT - MS. HORTON.

20 MS. BRACE - AND I ASK THE MERCY OF THE COURT,
21 BECAUSE I FEEL LIKE C.J., WHICH IS WHAT WE CALLED HIM,
22 DESERVES IT. I WAS THE ONLY ONE AT HOME THAT DAY. WHEN
23 I SAW HIM LEAVE, HE ASKED ME FOR SOME MONEY TO GET HIM
24 SOME GAS OR TO CARRY HIM --- I THINK, YES --- I CARRIED
25 HIM TO GET THE GAS, BECAUSE HE WAS UNEMPLOYED AT THE TIME,

1 AND HE WAS THERE WORKING ON HIS CAR. I NEVER DID REALLY
2 MISS HIM; BUT WHEN HE LEFT AND GOT BACK SHORTLY AFTER, THE
3 OFFICER WAS THERE, AND WHEN THE ARRESTING OFFICER GOT
4 THERE, OTHER PEOPLE, OTHER UNIT CAME AND AT FIRST HE DID
5 SAY, WELL, I DIDN'T DO ANYTHING, SO AFTER ALL THE
6 EVIDENCE, THE PHYSICAL EVIDENCE, WAS SHOWN TO US, HE NEVER
7 DID BECOME BELLIGERENT OR ANYTHING. HE DIDN'T LEAVE IN
8 HAND-CUFFS. DIDN'T TRY TO FIGHT ANYBODY. I JUST TOLD HIM
9 TO COOPERATE. HE WENT WITH THE OFFICER, BECAUSE THE
10 OFFICER SAID WE HAVE ENOUGH EVIDENCE TO CARRY YOU IN FOR
11 QUESTIONING, AND SHORTLY --- MAYBE A COUPLE OF HOURS AFTER
12 HE CALLED ME; HE SAID, BIG MA, HE SAID, I WASN'T EXACTLY
13 TRUTHFUL WITH YOU NOR THE ARRESTING OFFICER; HE SAID I HAD
14 DROPPED AN X TABLET, WHICH IS ECSTACY, YOU KNOW. AND I
15 SAID, WELL, DID YOU BUY IT; HE GAVE ME THE SAME
16 CIRCUMSTANCES THAT HE --- THE SOLICITOR GAVE YOU, THAT IT
17 WAS HALF A TABLET, AND WHEN HE TOLD ME THIS, WELL, IT MADE
18 ME UNDERSTAND WHY HE HAD THE ATTITUDE THAT HE DID WHEN THE
19 FIRST OFFICER CAME UP, IS BECAUSE --- I MEAN I COULD SEE
20 IT WAS NOT THE SAME C.J. THAT I KNOW, I CO-PARENTED,
21 BECAUSE HIS FATHER WAS NOT IN HIS LIFE. I CO-PARENTED HIM
22 FOR TWENTY YEARS. I KNOW THERE WAS SOMETHING DIFFERENT
23 GOING ON WITH HIM THAT DAY, EVEN THOUGH MOMENTARILY HE DID
24 DENY IT, AND WHEN HE DID CALL ME FROM THE DETENTION
25 CENTER, HE SAID I'VE CONFESSED, AND HE SAID I WANT YOU TO

1 FORGIVE ME, BECAUSE IT WASN'T ME. THOSE ARE THE WORDS HE
2 USED, AND IF ANYBODY DESERVES ANY CONSIDERATION, I FEEL
3 LIKE HE DOES BECAUSE TO HAVE A KID WHO HAS ALWAYS GIVEN ME
4 RESPECT --- I'VE NEVER HAD TO COME DOWN ON HIM FOR LACK OF
5 RESPECT. IT'S THE WAY WE RAISED HIM. AND WHEN HE DID
6 THIS, HE SAID HE --- EVEN HE COULDN'T BELIEVE IT, AND I
7 JUST WANT YOU TO KNOW THAT. THE ARRESTING TOLD ME, HE
8 SAYS, OUT OF MY NINETEEN YEARS IN THIS SERVICE, HE SAID
9 I'VE BEEN DRAGGING THUG AFTER THUG INTO THIS JAIL, AND HE
10 SAID I WANT YOU TO KNOW, MS. BRACE, THAT THIS IS NOT A
11 THUG I BROUGHT IN HERE TODAY. THOSE ARE THE WORDS HE
12 SAID. HE SAID THIS IS NOT A THUG I BROUGHT IN HERE. AND
13 HE SAID IF I CAN DO ANYTHING, LET ME KNOW. AND THIS IS
14 THE BIGGEST THING I FELT LIKE HE COULD'VE DONE WAS TO LET
15 ME KNOW WHAT TO SAY TO YOU.

16 THE COURT - WELL, THANK YOU, MA'AM. YOU'RE VERY
17 KIND OF YOU TO HAVE SHARED THAT WITH THE COURT.

18 MR. FRANCIS, IS THERE ANYTHING --- YES, SIR?

19 MR. LAWRENCE FRANCIS - MY NAME IS LAWRENCE
20 FRANCIS. I'M HIS UNCLE. AND I WATCHED CHRISTOPHER GROW
21 UP FROM THE TIME HE WAS BORN --- AS I SAY, I WATCHED HIM
22 GROW UP, YOU KNOW, FROM A CURIOUS YOUNG BOY TO A MOTIVATED
23 YOUNG MAN. I WATCHED HIM MAKE GOOD CHOICES IN HIS LIFE.
24 I WATCHED HIM SIDE-STEP OBSTACLES. I WATCHED HIM WATCH A
25 FRIEND GET IN TROUBLE WHILE INSTEAD HE WENT TO COLLEGE,

35

1 YOU KNOW, THOSE TYPES OF THINGS. I WATCHED HIM, YOU KNOW,
2 BY-PASS THOSE THINGS. AND I WAS, EXCEPTIONALLY, PROUD,
3 YOU KNOW, TO SEE HIM GET INTO CLEMSON, ESPECIALLY, OFF OF
4 AN ACADEMIC SCHOLARSHIP. I WAS WATCHING HIM PROGRESS WHAT
5 I CONSIDERED BETTER THAN ME, YOU KNOW, AND I WAS,
6 EXCEPTIONALLY, PROUD BECAUSE HE WAS CONSIDERING GOING INTO
7 THE FIELD THAT I'M IN, YOU KNOW, COMPUTER SCIENCE. AND I
8 WOULD HAVE TO SAY I WAS TOTALLY SURPRISED AND IT,
9 BASICALLY, BROKE MY HEART TO SEE HIM IN THIS SITUATION,
10 BECAUSE, YOU KNOW, BEFORE THIS, THE WORST THAT I WOULD
11 EXPECT FROM THIS YOUNG MAN JUST DUE TO HIS CHARACTER WAS
12 HE WOULD GET A BAD GRADE AND HAVE TO COME HOME AND TELL,
13 YOU KNOW, EVERYBODY THAT. THAT'S THE WORSE I WOULD EXPECT
14 OUT OF HIM, YOU KNOW. SO --- EXCUSE ME --- BUT I'M JUST
15 TOTALLY BLOWN AWAY BY THIS AND SURPRISED AND BLIND-SIDED,
16 AND I NEVER WOULD EXPECT THIS OF --- YOU KNOW, HIM NOT ---
17 YOU KNOW, I CAN UNDERSTAND WHEN HE SAYS HOW HE FELT --- HE
18 WASN'T WHO --- YOU KNOW, HE WASN'T HIS SELF AT THE TIME HE
19 DID THIS; I CAN TRULY BELIEVE THAT, BECAUSE THE PERSON
20 THAT'LL WALK INTO A PLACE WITH A GUN IS JUST NOT THE C.J.
21 THAT I KNOW, BY NO MEANS.

22 THANK YOU FOR THE OPPORTUNITY TO SPEAK.

23 THE COURT - THANK YOU VERY MUCH FOR COMING TO
24 COURT.

25 IS THERE ANYTHING THE VICTIM WOULD LIKE TO SHARE

1 WITH THE COURT?

2 MR. HOLLAND - YOUR HONOR, SHE INDICATED SHE DID
3 NOT, BUT I KNOW THAT YOU'RE ACCUSTOMED TO ASK IF THEY ---

4 MS. HORTON - NO.

5 THE COURT - AND AGAIN I THANK YOU FOR COMING AS
6 WELL AS I DO ALL THE FAMILY MEMBERS.

7 ANYTHING ADDITIONALLY, MR. BURTON?

8 MR. BURTON - NO, YOUR HONOR.

9 THE COURT - MR. FRANCIS?

10 MR. FRANCIS - I'D JUST LIKE TO APOLOGIZE AGAIN
11 TO MS. HORTON. I'M SORRY. I REALLY AM.

12 THE COURT - WELL, IT'S CERTAINLY A LOSE, LOSE
13 SITUATION, AND I REGRET THAT THIS TERRIFIC ERROR IN
14 JUDGMENT CAUSED YOU TO COMMIT SUCH AN UNFORTUNATE EVENT,
15 BUT YOU WERE FORTUNATE IN THAT YOU HAD AN ATTORNEY WHO WAS
16 ABLE TO GET YOU THE BARE MINIMUM THAT THE LAW ALLOWS. IF
17 THERE'S A BRIGHT SIDE TO THE CLOUD, THAT'S IT.

18 THE SENTENCE OF THE COURT IS --- IN 2002-GS-29-
19 562 --- THIS IS THE ARMED ROBBERY --- THE SENTENCE OF THE
20 COURT IS TEN YEARS WITH CREDIT FROM --- FOR ALL TIME THAT
21 HE'S BEEN IN JAIL UP UNTIL NOW. AND 2002-GS-29-563 ---
22 THIS IS POSSESSION OF A WEAPON DURING THE COMMISSION OF A
23 VIOLENT CRIME --- THE SENTENCE OF THE COURT IS FIVE YEARS
24 TO RUN CONCURRENT WITH THE TEN YEARS.

25 MR. FRANCIS, SOMEONE AS BRIGHT AND INSIGHTFUL AS

37

1 YOU, APPARENTLY, ARE CAN DO MORE WITH THEIR TIME
2 INCARCERATED THAN CERTAIN OTHER INDIVIDUALS WHO HAVE NOT
3 BEEN AS BLESSED BY NATURE WITH WHAT IS, APPARENTLY, A
4 GREAT MIND. SO I JUST ASK YOU, WHEN YOU GET THERE, WHEN
5 YOU GET INTO THE DEPARTMENT OF CORRECTIONS, FIND OUT
6 WHAT'S AVAILABLE. FIND OUT WHAT RESOURCES ARE AVAILABLE
7 AND GO AFTER THEM YOURSELF, BECAUSE DON'T WAIT FOR THEM TO
8 COME AND OFFER THEM TO YOU. USE THE GREAT MIND THAT
9 NATURE HAS GIVEN TO YOU. FIND OUT WHAT'S AVAILABLE SO
10 THAT YOU CAN ACCOMPLISH AS MUCH AS YOU CAN WHILE YOU'RE
11 INCARCERATED, AND I OFFER YOU ALL GOOD LUCK WHILE YOU'RE
12 INCARCERATED.

13 MR. FRANCIS - I APPRECIATE IT, SIR.

14 THE COURT - YES, SIR.

15 MR. BURTON - THANK YOU, YOUR HONOR.

16 (END OF TRANSCRIPT)

17

18

19

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CERTIFICATE

I, SHIRLEY G. BROOM, THE UNDERSIGNED COURT REPORTER, HEREBY CERTIFY THAT THE FOREGOING 37 PAGES CONSTITUTE A TRUE RECORD OF PROCEEDINGS TAKEN IN THE CASE OF STATE OF SOUTH CAROLINA VS. CHRISTOPHER JOSEPH FRANCIS, AS TAKEN BY ME AT THE TIME AND PLACE STATED.

I DO FURTHER CERTIFY THAT THE PERSONS WERE PRESENT AS STATED, THAT I AM NOT OF COUNSEL FOR, RELATED TO, OR IN THE EMPLOYEE OF ANY OF THE PARTIES TO THIS ACTION AND THAT I HAVE NO INTEREST WHATSOEVER IN THE OUTCOME OF THIS CASE.

THIS THE 2nd DAY OF July, 2003.


SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

County of LancasterChristopher Francis #287847
Full name and prison number (if any) of Applicant.

vs.

State
Name of Respondent.In the Court of Common Pleas
2003-CP-24-500APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten 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 this 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 Lieber Correctional Institution WC-166 PO Box 205
Ridgeville, SC 29472
2. Name and location of Court which imposed sentence Court of General Sessions
Lancaster, SC 29720
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Armed Robbery
 - (b) Poss. of a Weapon During Commission of a Violent Crime
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 10/9/02 10 years
 - (b) 10/9/02 5 years concurrent to 10 years
 - (c) _____

(a) after a plea of guilty ☒

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No

7. If you answered "yes" to (6), list

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) Appeal not filed within 10 day period

(b) _____

(c) _____

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

(a) Ineffective assistance of counsel

(b) _____

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Next page

(b) _____

(c) _____

10.(a) I only met with Mr. Barton once after sitting in the county jail for five months and I did not see or hear from him again until two months later on October 8th, 2002 in the Lancaster County Courthouse. He said he would do things, such as getting back in touch with me + getting me a preliminary hearing, that he did not do + never told me why these things were not done. When trying to convey the details of my case to him he brushed them off as not important. He neglected to read the documents in my case folder. During my trial he advised that promises made to me by the police in exchange for my full cooperation were irrelevant. He filed my appeal late claiming he recieved it on October 24 2002 when I wrote it on October 9th immediately after my trial + it was mailed out October 10th by the officers at the county jail. He said he would see if the solicitor's office would give me a better plea but he did not. He never looked at my case again until October 8th in the Courthouse. He made no effort to suppress the evidence against me mainly because he would not listen to what I had to say + did

OVER →

not read the documents in my file. He made no attempt to find out what types of pleas the solicitor's office usually offers. Basically he did not assist me to the fullest.

...with respect to this conviction

43

- (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 submitted 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. _____
- ii. _____
- iii. _____
- iv. _____

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

i.

ii.

iii.

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

i.

ii.

iii.

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth ground, and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective assistance of counsel: Unaware of circumstances

(b)

(c)

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

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

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Ross A. Burton P.O. Box 330 210 S. Vanderhorst St.
Winnsboro, SC 29180

ii.

iii.

(b) the proceedings at which each such attorney represented you:

i. My plea, trial, and sentencing

ii.

iii.

18. State clearly the relief you seek in filing this application.

I would like my conviction and sentence overturned and a new plea from the solicitor's office.

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

No

Ch Fran Ch Fran

My Commission Expires: 8/20/02

CL Fran CL Fran
Applicant

Mr. William Currier

8/20/04

STATE OF SOUTH CAROLINA)

County of Lancaster)03-CP-29-960
IN THE COURT OF COMMON PLEASChristopher Francis # 287847)

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

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
Cooper B-27 PO Box 205 Ridgeville, SC 29472
2. Name and location of Court which imposed sentence Court of General Sessions Lancaster, SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) Armed Robbery 2002-65-29-562

- (b) Poss. of Weapon During Commission of Y/C 2002-05-29 - 563
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Oct. 9th 2002 10 years
- (b) Oct. 4th 2002 5 years concurrent
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) Appeal was not filed within 10 days.

- (b) _____
- (c) _____

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

- (a) Ineffective assistance of counsel
- (b) Violation of 4th Amendment
- (c) _____

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

- (a) Next page
- (b) Next page
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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

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

11(a) Mr Burton failed to adequately my case. I only met with him once prior to my trial & sentencing. Our meeting lasted approximately 15 minutes. When I initially asked him what he knew about my case he said he didn't know anything. When I proceeded to tell him the details of what happened he brushed me off, saying he was only interested in the "facts" & the facts were that I signed an incriminating statement. He only wanted to know whether or not I would accept a plea of 10 years, emphasizing that armed robbery carried 30 years. I told him I did not like that plea & he said he would ask if they would let me plead to a non-violent charge. He also said he would get me a preliminary hearing for the following week to handle a bogus charge on my record & that he would be in touch soon. All of this was after 5 months of no direct communication between us. I didn't see or hear from Mr. Burton again until 2 months later in the court room when I was forced into pleading guilty by Mr. Holland. Mr. Burton completely ignored the things I told him during our meeting. He couldn't have possibly read the documents contained in my file because if he had he would have at least

made some sort of inquiry into the circumstances surrounding my detention + interrogation. Nor did he share any of this false information with me as I was not made aware of the existence of these documents until April of 2003. As a result of his negligence he never made a motion to suppress evidence that would have most certainly been suppressed.

(b) My detention violated my 4th Amendment rights due to the fact that I was taken into custody at my home, transported to the police station for further questioning, + then interrogated by Mr. Hilton until an incriminating statement was obtained. Mr. Bailey had no probable cause to order me taken in for questioning + Mr. Hilton's reasonable suspicion to initially detain me is highly questionable. Multiple officers converged on my residence under the instructions of Mr. Hilton. Upon arriving they left their vehicles + surrounded me in my drive way while I was accused + questioned by Mr. Bailey. Mr. Bailey asked me could he search my car, after he had already walked around it looking in the windows. Him + another officer took out two

rifles + all my hats from among the contents of my car. Mr. Bailey asked me about the rifles + said that the guy they were looking for had a rifle. I replied that things didn't look to good for me + he said that they sure didn't. I was under the impression that I was being charged with a crime. Mr. Bailey told me that I would have to go in for questioning but he never said I was under arrest. I verbally protested + he said if I was clean I didn't have anything to worry about. He told me to go with Officer Russell + when I tried to go back in the house to get a coat they told me I couldn't go. Mr. Bailey said my grand mother could go get it but not me. She got me my coat, Officer Russell put me in the back of the police car, without handcuffs, + he took me to the police station. The other officers stayed at my home for approximately 25-30 minutes after I was taken away trying to get consent from my grand mother to search my house which she did not + could not give. They waited until my mother returned home + told her they followed me from Heath Springs + had me in custody so she consented to search the

house. It is clear from the actions of the officers involved & the contents of Mr. Hilten's own report that I was taken away without probable cause for the purposes of getting me to confess to a crime that they could not legally charge me with & to get me away from the house so they could persuade my relatives to search my home. It is clear from the actions of the officers involved that they never intended on leaving my home without me & that they knew they had no probable cause to arrest me or charge me with a crime.

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) Failure of my council to bring them up.
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Mr. Ross Burton PO Box 1809 Lancaster, SC 29721
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Mr. Burton represented me during my plea, trial, & sentencing.
 - ii. _____
 - iii. _____

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

All charges dismissed.

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Lancaster)

VERIFICATION

I, Christopher Francis, 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.

CF

SWORN to and subscribed before me this 3rd
day of October, 2003.

Jay L. Cross (L.S.)
Notary Public

My Commission Expires: 2-18-2004

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

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

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

Christopher Francis
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of October, 2003.

My L. Cross
Notary Public

My Commission Expires: 2-18-2004

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
	)	
	)	2003-CP-29-500
	)	
Christopher Francis, No. 287847,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 22, 2003, 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 Lancaster County Clerk of Court. The Applicant was indicted at the April 2002 term of the Lancaster County Grand Jury for armed robbery (02-GS-29-562) and possession of weapon during commission of violent crime (02-GS-29-562). He was represented by Ross Burton, Esquire. On October 9, 2002, the Applicant pled guilty as indicted. He was sentenced by the Honorable Kenneth G. Goode to confinement for a period of ten (10) years and five (5) years concurrent.

On October 24, 2002, the Applicant served the State with a Notice of Appeal. On November 6, 2002, the South Carolina Court of Appeals ordered the appeal dismissed for failure to timely serve the notice of appeal. The Remittitur was issued on November 22, 2002.

Attached herewith and incorporated herein by reference are the records of the Lancaster

County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, his guilty plea transcript, his appellate records and his application for PCR.

II.

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

1. Ineffective assistance of counsel; and
2. Violation of Fourth Amendment.

III.

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

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, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient.

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

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

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State 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.

V.

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

VI.

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

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MOLLY R. CRUM
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Columbia, South Carolina
June 14, 2004.

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

)
) IN THE COURT OF COMMON PLEAS

2003-CP-29-500

Christopher Francis,

Applicant,

vs

State of South Carolina,

Respondent.

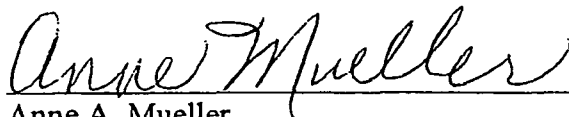
)
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) AFFIDAVIT OF SERVICE BY MAIL
)
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)
)

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:

Brian Robinson, Esquire
P.O. Box 61110
Columbia, SC 29260

Mary K. Sherman, Esquire
301 Stoneridge Drive
Columbia, SC 29210

DATED this 29th day of June, 2004.



Anne A. Mueller
Legal Assistant for Respondent

In the Court of Common Pleas
Lancaster County, South Carolina

Christopher Francis, Plaintiff

Versus

State of South Carolina, Defendant

Case Number: 200³~~8~~-CP-29-⁵⁸⁰~~973~~

Heard on Wednesday, February 28, 2007
Before the Honorable Brooks P. Goldsmith

Appearances:

Prentiss Counts
Attorney General's Office
Post Office Box 11549
Columbia, SC 29201

William R. Sims
105 S. Hampton Street
Kershaw, SC 29067

Reported by:

Janet M. Rich
1992 Downey Street
Rock Hill, SC 29732

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I N D E X

3 Christopher Francis

4 direct examination 5

5 cross examination 31

6 Sundra Witherspoon

7 direct examination 39

8 cross examination 44

9 Ross Burton

10 direct examination 45

11 cross examination 48

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1 Ms. Counts: Your Honor the State calls Christopher
2 Francis. 2003-GS-29-500. Mr. Francis was indicted in April
3 of 2002 for armed robbery and possession of a weapon during
4 the commission of a violent crime. He plead guilty on
5 October 9, 2002. He was represented by Ross Burton. Judge
6 Goode sentenced him to ten years for armed robbery and five
7 years for the weapons charge. Those were run concurrent that
8 was a negotiated ten year deal. His appeal was dismissed for
9 failure to timely serve notice on November 22, 2002. The
10 remittitur was issued on November 22, 2002. That's all.

11 Mr. Sims: Your Honor, if I may. The attorneys met
12 briefly with Your Honor in chambers this morning. Today
13 Mr. Francis has brought with him a document that he entitles
14 a memo of support of post conviction relief. I have provided
15 the state with a copy of that. The clerk has made a couple
16 of copies and we appreciate that. He does want to submit
17 that to the court. He does want to testify to some of the --

18 The Court: Sure.

19 Mr. Sims: ---facts and circumstances that are in
20 that brief.

21 The Court: All right.

22 Mr. Sims: So if I can submit that at this time.

23 The Court: All right. Thank you. You may call
24 your first witness.

25 Mr. Sims: Call Mr. Francis.

1 Christopher Francis, being first duly
2 sworn, testified as follows:

3 Mr. Sims: May it please the court.

4 The Court: Yes, sir.

5 Direct examination by Mr. Sims:

6 Q. State your full name?

7 A. Christopher Joseph Francis.

8 Q. Try to speak up so we can all hear and the court
9 reporter can take it down. Mr. Francis, how old are you?

10 A. I'm 26 right now.

11 Q. 36?

12 A. 26.

13 Q. 26. Where are you currently incarcerated?

14 A. Evans Correctional institutional.

15 Q. Where is that?

16 A. Bennettsville, South Carolina.

17 Q. What level security is that facility?

18 A. It's level two.

19 Q. What does that mean?

20 A. Level two. You have 8 counts, level two yards, and
21 level three yards.

22 Q. You heard the attorney general just state why we are
23 here today, you understand all that?

24 A. Yes, sir.

25 Q. Okay. When were you arrested for this crime?

1 A. March 13, 2002.

2 Q. And you were appointed the Public Defender Office in
3 Lancaster County at that time which was Mr. Burton. He was
4 appointed to represent you, is that correct?

5 A. Well, at first it was Mr. Loftis, but I think they
6 said he went to be a public defender for the Federal Courts
7 and then Mr. Burton came on June or July something like
8 that.

9 Q. But you were appointed the public defender?

10 A. Yeah. Yeah.

11 Q. And it ended up being Mr. Burton?

12 A. Uh-huh.

13 Q. We have told the Judge that you have some issues you
14 want to raise today, but let me ask you a few quick questions
15 about Mr. Burton's representation of you before we get into
16 that, okay?

17 A. Uh-huh.

18 Q. How much time did Mr. Burton spend with you between
19 the arrest and the day that you plead guilty?

20 A. Well, I wrote him a letter after about five months.
21 I sat in the county seven months altogether, so around August
22 I wrote him a letter to ask him to come see me. He came and
23 I didn't see him again until, that was October the 8. I
24 plead on October 9. I saw him on October 8. They brought me
25 up here and I didn't want to plead and then they brought me

1 back the next day. That was the only time I saw him.

2 Q. So did you just talk to him that one time then?

3 A. That one time.

4 Q. Did you say he came to see you at the jail?

5 A. Yeah, he came to see me at the county jail.

6 Q. Just that one time?

7 A. Uh-huh.

8 Q. Did anybody else from his office, his secretary or
9 investigators or anybody else come?

10 A. No, sir, just him.

11 Q. Did y'all have a preliminary hearing in this case?

12 A. No, sir.

13 Q. Did you ask him about that or did he say anything to
14 you about having a preliminary hearing?

15 A. We were talking and when he came to see me because
16 they had bogus gun charge that was supposed to have been
17 throwed out way back in 2001 still on my record and that's
18 what I thought, that's why I was asking about a preliminary
19 hearing for that but I wasn't, at the time because I didn't
20 know anything about the law, I know a little something now,
21 but I wasn't aware that had been too late for a preliminary
22 hearing and all that. I'm just going by what I hear so.

23 Q. So there was no preliminary hearing?

24 A. No.

25 Q. Really no discussion of a preliminary hearing?

1 A. As far as with these charges here?

2 Q. Right.

3 A. No. He said something about preliminary hearing for
4 that bogus gun charge but they did throw it out. It was
5 bogus gun charge from 2001, but they throw it out.

6 Q. How much time would you say that Mr. Burton spent
7 with you talking to you all together between the time he was
8 appointed, his office was appointed to you and the time of
9 the guilty plea?

10 A. When he come and saw me, seen me at the county it
11 was about, at least 15 minutes, maybe 20. And when we were
12 in the, when we came here, we spoke in the back. Before we
13 came up front, we spoke and my mother and my grandmother was
14 there, we were in the back, back chambers back here to my
15 right over here.

16 Q. And how much time was that that day, do you
17 remember?

18 A. I really can't. It was at least 30 minutes. It was
19 at least 30 minutes we spent.

20 Q. So altogether may be about an hour, 15 or 20 minutes
21 at the jail, or then 30 minutes or so here, an hour or a
22 little less, is that fair to say?

23 A. Altogether, yes sir, that's approximately right.

24 Q. And this is the other thing we are going to get
25 into, but as far as you know did Mr. Burton file any kind of

1 pre-trial motions on your behalf?

2 A. No, sir. No, sir.

3 Q. Regarding the testimony or evidence or anything?

4 A. No, sir.

5 Q. Okay. Did Mr. Burton go over with you what the
6 maximum and minimum sentences were for the crimes that you
7 had been indicted for?

8 A. He went through all that. I can't say nothing as
9 far as went over all that. I had a problem, that's the only
10 record of the transcript as far as me not being able to see
11 him, but as far as everybody telling me anything, I was like
12 why bother. But as far as writing things out, there was
13 nothing nobody can do and the solicitor told me that if I
14 didn't take the plea they was going pick 12 and I wasn't
15 ready to go to that at that time. So as far as everything
16 else he was on point with it. I knew about 85 percent. You
17 knew about all that. I knew everything. The only problem I
18 have today is the motion to, suppression motions weren't
19 filed, pre-trial. That's the only problem I got with him.

20 Q. So your testimony to this court so far is that you
21 don't have any problem with Mr. Burton's representation of
22 you other than the fact that he failed to make certain
23 pretrial motions?

24 A. Yeah, I had problems as far as me not seeing him
25 enough then, you know, but that kind of pertain to issues I'm

1 raising today, you know, because I didn't really talk to him
2 enough and I didn't feel he was really listening to me when I
3 did tell him what was going on. I didn't know anything was
4 wrong with it but he's my lawyer, I'm going to tell him
5 everything that happened and so.

6 Q. So other than that time factor then and the issues
7 that you are raising today regarding the suppression of
8 evidence, the fourth amendment type cases, are those the only
9 things that you want to talk to as far as Mr. Burton's
10 representation of you?

11 A. Yes, sir. Yes, sir. Everything else he was cool.
12 He was straight. That's the only thing bad about it.

13 Q. And you have prepared and studied some of these
14 issues since you've been incarcerated?

15 A. Oh, no doubt. No doubt. All the time.

16 Q. Go ahead and tell the judge briefly if you can what
17 those issues are that you would have liked Mr. Burton to
18 investigate and perhaps make motions and so forth either
19 before the trial or at the trial if there had been one?

20 A. Yes, sir. Well, first things first. We have a
21 small problem because on my transcript it has the solicitor
22 Holland he's relaying the facts of what happened and I'm not
23 saying that he relayed them in a way that kind of twists,
24 twist it and put it in a different light and make it sound
25 one way when it was really another way. That's what he did.

1 But I can't say he out right lied because he didn't right out
2 lie, but he kind of twisted it and made it sound a certain
3 way which he wasn't in the position to do that because we
4 wasn't there. We have two incident reports that come from
5 the police officers, that's them talking and what happened I
6 think, and so before we can even get to the fourth amendment
7 issues we got to know what facts we dealing with that, that's
8 on my transcript, that's not the facts of the case. That's
9 not even what the police said about the situation, so we are
10 going to dealing with the incident reports, there's two of
11 them, and I'd like to put those incidents reports in as
12 exhibits first and foremost.

13 Ms. Counts: I think they may already be part of the
14 record. Let me check.

15 A. They should be.

16 Q. Should be part of the court's file already?

17 A. Okay.

18 Q. Let's see if they are then we can refer to it.

19 The Court: You believe the incidents reports are
20 part of the.

21 Ms. Counts: No, Your Honor. I was thinking about
22 the arrest warrants.

23 The Court: That's what I see is the arrest
24 warrants.

25 A. There's two separate incident reports. I received

1 those from Mr. Burton from the Public Defender Office.

2 Q. Hold on just a minute. That's okay.

3 Ms. Counts: Your Honor, I object to them coming in.
4 We don't have the officer hear and the incident report
5 contains hearsay.

6 Mr. Sims: Your Honor, again, we are just proffering
7 this. I don't think that it's necessary to have the actual
8 officer hear. We are proffering not for the truth or untruth
9 of these statements, but for the fact that apparently
10 Mr. Burton did not review or see these statements beforehand.

11 The Court: Say that again. You are saying that
12 you are offering them because Mr. Burton didn't see them?

13 Mr. Sims: We are offering them because it goes to
14 the question of whether Mr. Burton reviewed these before he
15 made the motions or instead of making motions about these
16 statements. Your Honor, my client may have something to add
17 to that.

18 A. As far as those incidents reports right there, from
19 my understanding that's just as good as testimony seeing as
20 how this is a civil proceeding and they wouldn't have to be
21 here and I'm not attacking the veracity of those statements.
22 I want to clarify some of the things that weren't
23 specifically said by the record. That record reflects more
24 specifically what was said. I've got the evidence to clarify
25 here, but I'm not coming to play he/she said. That's what

1 the police officer said. That's what you got to hold them to
2 because they are not going to be able to come back in here
3 and say anything other than what they said on the incident
4 reports. And number two, as far as I have filed Federal
5 habeas corpus proceeding, right, and I had entered a brief
6 and objection motions for respondent's return. She might not
7 be aware of it but Mrs. Crum is, but I haven't deal with her.
8 She might not be aware of it but her office was served with
9 these documents, but those incidents reports, so this is not
10 brand new. I've been making the same arguments from the
11 beginning basically. And that is the record. I got that
12 from Mr. Burton. I have the envelope that it came in. I got
13 it on October 4, 2003, from the Public Defender Office. He
14 may not recall me sending him that, but I wrote him a letter
15 and he promptly sent me, all the paperwork in my file and
16 everything.

17 The Court: Help me out one more time and explain to
18 me the significance of the --

19 Mr. Sims: Your Honor, let me back up if I may and
20 let's submit it this way. Without actually placing them in
21 evidence, allow my client to go ahead and testify about the
22 discrepancies that he, in his view, are in the record of the
23 case.

24 A. I'm not saying that there's any discrepancies. I'm
25 not coming to challenge the veracity of those statements that

1 they are making in the incident reports. We need to set the
2 facts straight so we can get to the fourth amendment issues.
3 Got to have the facts before we can decide whether or not
4 there were fourth amendment violations. Got to have a set of
5 facts to work with. My testimony is irrelevant if my
6 testimony is different than that, but I'm not coming to
7 challenge the veracity. Some things are different from what
8 actually happened but at the same time -- it's close enough
9 to the truth that we can get to the truth of the matter. So
10 that's why we need to get that into the record.

11 Mr. Sims: Again, Your Honor, I would just suggest
12 we let him testify about his issues, if there are any, with
13 the incident reports that Mr. Burton apparently did not bring
14 up at the time of the, his representation of my client today.

15 The Court: Ms. Counts.

16 Ms. Counts: Your Honor, we just argue that the
17 incident report is hearsay and he is bringing it up to try to
18 prove the truth of the matter asserted because this is the
19 factual scenario that he wants as he challenges Mr. Holland's
20 recitation of the facts. This wouldn't have been admissible
21 at court. We doesn't feel it's admissible today.

22 The Court: Mr. Sims, let me see if I understand.
23 Your client is saying Mr. Holland's statement of the facts
24 made in court to which he plead to were inaccurate and that
25 he wishes to use these incident reports to establish that?

1 Mr. Sims: That is correct.

2 A. That he is close enough, sir.

3 Mr. Sims: But again, Your Honor, I would submit
4 even if we don't place these into evidence of the case, that
5 he be allowed to comment on them in his testimony.

6 A. Excuse me, Your Honor. I'm not saying that, I'm not
7 challenging it. I just want the facts straight because
8 Holland wasn't there. He's the solicitor. He's not a police
9 officer. The police officers were there. The only way he's
10 going to be able to have the information on what happened
11 because he had those incidents reports. He take the incident
12 reports and make it sound the way he wants them to sound. We
13 need to talk here and get it from the horse's mouth. Holland
14 is not there. He's not in the position to tell the facts of
15 the case. He wasn't there. He's solicitor. He works here.
16 He's not in a car driving around arresting people. That's
17 not what he does. He's a solicitor. That's why.

18 The Court: How many incidents report from you have
19 you got.

20 Mr. Sims: Two.

21 A. Two separate ones.

22 Ms. Counts: Your Honor, we would also argue that
23 it's in the, the transcript speaks for itself. After
24 Mr. Holland gave the facts Mr. Francis took exceptions to
25 some of those facts.

1 A. I did. I did take exception to them but.

2 Ms. Counts: So he was already given a chance to try
3 to correct it.

4 A. I'm not saying that what he saying is wrong, but,
5 see, the reason I'm bringing this up is because in the
6 Federal proceedings the state had the, the Federal habeas
7 corpus I filed, they filed a return on habeas corpus petition
8 and they was supposed to have a defense to my claim, supposed
9 to give a defense to my claim and their defense was based on
10 the facts as presented in the transcript that it would, it
11 would have been probable cause but those facts are -- Holland
12 was saying things that the incident reports didn't even say
13 themselves and I'm just coming to clarify that. We are going
14 to hear it from the horse's mouth instead of dealing with
15 what Holland said because what Holland said ain't even, is
16 not even what the incident reports said. That's why I want
17 to bring them into evidence because that was his foundation,
18 what he was saying, but he wasn't saying, he twisted it and
19 put it in his own words.

20 The Court: I will overrule the objection and allow
21 the incident reports to be received into evidence.

22 Mr. Sims: Thank you, Your Honor.

23 (Plaintiff's exhibits one and two incidents reports
24 received into evidence.)

25 Q. Mr. Francis, go ahead and relate to the judge your

1 comments and discrepancies between your, between what the
2 solicitor said that day and what's in the incident reports?

3 A. As far as what the solicitor said in the incidents
4 report he made it sound like it might have been a high speed
5 chase incident or something because he said that, if I
6 remember right, he said, he said that, he made a comment
7 that, how did he put it, that officer saw me leaving the
8 crime scene and kind of making it seem like it was an
9 incident where he saw me leaving the crime scene and followed
10 me to my home when that wasn't the case. The officers didn't
11 say that. The officers said that they saw me basically a
12 third of a mile away from my house. Probably from here to
13 Wachovia away from my house, Wachovia down the street, away
14 from my house, around the corner, near the intersection of
15 Tyron and Beacon Road, that's where the officers say they saw
16 me. That's 8 miles away from the crime scene and I have the
17 maps that I'd like to enter into evidence to show the
18 veracity of my statements right here on that. I also want to
19 state also that Officer Bailey claimed that he saw me, that
20 he passed me when I was going one way and going another, and
21 that he saw me, but he didn't follow me. That's on the
22 record. Officer Hilton called me out at my home and Officer
23 Hilton, even in the incident report, states that when the
24 call came in for the armed robbery, the call came in, they
25 was at the county jail and that they left the county jail.

1 He went one way toward Bufort Crossroads area, the
2 intersection of 522 and Highway 9, and that Bailey and
3 Officer Russell went on Potter Road towards, you know what
4 I'm saying, Heath Springs and so the intersection were Hilton
5 was headed to, that's seven miles away from the area where I
6 lived at, so he was seven miles away. Nobody came to my
7 house, like I said on transcript and it's on the record,
8 until like 30 minutes after the crime happened. So it wasn't
9 a high speed chase or nothing like that. I just want to
10 clarify that because that's a fact. That is a fact. And I
11 have the documents I got off Yahoo maps. I got my people to
12 download and stuff to show the distances officially for the
13 record.

14 Mr. Sims: Your Honor, I have not reviewed these, he
15 did not tell me about it, but if it's straight off the
16 computer we would submit those as evidence.

17 A. Straight off the computer, Yahoo map.

18 The Court: Without objection.

19 Ms. Counts: No objection.

20 (Plaintiff's exhibit three admitted into evidence.)

21 Q. Please continue.

22 A. What we dealing with right here is a scenario where
23 the police didn't have probable cause to arrest me and police
24 officers themselves have pretty much admitted to this fact
25 but we are going go into that.

1 Q. Again, Mr. Francis, this goes to your information
2 that you have in your brief that you have provided to the
3 court today?

4 A. Yes, sir. I enumerated and put in detail what the
5 case law and everything as far as in my brief.

6 Q. And, of course, His Honor will have the opportunity
7 to read that or he may already be reading it, I'm not sure,
8 but instead of reading it, go ahead and summarize your points
9 of it?

10 A. Yes, sir.

11 Q. If the court will allow, just go ahead and go down,
12 I believe you have five issues, go ahead and go down those
13 succinctly as you can?

14 A. Yes, sir. And the officers never claimed first and
15 foremost that they had probable cause to arrest me. And from
16 the facts of the case it's clear and evidence that they
17 didn't. The description was given as a black male in a white
18 older model Oldsmobile, two door Oldsmobile, and they said
19 the black male had on a long black coat or cape. He had a
20 shotgun, rifle, or long gun or something. One incident
21 report says a rifle. The other one says a shotgun. But so
22 he had a long gun. He had some gloves and his face was
23 covered up with a white bandana and he had a black hat on,
24 didn't say what type of hat, just some type of hat, but this
25 was the description that officer said that they had when they

1 left the sheriff's office, what came over the radio. So
2 eventually it lead to my house, to my home. Okay. I'm not
3 challenging the veracity of the initial seizure because that
4 was, I was received under the forth amendment under Terry
5 versus Ohio. When Officer Hilton came to my house I went out
6 and confronted him to find out what he was doing out there.
7 So when I came out to confront him to see what he was doing
8 out there, I had my hands in my pocket. He told me to take
9 my hands out of my pocket. All of this is on the record in
10 the transcript, Hilton says this himself, and so he told me
11 to take my hands out of my pocket. He patted me down for a
12 weapon, to see if I had any weapons, and he states that he
13 told me that I was a focus of a armed robbery investigation
14 and in the meantime he had already called other officers in
15 the area out to my home. This was 30 minutes after the
16 crime, approximately 30 minutes. So he calls them all out
17 there and from the record that I can show there was at least
18 five, there was more than that, but I can show from the
19 record and proven that it was at least five officers there,
20 at least. It was Russell, Bailey, Hilton, Jeff Bowers, and
21 another guy I can't read his name, that's why I'm not in the
22 position to say what his name was because I can't read it.
23 It's not legible on the documents that I have. But, but it
24 was at least five officers, at least five, and under the
25 fourth amendment I would have been seized at that point, but

1 that would have been a justifiable seizure, because it's
2 justifiable under reasonable suspicion and from my studying
3 of the law, the case law on the subject, they would have had
4 reasonable suspicion to initiate an initial seizure.

5 Ms. Counts: Your Honor, I just had a missed call.
6 Do you want me to call back and see if it was Mr. Stegman.

7 The Court: Certainly. Let's take a short break
8 while the attorney general finds out about the status of the
9 next case or another case this morning.

10 (court's in recess.)

11 (Court resumes.)

12 Q. Mr. Francis, go ahead and continue where you were
13 please.

14 A. Yes, sir. As I was saying the description that was
15 given by the witness was vague. So they had vague
16 description to go off, number one, and when the police
17 officers, when all of them finally got there, officer Bailey
18 asked to search my car. I reluctantly gave him consent to
19 search my vehicle but before that, even that's on the record,
20 he says that he saw the contents of my vehicle in it, he saw
21 inside my car and by the way my car is a white Buick Regal,
22 that's at variance with the description given by the witness
23 as being an older model white two door Oldsmobile, two
24 different cars. I mean, it's kind of sort of close, that
25 would have been enough for reasonable suspicion purposes but

1 as far as probable cause? No. No. And so they saw two
2 rifles in the car. Well, it was a black .22 rifle, like a
3 little, little, little rabbit hunting gun, a little boy's
4 rifle and a old rusted over shotgun. It was old and rusted
5 over. You can look at it and tell it didn't even work.
6 Those was in the back seat of the car. My car was junky.
7 There was a bunch of stuff in there. There was a water pump,
8 a magazine, a jacket. They claim, they say on the record
9 that they got a couple of hats out of my car. I think it was
10 four. They took all the hats. They saw white bandana in
11 there. That's irrelevant to anything because young black
12 males, we wear them. It doesn't necessarily mean it's gang
13 affiliated, but it's like a accessory like a hat, dude rag,
14 whatever. It's like a accessory like a woman wear earrings.
15 Might wear a bandana around your hand, on your pants, hanging
16 out your back pocket, or whatever, you know, it was in the
17 car and. So looking at those facts there wasn't and looking
18 at them objectively as we have to under the case law, as I
19 Detailed in my brief, my memo and brief, that would have
20 constitute probable cause.

21 And number two on this issue, the police officers
22 never claimed that they had probable cause to arrest me until
23 after they had obtained incriminating statement from me.
24 According to the police officers in the two incident
25 reports -- well, one of them is in detail and the other one

1 is a summary, according to the detailed incident report,
2 Hilton says once they searched my car, they asked me to go to
3 the police station and they said, and they say that they told
4 me that that was to be completely voluntary and they told,
5 and they said that I consented to go. Now under the law, as
6 a matter of law, that's, and the Supreme Court announced that
7 in Brown versus Illinois and Delaware versus New York which I
8 detailed in my brief and cited and quoted that when police
9 officers send that type of, giving that type of explanation
10 for their actions, that constitutes a admission that they
11 didn't have probable cause. It's a virtual concession by the
12 police officers that we are really not, seeing as how they
13 was there and under the fourth amendment jurisprudence, we
14 determined probable cause by, it's based on the officers
15 assessment of the situation and they assessed and according
16 to them, they assessed that I didn't have probable cause.
17 Well, they didn't have probable cause to arrest me. That I
18 wasn't being forced to go anywhere. That's what they are
19 saying. That's what this incident report says. I wasn't be
20 forced to take to the police department. They asked me to
21 go. And so that's what, they saying that they asked me, but
22 and that's a virtual concession that they didn't have
23 probable cause.

24 Now seeing as how they didn't have probable cause to
25 arrest me when they supposedly asked me to go to the police

1 station, that converted to initial valid seizure under Terry
2 versus Ohio and it's prodigy into an illegal arrest and the
3 controlling authority on that issue is Florida versus Royal.
4 I think that should be 103 Supreme Court 1319. And they go
5 on to give their reasons for why they made that decision and
6 even though the police officers claim they give me basically
7 Miranda warnings, Terry, not Terry but Royal and Brown, Brown
8 versus Illinois and Delaware versus New York, they are
9 unequivocal when they state that, they are unequivocal when
10 they state that giving Miranda warnings can't cure the taint
11 of an unconstitutional seizure, so even though they
12 supposedly asked me to go to the police station, that doesn't
13 cure the taint because the question itself is invalid under
14 Royal and they simply state that in Royal and that's detailed
15 in my brief. And so that converted the whole incident right
16 there to a fourth amendment violation.

17 That's the first fourth amendment violation, but
18 even though it's the first one, it's somewhat moot because
19 the second one is definitely a fourth amendment violation and
20 that is the actual custodial interrogation absent probable
21 cause that they conducted on me at the police station. They
22 didn't have probable cause. They claim they asked me to go
23 the police station, I came under consent, so they took me to
24 the police station. Russell drove me. Hilton followed me.
25 I got there around about 12:45. Got there about 12:45 I

1 have the Miranda warning sheet that I, he had me sign and
2 it's dated at 12:52, I have that right here, and so that's
3 when the interrogation started and he says in the incident
4 report that I was interrogated and after I finished, after I
5 gave my statement I was placed in SCDC. That's when I was
6 officially arrested once he placed me in the Department of
7 Corrections, not the department of corrections, the detention
8 center and that's in the same building. That's -- well, no,
9 at the Sheriff's Office. They took me to the Sheriff's
10 Office. And I wasn't booked until 1430 and that's military
11 time. That translates to 2:30 So from 12:52 to 2:30 I was
12 being interrogated. That's well over an hour. And the
13 controlling authority on that issue is Dunaway versus New
14 York and it's unequivocal. There's no way around it. If the
15 officers do not have probable cause, they are under no
16 circumstances, none, period, to be conducting a custodial
17 interrogation. They use strong language against it, very
18 strong language. And so that, that statement was, I end up
19 giving an Incriminating statement. That incriminating
20 statement was obtained as a result of the fourth amendment
21 violations. That's what the officer use as probable cause.
22 That's on record. That's already on the record, my arrest
23 warrants. They held those, those incidents reports as
24 evidence of my guilt. They didn't have anything else.
25 That's it as far as establishing probable cause, so that

1 would be a fourth amendment violation. Second one-- well,
2 that's the second one.

3 The third one would be when the police took me away
4 from my home. They never asked me to search through my, my
5 personal belongings, my personal effects. They waited until
6 after I left. They asked my grandmother to do it; could they
7 have consent. She told them, no, it wasn't her house. They
8 waited until my mother got there and she is here and she can
9 testify to this. They waited until I left and she got there,
10 asked her for her consent to search through my personal
11 belongings, and they know those are my personal belongings;
12 that's why they wanted to search my bed after I have a
13 legitimate expectation of privacy in my personal bed, my
14 mother doesn't use that area, that's my personal bed, and I
15 have some documentary evidence to show that that's a personal
16 area. We have voluntary consent to search form that the
17 officers have my mother fill out. It's signed by Jeff Bowers
18 and some guy I can't read his name, it's illegible, and it's
19 signed by my mother and searched the home. They stay there
20 together but they only searched through my room. And they
21 said what they got as a result of the searches is \$769 of
22 currency and one magazine.

23 Now it was a magazine also under the bed along with
24 that money under my mattress. My mother told them to take
25 that magazine because she don't approve of those types of

1 magazines. It was, some type of pornography book. My mother
2 doesn't approve of them. She don't want it in her house.
3 It's under the bed. I am not going to put it anywhere where
4 I know my mother is going to see it because my mother doesn't
5 go in my personal belongings. Been that way since I was
6 about 13-14. I was 21. It was a week before my 22 birthday
7 when all this happened on March 13, '002 so I'm an adult. I
8 have legitimate expectation of privacy in that area under the
9 controlling authority. That would be US versus Matlock and
10 that's detailed in my brief under controlling authority.
11 That would be, under the controlling authorities that would
12 be illegal search because they can't get my mother's consent.
13 She is a third party. She doesn't have mutual use or control
14 over that, that my personal effects. We don't share that.
15 We don't share that in any way. Even though we share the
16 house, that's my personal area. The police officers knew
17 that. That's why they wanted to search it, so her consent
18 would be invalid and so that money that they seized as a
19 result of that search would be inadmissible under evidence
20 under the general principles of fourth amendment exclusionary
21 rule. That's Mat versus Ohio. All of that is enumerated in
22 the brief.

23 As far as the statements, I gave initial statement
24 to the officers. That statement there would be fruit of the
25 illegal custodial interrogation and Dunaway versus New York

1 and Brian versus Illinois go into details of why and I've
2 enumerated them in my brief of why they are, that those
3 statements will be inadmissible.

4 And number one, the facts are identical, virtually
5 identical as a matter of law so, and under stare decisis we
6 not in a position to really argue that, that's US Supreme
7 Court and we not in a position to argue with that. They say
8 that the evidence is inadmissible. That's what the U.S.
9 Supreme Court says, and so under that, but while I was in the
10 county jail -- well, initially Hilton, officer Hilton, told
11 me to write to the victim. I had in my heart to speak with
12 her verbally, but he say couldn't arrange that. He told me
13 to write her and so I did. And I also wrote to the
14 Solicitor's Office and it's on the transcript, Solicitor
15 Holland made a reference to those two documents as being
16 evidence of my, of my guilt, and so those subsequent
17 statements that I made while I was in illegal custody from
18 the beginning to the end of this whole thing, not one step
19 under the law, under the fourth amendment jurisprudence.
20 When they took me from the house, it was illegal. The arrest
21 warrant would be invalid because it's based on, it's based on
22 evidence that was seized in violation of the fourth
23 amendment. That's US versus Gillwaters. After that it was
24 definitely illegitimate when I came to this very courtroom on
25 October 9 and plead guilty to these charges without knowledge

1 of the law in relation to the facts of the case and
2 Mr. Burton had made a motion to suppress any of this evidence
3 because it's clear that it was obtained in violation of
4 fourth amendment. There is no way no around it. No -- how
5 we say no rap. There's no rap. Nothing. It's not even
6 arguable that the evidence was obtained legitimately. All of
7 it is inadmissible; the statements, the subsequent
8 statements, plus the money, and so seeing as how he didn't
9 make a motion to suppress that evidence like he was supposed
10 to and have me come in here and plead guilty and it's on the
11 record that he was stating that there was nothing more he
12 could do and that he strongly advised me to plead guilty,
13 that's on the record in the transcript.

14 And so I don't know the law. I'm not required to
15 know the law. By law I'm not required to know the law. I
16 learned it once I got locked up because I had to but that's
17 why under, I think that's the six amendment, he has, they
18 have to appoint me attorney because he's supposed to know.
19 I'm not supposed to know. He's supposed to be my advocate.
20 He's supposed to provided me with assistance and no actual
21 assistance is provided for my defense then the constitutional
22 guarantees are violated. That's detailed in my brief. So he
23 should have done that and if he would have done that, that's
24 the only evidence the State would ever had against me in the
25 first place. That's the evidence, they didn't even have

1 enough to arrest me on probable cause day. They definitely
2 didn't have enough to prove my guilt beyond a reasonable
3 doubt absent that evidence, absent the statements and the
4 money. If that would have been suppressed, I wouldn't have
5 plead guilty because I would have had knowledge of the law in
6 relation to the facts of my case and I wouldn't have plead
7 guilty. I would have told them jury trial and I would have
8 got a direct verdict or either the charges would have been
9 dismissed without prejudice probably, but they would have
10 been dismissed and I wouldn't have plead guilt. That's a
11 fact.

12 Q. Okay. Mr. Francis, have you covered the issues that
13 you raised in your brief that have been presented to the
14 court?

15 A. Yes, sir.

16 Q. And it's your testimony then that, to put it one
17 way, if you knew then what you know now, you never would have
18 plead guilty, is that right?

19 A. No, sir. No, sir.

20 Q. You believe today that it was Mr. Burton's
21 responsibility at that time to make those motions, to
22 investigate it, and make those motions for you?

23 A. Yes, sir. He's supposed to be my advocate. That's
24 by law. That's not competent representation. I can't say
25 anything bad about him on any other level, but he didn't make

1 no motions to suppress like he was required to do under the
2 law. He didn't do that.

3 Q. Okay. Anything else you want the court to know
4 before the attorney general has a chance to question you?

5 A. No, sir.

6 Q. Please answer any questions Ms. Counts may have.

7 A. Yes, sir.

8 Cross examination by Ms. Counts:

9 Q. Mr. Francis, just before we start, are you aware
10 what happens if you are successful with your PCR?

11 A. Yes, sir. I mean, yes, ma'am.

12 Q. That you can be reindicted and recharged for these
13 charges?

14 A. In theory, yeah.

15 Q. And that your, you could face the full 35 years?

16 A. In theory, yes.

17 Q. And you received the minimum ten years?

18 A. Uh-huh.

19 Q. And you'd like to go forward?

20 A. Yeah, because if I -- if the evidence, if I prove
21 today that the evidence should have been suppressed then,
22 then the evidence is suppressed, it's not admissible in
23 court, and if they don't have any evidence to tie me to the
24 case, you can pick 12 tomorrow, don't make me any difference.

25 Q. You've testified earlier that you felt that

1 Mr. Holland's description of the incident was incorrect
2 because it implied that y'all had a high speed chase, is that
3 correct?

4 A. Yeah.

5 Q. Did Mr. Holland ever tell the judge that you had a
6 high speed chase?

7 A. No, but reading, somebody reading it that didn't go
8 through it and me looking at it objectively could see it.
9 Could get the -- that's the picture that was painted. It
10 wasn't a details. He didn't, he didn't say anything as far
11 as and I objected to him saying somebody saw me because
12 regardless of what the police officers say, I just make it
13 clear, nobody saw me anything. Nobody came. I never had any
14 interaction or saw a police officer until about 30 minutes
15 after the crime, so all, I stand to that this day. Nobody
16 saw me, passed me, anything, but he, Holland said, that he
17 actually said that they saw me leaving the crime scene --
18 that is not true. That's not even what the incident report
19 says. The incident report says that he saw me, pass me on
20 Potter Road near the intersection of Potter and Beacon Road.
21 I live about a third of a mile from that intersection and
22 that whole area is 18 miles away from the crime scene.
23 That's not detailed. That's why I have the maps to show that
24 and that's GPS satellite there. That doesn't lie.

25 Q. Didn't you tell the judge that day that you didn't

1 think anyone saw you?

2 A. I know for a fact nobody saw me but that's, the
3 police saying they did. I'm not coming to play he said/she
4 said.

5 Q. But you told the judge that?

6 A. Uh-huh.

7 Q. So he knew that when you took the plea?

8 A. Uh-huh.

9 Q. Earlier you've testified that you didn't feel like
10 the officers had probable cause to arrest you. Now isn't it
11 true that the officers when they arrived at your house saw
12 you walk out to your car and rip the license tag off?

13 A. No, they did not. He says he did and they did not.
14 I told them I did that and I have photographic evidence to
15 prove that right here and we can present that to the court
16 since you raised that issue. He claimed and you can ask my
17 mother and my grandmother because they were right there.
18 Reading on paper it might sound good, but I lived it. I
19 lived their since 1987 and I know what happened because I
20 went through it. When he was parked it, he wouldn't be able
21 so see that and I have the pictures right here. I told him I
22 did that. And the only reason he was, he made that statement
23 on the incident report is because he had to, he had to have,
24 under the fourth amendment he had to provide a justification,
25 the reason why he pulled all the way up in my yard to my

1 front door because our house is behind my grandmother's
2 house, but you can see from the pictures.

3 Q. Okay.

4 A. No, he did not see me take off a license plate. All
5 he saw was me come off my porch to where he couldn't see me,
6 come back towards my porch, put something in the grass, and
7 go back in my house. That's what he saw. I told him that's
8 what I did.

9 Q. Did you tell the judge that day when Mr. Holland
10 said that that was the case?

11 A. No, because he didn't really present it to where it
12 wasn't true. He mentioned it, but it was, it was basically
13 true, that's what I did, but the police didn't see me do
14 it.

15 Q. You consented to your car being searched, didn't
16 you?

17 A. Yes, ma'am.

18 Q. And in the car they found a white bandana?

19 A. Uh-huh.

20 Q. And one of the witnesses said that the gun man had a
21 white bandana, isn't that true?

22 A. Yeah, but that's not eligible to innocuous items
23 like I detailed in my brief. That's innocuous. A white
24 bandana, it's innocuous.

25 Q. Were the guns innocuous?

1 A. Yes, ma'am, because I'm a country boy. That's out
2 in the country. You could have went to anybody's house,
3 anywhere where I stayed and find firearms. My grandmother
4 got a rifle underneath her bed. I'm a country boy. And
5 number two, the rifle that they found was a .22 rifle.
6 That's a little boy rifle. That's a like beginner's rifle.
7 You shoot rabbits and squirrels with that. The other one
8 obviously didn't work. It's all rusted over. It didn't even
9 work. It was just laying there. It was in the car and I've
10 been living in South Carolina since I was seven years old and
11 I see people riding around with two or three rifles in the
12 gun rack all the time, especially out in the country.
13 That's what I'm used to so, and they know that. So they
14 can't say that that would be incriminating. It's just there.
15 So what? And the car is parked. This was 30 minutes after
16 the crime. The car is parked behind another house and it's
17 been there.

18 Q. So you are saying the facts that there was guns, a
19 white bandana, and you were driving a white Buick which is
20 very similar to a white Oldsmobile, does not give the police
21 officers probable cause to arrest you?

22 A. No, ma'am, because that's at variance, number one,
23 and the description they had to begin with was vague. From
24 our review, I read a lot of case law, a whole bunch, and you
25 have an objective standard that they have to go by and I

1 think it's old case law, it's called West versus Cattle and
2 it states that, it's dealing as far as warrant but the
3 warrant requirement and probable cause requirement is
4 identical. They are identical. And it states that they
5 would have had to have a suspicion, a description sufficient
6 enough to identify me with reasonable certainty. They had a
7 vague description to work with from the beginning and I
8 didn't even fit the description. They had no description of
9 me personally. They had description of items. They never
10 found me wearing any of the clothes that the suspect was
11 supposed to be wearing. They never found anything. They
12 went amongst my car. My car is junky and picked out things
13 that they wanted, that might fit the description, maybe, but
14 those are innocuous items. Now that might be enough for
15 reasonable suspicion and I've provided the definitions from
16 Black's law dictionary in my brief on what suspicion means,
17 the legal definition of suspicion, the legal definition of
18 objective, and the legal definition of subjective. We are
19 not dealing with polices subjective, with subjective things.
20 We dealing with objective to where the police have to
21 balance -- well, it's not really, the police doesn't have
22 final call as you would probably know. The magistrate judge
23 has the final call on the matter. They have to be able to
24 have enough evidence to present to him that he can make a
25 neutral and detached decision. Now if you would, now if they

1 would have signed up a warrant and it would have stated
2 something similar to Mr. Francis committed such and such
3 crime on such and such date and description given was a black
4 male with a long black coat or cape which was never found,
5 they never did find anything like that, he had a rifle or
6 shotgun, some type of long gun, he had on a hat, he had a
7 bandana on his face, and he was driving a white two door
8 Oldsmobile, possibly Oldsmobile at that. That's the words
9 used on both incidents reports, possibly and we dealing with
10 probable cause, we are not dealing with possibilities. If my
11 car, if the suspect car could have possibly been a Buick, it
12 could have been Cadillac or Lincoln or Ford. Just because
13 it's white and a two door, that's, that's the only thing,
14 that I got a white two door vehicle and what there's plenty
15 of those, plenty. As a matter of fact, my immediate
16 neighborhood, my neighbor had a two door that been a Chevelle
17 all white. My next door neighbor actually did have a white
18 Oldsmobile, a Cutlass, but it wasn't running at the time,
19 sitting in the front yard. My car is in the back behind my
20 grandmother's house in its parking space.

21 Q. With a partial tag number that was given by the
22 witnesses?

23 A. That's, that, that was never included. We don't
24 know where that partial tag number stuff coming from. He
25 made reference to that in his incident report, but at the

1 same time that's part of his, basically his lie, saying that
2 he saw what he saw and I would like to enter these pictures
3 into evidence. I would like to do that because seeing as how
4 you raised that issue. That's a bald face lie. The only way
5 I can put it. He did not see that. He didn't do it. I told
6 him that. I told him that's what I did.

7 Ms. Counts: Your Honor we object to relevance and
8 there is no foundation.

9 Mr. Sims: I'm not going to offer those pictures at
10 this time.

11 The Court: Sustained.

12 Q. With your statement you testified earlier you
13 voluntarily consented to give that statement, isn't that
14 correct?

15 A. Under the law, yes.

16 Q. Okay.

17 A. But as far as under the fourth amendment
18 jurisprudence dealing with and Brian versus Illinois and
19 Delaware versus New York going to it and go into detail but
20 they basically saying that Miranda warnings can't purge the
21 taint of a fourth amendment violation.

22 Q. I think my question was if you consented. Isn't it
23 true that Judge Goode asked or told you that you'd be giving
24 up any right to challenge your statements or the
25 admissibility of your statements if you plead guilty?

1 A. Yes, he did.

2 Q. And you said you understood?

3 A. Well, at the time that I didn't have knowledge of
4 the law in relation to the facts of the case. I don't know
5 fourth amendment jurisprudence. That's not my job. That was
6 Mr. Burton's job. He has a little plaque somewhere on the
7 wall somewheres saying he been to law school and he passed
8 the bar exam somewhere, in his office somewhere, that's the
9 only reason he was appointed to represent me. I'm not
10 required to know the law. That's why he's there Because I am
11 not, I don't know the law.

12 Q. The judge also told you that you gave up any
13 defenses by pleading guilty, didn't he? And he also told you
14 at the beginning if there is anything you didn't understand
15 that you could stop the plea and talk to your attorney?

16 A. Yes, sir. I mean, yes, ma'am.

17 Ms. Counts: That's all I have, Your Honor.

18 The Court: Any redirect.

19 Mr. Sims: Nothing for this witness.

20 The Court: Thank you, sir. You can step down.

21 A. Yes, sir.

22 Mr. Sims: Call Mrs. Witherspoon.

23 Sundra Witherspoon, Being first duly
24 sworn, testified as follows:

25 (Court is in brief recess.)

1 (Court resumes.)

2 The Court: Mr. Sims.

3 Mr. Sims: Thank you, Your Honor.

4 Direct examination by Mr. Sims: . . .

5 Q. State your full name, please ma'am?

6 A. Sundra Edwards Witherspoon.

7 Q. Where do you live?

8 A. 3034-h miller Street here in Lancaster.

9 Q. And are you related to Mr. Francis?

10 A. That's my son.

11 Q. Okay. Back in the time that we are talking about
12 when he was arrested and so forth, was he living with you at
13 that time?

14 A. Yes, he was.

15 Q. How long had he been living with you?

16 A. All his life.

17 Q. Do you remember specifically that day that the
18 officers came and all the things that he's testified about
19 today?

20 A. Yes, I do.

21 Q. Okay. Did you have control of his room?

22 A. It was my house, but I respected his privacy being
23 that he was grown. I didn't know what I was supposed to do
24 that day. We had never dealt with anything like this before.
25 I was asked if they could go in his room.

1 Q. The officers asked you?

2 A. Yes. If they could go in his room and I told them,
3 yes, that they could. I didn't know if I had told them no
4 what would happen. I didn't know. So I just told them yes,
5 they could go in there.

6 Q. How old was your son Mr. Francis at that time?

7 A. He was 21, almost 22 years old. I don't know.

8 Q. When the officers first came to the house that day,
9 was he there?

10 A. Was Christopher there?

11 Q. Yeah.

12 A. No, he wasn't. He wasn't there. I didn't see him.

13 Q. Well, I maybe getting a little confused but just in
14 your own words tell us the sequence of the events that
15 afternoon.

16 A. I was at work and my mother called me at work. I
17 work at a church here in Lancaster and she called me and told
18 me, I think you need to come home. I believe C. J. is in
19 trouble. So when I got there there was cars lined all up and
20 down Tyron Street.

21 Q. Police cars?

22 A. Police cars. And it's not a through way. It's a
23 dead end street that off of 903 so we don't get a lot of
24 traffic. Our kids was safe to play in the road so it was
25 that kind of a street. There was a lot of cars. There were

1 police cars. There are a lot of them. So I went into the
2 yard and one officer met me and he said, ma'am, we believe
3 that your son was involved in a robbery and I told him, no,
4 that couldn't have been my son, you know. And he said, yes,
5 ma'am, we have, we believe we have evidence to that fact, and
6 he said that he followed my son home. I said you chased my
7 son? He said, No, ma'am, there was no chase. I just
8 followed him down the street. And he said we would like to
9 go into the house. We were not given permission to go into
10 the house and we would like permission to go into your house
11 and to look around. And so I said what are you looking for?
12 And they said, well, we are looking for evidence in
13 connection to this case. So I let them come into the house
14 and they checked my living room and they checked C.J.'s room.
15 And they looked in his bathroom. They looked in the closets.
16 And they looked on his bed. And under his bed.

17 Q. What happened then?

18 A. When they looked in his bed they found a pack of
19 crackers and some money and a magazine and I just, it was
20 like a playboy type thing, and I said, well, you can have
21 that because I don't allow that in my house and I told them
22 to take it.

23 Q. Please go ahead and tell us what happened, tell the
24 court what happened next?

25 A. After they took that, they counted it. They asked

1 me to stand there while they did that and there was some
2 other officers and they were checking in the kitchen and in
3 the cabinets and things of that nature. They didn't go past
4 that in the house. They didn't go to the other end of the
5 house like where my room was or the baby's room, they didn't
6 go back that way. They just checked in the kitchen cabinets,
7 under the sink, that type of thing and then that was it. They
8 counted it. I stood there and watched them and they thanked
9 had me and left.

10 Q. So the officers did not search the entire house?

11 A. They didn't search, they searched the front end of
12 the house.

13 Q. And you mentioned your mother. Was she living there
14 at the time too?

15 A. My mother's house was in front of mine. I had a
16 single wide trailer, single wide mobile home that was
17 situated behind her house, so her house is the house that you
18 saw from the road.

19 Q. And were you buying or renting that mobile home at
20 that time?

21 A. Buying.

22 Q. Okay. And again you considered, you considered your
23 son, your adult son to have his own private room in your
24 house?

25 A. That was it and he had his own bathroom down there

1 on that end of the house and everything. The main bathroom
2 was on my.

3 Q. You really didn't use that space for your
4 purposes?

5 A. Never.

6 Q. Did you consider that his private space?

7 A. Yes, it was.

8 Q. Okay. One moment, Your Honor. Again
9 Mrs. Witherspoon, the only items they took from the house
10 that day was the currency and a magazine?

11 A. Yes, and they gave me the crackers.

12 Q. So that's they took from inside the house that
13 day?

14 A. That I know, yes.

15 Q. And was that the \$769 that's been talked about?

16 A. Yes.

17 Q. Are you comfortable with those figures and that was
18 the only thing, those were the only things that were taken
19 from the house?

20 A. That's all I saw them take.

21 Q. That's all the questions I have.

22 The Court: Ms. Counts.

23 Cross Examination by Ms. Counts:

24 Q. Mrs. Witherspoon, you testified earlier that you
25 consented to allow the officers to search your house?

1 A. Yes.

2 Q. Did they coerce you in any way?

3 A. No.

4 Q. Did they threaten you in any way?

5 A. No, they didn't threaten me.

6 Q. And you gave them your consent?

7 A. Yes. I didn't know what else I was to do.

8 Q. No further questions.

9 Mr. Sims: Nothing further.

10 The Court: Thank you, ma'am. You may step down.

11 Mr. Sims: The applicant rests.

12 The Court: Anything from the State?

13 Ms. Counts: Your Honor, the State would call Ross

14 Burton.

15 Ross Burton, being first duly sworn, testified as

16 follows:

17 Direct examination by Mrs. Counts:

18 Q. Mr. Burton, were you appointed to represent

19 Mr. Francis?

20 A. I guess you could say so. I was the public defender

21 and he qualified under the defense of indigent acts for an

22 attorney and I became his attorney that way.

23 Q. Did the state come up with any offers for this?

24 A. They did. Let me see here. Armed robbery carries

25 between 10 and 30 years and they had offered the minimum 10

1 years on armed robbery and 5 years on the use of firearm
2 which they had offered to run concurrent with the ten years
3 for armed robbery.

4 Q. Mr. Francis testified earlier about, that you did
5 not make a motion to suppress the evidence. Do you normally
6 do that when you are going to plead guilty?

7 A. Not when you are going to plead guilty. I mean that
8 would typically be a pre-trial motion and if there is no
9 trial there is no motion.

10 Q. If this had gone to trial would you have moved to
11 suppress the evidence?

12 A. Well, the first thing I would have done is demand a
13 Jackson versus Denno hearing which is a hearing to exclude a
14 confession or a statement made by the defendant. That's the
15 first thing I would have done. Although he testified under
16 direct that he consented so it's highly unlikely that that
17 motion would be, would have been granted.

18 The second thing I would have done would be to move
19 to exclude the evidence found in the, in his bedroom.
20 Although he has probably studied the fourth amendment case
21 law more recently than I have, but my understanding is that
22 the homeowner can give consent to search her own home. But I
23 would have researched that more thoroughly and I would have
24 made that motion had I been able to make the motion in good
25 faith.

1 Q. Did you see a problem with the search of the
2 automobile?

3 A. His testimony he gave consent, so I just don't see
4 how I could have mounted a realistic challenge to that.

5 Q. Did you see a problem with the probable cause used
6 to arrest him?

7 A. Well, reading the whole file it seems to me like
8 they had, had established a pretty reasonable chain of events
9 that lead to him being the prime suspect and the magistrate,
10 they would have had to prove to a magistrate that they had
11 probable cause or the magistrate wouldn't have issued the
12 arrest warrant.

13 Q. Did you go over with the applicant the Jackson
14 versus Denno and the motion to exclude and what you would do
15 if you went to trial?

16 A. Probably not.

17 Q. Did you go over the evidence that the solicitor had
18 against him?

19 A. That I did and that was sort of, I probably did give
20 him some advice that it pretty much looked like he didn't
21 have anywhere to go with this and pleading guilty was
22 probably his best option and I would give the same advice
23 today.

24 Q. So you think it was in his best interest to plead?

25 A. Well, he had an offer of the minimum. I don't know

1 how much better I could have done for him. In a typical
2 situation like this where, you know, the victim was some poor
3 lady working for a telephone company with no expectation at
4 all that people would come and rob them at gun point, that's
5 the sort of, those are the sort of facts under which a judge,
6 I think, would lean towards a maximum had Mr. Francis lost at
7 trial.

8 Q. Did you see a problem with the solicitor's
9 recitation of the facts?

10 A. I just read those over and I don't. But I just
11 don't see how that would have mattered. If he was pleading
12 to the minimum sentence no matter what the solicitor said it
13 would have had no effect on the judge. The judge, the judge
14 can't go below ten years and that particular crime the judge
15 hasn't even got the power to suspend below ten years, so it
16 would have been ten years no matter what Mr. Holland had
17 said.

18 Q. Beg the court's indulgence. Did you go over with
19 the applicant his right to a jury trial?

20 A. Certainly.

21 Q. That's all I have, Your Honor.

22 The Court: Cross examination, Mr. Sims.

23 Mr. Sims: Briefly, Your Honor.

24 Cross examination by Mr. Sims:

25 Q. Mr. Burton, in answering some of the attorney

1 general's questions you said I probably did and then on those
2 last questions you said that you are sure that you did. I
3 know that you had a heavy case load at that time, do you have
4 independent recollections of your conversations with Mr.
5 Francis?

6 A. I don't have any independent recollection of
7 anything I said or didn't say to Mr. Francis because this
8 happened in 2002 and that's a long time ago so.

9 Q. So you are going exclusively pretty much by the or
10 you are going exclusively by the written record?

11 A. I'm not sure I understand your question.

12 Q. Are you going exclusively by the written record and
13 not any independent recollections of what happened back in
14 2002?

15 A. Well, I'm also going with my habit. I can't think
16 of any client that I wouldn't have gone over their trial
17 rights and told them that it was their choice to go to trial
18 or not and certainly I'm giving the benefit of my advice,
19 but, you know, can say I remember doing that with
20 Mr. Francis? No. But I can say that going over trial rights
21 is something that I've got to do with everybody, be it or a
22 plea or not, because you got to answer the judge's questions
23 and the judge is going to ask him, did your attorney go over
24 your trial rights and your rights to remain silent, and so
25 forth and if the client says, no, my attorney didn't do that,

1 the judge won't accept the plea, so I have to, trial or no
2 trial.

3 Q. Do you have any independent recollection of the
4 amount of time that you spent in the presence of Mr.
5 Francis?

6 A. No.

7 Q. And I think we can all tell by the record that there
8 were no pre-trial motions filed?

9 A. We didn't go to trial so why I would I file
10 pre-trial motions.

11 Q. That's all the questions I have.

12 The Court: Any anything further?

13 Ms. Counts: Nothing further.

14 The Court: You may step down.

15 A. Thank you, Your Honor.

16 Mr. Sims: I would offer some very brief rebuttal.

17 The Court: All right. I'm sorry. Anything else
18 from the attorney general?

19 Ms. Counts: No, Your Honor.

20 The Court: All right, sir.

21 (Mr. Francis takes the witness stand.)

22 The Court: You are still under oath.

23 Examination by Mr. Sims:

24 Q. Mr. Francis, you just heard Mr. Burton testify,
25 correct?

1 A. Yes, sir.

2 Q. All right. He testified to certain things. What is
3 your response to his testimony about what he did and didn't
4 do?

5 A. Well, first and foremost he says that he would have
6 had a Jackson Denno hearing as far as with Jackson versus
7 Denno, from my understanding, that's a fourth amendment
8 hearing that wouldn't deal with fifth amendment as far as
9 voluntariness of the statement. It would be a hearing as far
10 as dealing with fourth amendment issues, number one.

11 And number two, the job under, under the law; under
12 sixth amendment jurisprudence, I read over it, a lot of it,
13 before any talks of any plea bargains or anything going down,
14 I have no knowledge of law in relation to the facts of my
15 case. I can't tell him whether or not, all I know is that I
16 have given incriminating statement. How do I look going to
17 trial with incriminating statement? It's not my job to know
18 it holds up, wait a minute, reading this incident report and
19 seeing that's something's wrong and even if he says today
20 that he wouldn't think, he doesn't think, he doesn't think
21 that the hearings would have been in my favor, he's wrong.
22 Because, number one, if you read that incident report and you
23 look at the record, you look at the warrants, the police
24 never claimed to have probable cause to arrest me until after
25 I gave that statement. That's what they put forward to the

1 magistrate judge. The statement and the money. They never
2 claimed that they had. They took me away from my house
3 supposedly and let them tell it on consent. They are saying
4 that they said asked me to go and told me that they warned
5 me, basically Miranda warning, this is completely voluntary.
6 We can't force you to go under, as a matter of law; that is a
7 concession by the police officers that they didn't have
8 probable cause. That's Dunaway versus New York and also
9 Brown versus Illinois. They used the same language in two
10 different case law. And plus they have, from I think that's
11 Boyle versus US and also Mallory versus US, US Supreme Court
12 cases when they did basically in principle, and all this is
13 detailed in my brief, basically in principle saying that's no
14 good and we have a hard time coming back five years later and
15 saying that there was probable cause when the police never
16 claimed it in the first place. That is they were there. And
17 even, as far as looking at the case objectively as required
18 by the fourth amendment, it would be a situation of it
19 wouldn't be probable cause to arrest me.

20 Q. Do you have any other statements to the court
21 regarding Mr. Burton's testimony?

22 A. And number two, the last point, I'm not, the only
23 reason I brought up Mr. Holland's remarks at my guilty plea
24 was because they are, of the Federal proceedings, and I was
25 under the impression that the state, that's what they were

1 going to try to assert. They were going to try to assert the
2 veracity after what Holland said on the record which and I
3 just wanted to get the facts straight so we had have a set of
4 facts to deal from. I'm not contesting the veracity of it.
5 I'm not saying that I should get relief as a result of what
6 he said. Okay, he said it. That's not what the police
7 saying. It's not even as far as me read the incident report
8 and you read what he's saying, he's not saying the same thing
9 the police. That's all I was saying. We are going to work
10 from the facts, from the horse's mouth so to speak. That's
11 all I have to say.

12 Mr. Sims: Nothing further from this witness.

13 Ms. Counts: Nothing further.

14 The Court: Thank you. You may step down again.

15 Mr. Sims: Applicant rests.

16 The Court: Anything further?

17 Ms. Counts: Nothing further, Your Honor.

18 The Court: Be glad to hear argument from you,

19 Mr. Sims.

20 Mr. Sims: Your Honor, I appreciate the court's
21 indulgence on hearing Mr. Francis out. Your Honor, again he
22 created that document that's before you. Even though he put
23 my name on it I don't think I need to sign it at this point.
24 You do have it. Your Honor I think that he has made a case
25 today for the fruit of poisonous tree argument under the

1 fourth amendment and I would ask the court to consider his
2 evidence and testimony and everything else that was presented
3 and rule in his favor.

4 The Court: Thank you. Ms. Counts.

5 Ms. Counts: Your Honor, it's the State's position
6 that the police had probable cause to arrest him. He
7 consented to the search of the car. They found the white
8 car. They found a white bandana. There was a rifle. They
9 found guns. They saw him rip the tag off the car that was
10 the partial tag of the getaway car. It's our position that
11 his mother consented to the search of the trailer. His
12 statement was voluntarily given. He was mirandized and it
13 would be our position that he's not met his burden of proof.

14 The Court: All right.

15 Mr. Sims: Your Honor, excuse me. Mr. Francis has
16 presented to me a motion of finding and facts and conclusions
17 of the law under rule 52 of South Carolina Rules of Civil
18 Procedure. I believe that this is the basically the proposed
19 order that we would have and of course I will go back and
20 look at it if you ask me to submit an order.

21 The Court: Say it one more time? I didn't hear the
22 last thing you said.

23 Mr. Sims: I would assume that this would be part of
24 the order if you rule in his favor, but I will submit that in
25 my own language if you rule in his favor if you tell me to do

1 an order. I just wanted the court to be aware he had
2 prepared one.

3 The Court: Okay.

4 Mr. Sims: Under Rule 52.

5 The Court: Okay. Mr. Sims, Ms. Counts, I'm going
6 to take these matters under advisement and do a little more
7 review of the file and be in touch with the attorneys
8 concerning my decision. I'm going to try to do that on
9 Friday of this we can. Thank you so much.

10 Ms. Counts: Thank you, Your Honor.

11 Mr. Sims: Thank you, Your Honor.

12 (end of proceedings.)

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2 I, Janet Rich, official court reporter for the
3 Sixteenth Circuit of the State of South Carolina, do hereby
4 certify that the forgoing is a true, accurate, and complete
5 transcript of record of all the proceedings had and evidence
6 introduced in the trial of the captioned case, relative to
7 appeal, in the court of common pleas for Lancaster County,
8 South Carolina, on the 28 day of February 2007.

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

11

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13



Janet M. Rich

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STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

)
) IN THE COURT OF COMMON PLEAS
) SIXTH JUDICIAL CIRCUIT

2003-CP-29-500

Christopher Francis, # 287847,
Applicant,

v.

State of South Carolina,
Respondent.

ORDER OF DISMISSAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 22, 2003. An evidentiary hearing into the matter was convened on February 28, 2007 at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by William R. Sims, Esquire. The Respondent was represented by S. Prentiss Counts of the South Carolina Attorney General's Office.

At the hearing, the Applicant and the Applicant's mother testified on his behalf. Testifying on behalf of the State was Ross Burton, Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Spartanburg County Clerk of Court, the Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Applicant was indicted at the April 2002 term of the Lancaster Grand Jury for Armed Robbery and Possession of a Weapon During the Commission of a Violent Crime (02-GS-29-562). He was represented by Ross Burton, Esquire. On October 9, 2002, the Applicant pled guilty to the indicted offenses. He was sentenced by

STATE OF SOUTH CAROLINA
 COUNTY OF LANCASTER
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2003-CP-29-500State of SCChristopher Francis

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:Dated at LANCASTER, South Carolina, this _____ day of _____, 20____._____
PRESIDING JUDGEThis judgment was entered on the 25th day of April, 2007, and a copy mailed first class this 25th day of April, 2007 to attorneys of record or to parties (when appearing pro se) as follows:William R SimsP.O. Box 645Kershaw, SC 29067_____
ATTORNEY(S) FOR THE PLAINTIFF(S)S. Prentiss CountsP.O. Box 11549Columbia, SC 29211-1150_____
ATTORNEY(S) FOR THE DEFENDANT(S)Jeff Hammond
CLERK OF COURT

the Honorable Kenneth G. Goode to confinement for a negotiated period of ten (10) years for Armed Robbery and five (5) years for Possession of a Weapon During the Commission of a Violent Crime.

The Applicant filed a notice of appeal on October 24, 2002. The Court of Appeals dismissed the appeal for failure to timely serve notice. The remittitur was issued on November 22, 2002.

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

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Applicant's Testimony

At the PCR evidentiary hearing the Applicant testified that he spoke to trial counsel three (3) times before he pled guilty. He stated that trial counsel did not file any pretrial motions. He testified that trial counsel did go over the mandatory minimum and maximum sentences he could receive.

The Applicant testified that trial counsel was ineffective for failing to object to the Solicitor's rendition of the facts during the plea. He stated that the Solicitor was twisting the facts in the incident report. The Applicant stated that the Solicitor said that the officers saw the Applicant leave the crime scene and they followed him. He believed that this implied that there was a high speed chase and trial counsel should have objected. He also testified that the Solicitor stated that the officers followed him but he does not believe that to be true because his house is eight (8) miles from the crime scene and no one approached the house for thirty (30) minutes after he got home.

The Applicant also testified that trial counsel was ineffective for failing to challenge his arrest. He stated that the officers did not have probable cause to arrest him until after he gave a full confession. He testified that the officers watched him go out and pull the tags off his car. He stated that the officers then approached him at his house and he was patted down and told they were investigating an armed robbery. He testified that shortly thereafter, five (5) more officers arrived on the scene. The Applicant stated that the description of the robber was vague. He admitted that his description was a black male with a white bandana driving a white Buick. The Applicant testified that he consented to have his white

Oldsmobile searched and in it the officers found a white bandana, two (2) guns, and a few hats. He testified that all this evidence was circumstantial and the officers did not have probable cause to arrest him.

The Applicant testified that trial counsel was ineffective for failing to move to suppress his statement. He said that his statement was taken during a custodial interview and a suspect cannot be interrogated without probable cause. He testified that the officer asking him to go to the station is an admission by law enforcement that he does not have probable cause for the arrest. He stated that once at the station he was read his Miranda rights, but that this cannot cure an unconstitutional seizure. The Applicant testified that his statement was a fruit of the poisonous tree.

The Applicant next testified that his trial counsel was ineffective for failure to move to suppress the money found in his room. He stated that his mother gave law enforcement her consent to search the house. He testified that she did not have authority to do this because, although she owned the house, she was not in control of the room.

The Applicant testified that he pled guilty because trial counsel told him he did not have any defenses to these crimes. He stated that if he had known he could suppress the evidence and his statement, that he would not have pled guilty. He said he would have wanted a jury trial and the trial would have received a directed verdict.

Applicant's Mother's Testimony

Mrs. Witherspoon testified that the Applicant has lived in her house his entire life. She stated that it was her house and that she respected his privacy.

She testified that she was at work when her mother called her and said the Applicant was in trouble. When she arrived at her house, law enforcement was there and told her that they had followed her son home. She stated that they asked her permission to search the house. She asked them what

they were looking for and they said "evidence." She testified that she consented to the search. She said that she did not feel threatened or coerced to consent to the search. She stated that they searched the living room and the Applicant's room. She said they found \$739 in cash under his bed.

Trial Counsel's Testimony

Trial counsel testified that he was appointed to represent the Applicant. He stated that the State offered the Applicant the ten (10) year minimum for Armed Robbery. He stated he thought it was in the Applicant's best interest to accept the offer. He stated that the victim of the robbery was a telephone company employee with no expectation of danger at her workplace. Trial counsel testified that he told the Applicant that it may have an affect on the Judge's sentence.

Trial counsel testified that he did not make any pretrial motions because they were not going to trial. He stated that if they had proceeded to trial he would have requested Jackson v. Deno hearing, but success in suppressing the statement would be unlikely because the Applicant was read his rights and consented. He testified that he also would have moved to suppress the money found, but he felt that motion would have also been unsuccessful because a homeowner can consent to the search of their own house.

Trial counsel testified that he did not see any problem with the search of the car, especially since the Applicant gave his consent. He also thought that law enforcement had probable cause for his arrest.

Trial counsel testified that he went over the evidence with the Applicant. He stated that he certainly went over his rights, although he did not have an independent recollection of doing this in the presence of the Applicant. He testified that it was his practice to go over his client's rights with them. He stated that he told the Applicant that he thought that he should accept the State's offer.

Trial counsel testified that he did not see any problem with the Solicitor's recitation of the facts. He also stated that he did not think that it would have mattered because he was pleading to the

minimum and, since it was a negotiated plea, it could have no affect in sentencing.

III. APPLICABLE LAW

Ineffective Assistance of Counsel

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

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

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

Consent to Search

Consent to search is valid when based upon apparent authority judged against an objective standard that the facts available to the officer would lead a person of reasonable caution to believe that the consenting party had authority over the premises. State v. Laux, 344 S.C. 374, 544 S.E.2d 276 (2001) [Court found girlfriend of defendant who had moved in a week before gave valid consent to search his apartment]. The test of whether a third party has sufficient status to consent to a search is whether the third party possesses common authority over or has some other sufficient relationship to the premises or effects searched. Id. A homeowner may grant consent to search the premises of which a criminal defendant resides if the homeowner possesses common authority over or sufficient relationship to the premises or effects to be inspected. State v. Flowers, 360 S.C. 1, 598 S.E.2d 725 (2004).

Probable Cause for Warrantless Arrest

Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested. State v. George, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996) [finding probable cause for warrantless arrest for murder]. Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal. Id. See also Beck v. Ohio, 179 U.S. 89, 91, 85 S. Ct. 223, 225, 13 L.E.2d 142 (1964) [holding a court must consider "whether, at the moment the arrest was made, the officers had probable cause to make it-whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [Appellant] had committed ... an offense."].

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed the

witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

This Court finds trial counsel's testimony to be credible and the Applicant's to be incredible.

This Court finds that trial counsel was not ineffective for failing to object to the Solicitor's rendition of the facts. This Court notes that the Applicant was asked by Judge Goode if he agreed with the Solicitor's rendition and he was able to tell the Court with which points he disagreed. (Tr. Pg. 19, Ln.21 - Pg. 23, Ln. 10). This Court also agrees with trial counsel that the Applicant was not prejudiced by any alleged discrepancies because the Applicant's plea was negotiated and the Judge did not have discretion with regards to sentencing once he accepted the plea. This Court denies and dismisses this allegation.

This Court finds that trial counsel was not ineffective for failing to challenge the validity of the arrest. When considering the totality of the circumstances, which includes the information the officers knew before arriving and observations they made at the scene, this Court finds that probable cause existed to arrest the Applicant. Law enforcement knew that they were looking for a black male driving a white Buick who had held up the telephone company with a rifle while wearing a white bandana. The Applicant had been seen driving away from the scene in a white Oldsmobile which is very similar to a white Buick. Upon arriving at the scene, the officers witnessed the Applicant rip the license tags off his car. Two (2) guns and a white bandana was found in the car after the Applicant consented to its search. This Court finds that there was probable cause for his arrest and denies and dismisses this allegation.

This Court finds that trial counsel was not ineffective for failing to suppress the Applicant's statement. Trial counsel testified that if the case had gone to trial, he would have requested a Jackson v. Deno hearing. This Court agrees with trial counsel's assessment that this motion to suppress the statement would not have been successful. The Applicant was read his rights and consented to the interrogation. No evidence of coercion, threats, or any wrongdoing by law enforcement has been presented and this Court denies and dismisses this allegation.

This Court finds that trial counsel was not ineffective for failing to move to suppress the money found in the Applicant's room. Trial counsel testified that he would have moved to suppress the money had the case gone to trial. This Court agrees with counsel's assessment that this motion would not have been successful. Mrs. Witherspoon was the owner of the house and would exert common authority over the home *and* sufficient relationship with the defendant to consent to the search of his room. With the facts available, law enforcement would be reasonable to believe that Ms. Witherspoon had authority over the premises. Therefore, this Court denies and dismisses this allegation.

This Court finds that the Applicant made a knowing and voluntary decision to pled guilty to receive the benefit of the minimum sentence he could get for his charge.

Therefore, this Court finds that the Applicant failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard. Strickland v. Washington; Cherry v. State. The Court finds that the Applicant cannot satisfy either requirement of the Strickland test.

CONCLUSION

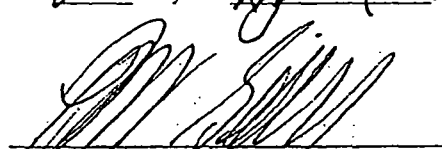
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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. 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 this 20 day of April, 2007.


BROOKS P. GOLDSMITH
Presiding Judge
Seventh Judicial Circuit

Lancaster, South Carolina.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
 IN THE SIXTH JUDICIAL CIRCUIT

Christopher Francis,)

2003-CP-29-500

Applicant,)

vs)

CERTIFICATE OF SERVICE BY MAIL

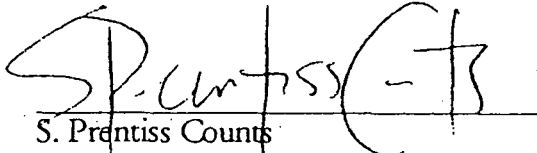
State of South Carolina,)

Respondent.)

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 Order of Dismissal in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Christopher Francis, SCDC No. 287847
 Evans Correctional Institution
 610 Highway 9 West
 Bennettsville, South Carolina 29512

DATED this 22nd day of April, 2008.


 S. Prentiss Counts
 Assistant Attorney General

FORM 5

STATE OF SOUTH CAROLINA)
 County of Lancaster)
Christopher J. Francis 287847)
 Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

FILED
 OFFICE OF CLERK
 OF COURT

2008 AUG 25 A 11:52

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 clear to which question any such continued answer refers.

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

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

1. Place of detention Evans Correctional Institution
2. Name and location of Court which imposed sentence Lancaster County
General Sessions Court
3. Name(s) of co-defendant(s) (if any) _____

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

- (a) 2002-65-29-562
- (b) 2002-65-29-563

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Oct 9th 2002 10 years
- (b) Oct 9th 2002 5 years concurrent
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel Failed to File notice of Appeal within 10 days
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of PCR counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached Motion For Summary Judgment
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. PCR
- ii. Federal Habeas Corpus
- iii. State Writ of Mandamus (2)
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Lancaster County Court of Common Pleas
- ii. US District Court of South Carolina
- iii. SC Supreme Court
- iv. _____

(c) the disposition thereof:

- i. denied
- ii. dismissed for failure to exhaust state remedies
- iii. dismissed pursuant to Key v Currie
- iv. _____

(d) the date of each such disposition:

- i. April 20, 2007
- ii. May June 2006
- iii. Oct 17, 2007 + April 16, 2008
- iv. _____

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

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

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) see attached Motion For Summary Judgment
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Ross A. Burton PO Box 330 Winnsboro, SC 29180
- ii. William R. Sims PO Box 645 Kershaw, SC 29067
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. plea + sentencing
- ii. PCR
- iii. _____

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

see attached Motion For Summary Judgment

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

STATE OF SOUTH CAROLINA)
County of Lancaster)

VERIFICATION

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

CL. Frank

SWORN to and subscribed before me this 22
day of AUGUST, 2008

Oscar B. Brundel (L.S.)
Notary Public

My Commission Expires: 08-06-2009

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

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

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

CL. France
Applicant

SWORN or affirmed to and subscribed before me this

22 day of AUGUST, 2008.

O. A. Brown
Notary Public

My Commission Expires: 08-26-2009

610 Hwy 9 West
Bennettsville, SC 29512

FILED
OFFICE OF CLERK
OF COURT

2008 AUG 25 A 11: 52

CLERK OF COURT
LANCASTER COUNTY, SC

The Hon. Jeff Hammond
Clerk of Court
PO Box 1809
Lancaster, SC 29720

E: Christopher Francis v State of South Carolina

Dear Mr. Hammond,

Enclosed is a PCR application along with a three page Brief and Motion for Summary Judgment in Support of PCR (with Exhibits A-E). Please file said PCR application and attached motion and documents with the Motion for Summary Judgment being placed on the motions calendar to be heard at the earliest possible date. Please return a clocked and stamped copy of the first page of the PCR application and the Motion to me for my records. Thanks for your time.

Sincerely,

Ch Francis

Christopher Francis #28784

Mailed on 22 AUGUST 2008

Notary Public
Notary Public

My Commission Expires: 08-06-2009

FILED
CLERK
STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER
2008 AUG 25 A 11:53
2008 CP 29-973
COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Christopher Francis #287347
COUNTY, SC

Applicant

VS

State of South Carolina

Respondent

Brief and Motion For Summary

Judgment in Support of PCR

Applicant, with this Motion for Summary Judgment in support of application For Post-Conviction Relief (PCR) pursuant to § 17-27-70(c) South Carolina Code of Law, would respectfully show the following:

Applicant Filed For PCR in April 2003 (2003-CP-29-500). A hearing was held in Lancaster County on February 28, 2007. An order dismissing the application was entered on April 20, 2007 with PCR counsel and counsel for the state being served April 25, 2007 (see Exhibit A). Applicant was notified by the Attorney General's Office on April 22, 2008 of the final order, a whole year after it was entered (see Exhibit B). Applicant notified PCR counsel of his wish to appeal the judgment and asked him to perform his duties under Rule 71.1 SCRPC and Rule 221 SCACR, i.e. file a timely notice of appeal, obtain the hearing transcript, and retrieve the exhibits from the clerk's office (see Exhibit C). As of this date no appeal has been filed.

It is without question that an applicant has a right to appeal the denial of a PCR application and to the effective assistance

of counsel on that appeal. *Odum v State* 523 SE2d 753 (1999); *Austin v State* 409 SE2d 395 (1991). It is PCR counsel's duty to advise a defendant of his right to appellate review of the denial of PCR. *Bray v State* 620 SE2d 743 (2005). Once Applicant is advised of his right to appeal, PCR counsel has a duty to serve and file a notice of appeal if asked to do so. *Dennison v State* 639 SE2d 35 (2006). All appointed or retained counsel have a duty to consult with their clients, act with reasonable diligence, and to communicate with their clients. Rule 407 SCACR Rules of Professional Conduct Rules 1.2, 1.3, 1.4.

Applicant's PCR counsel neglected to timely inform Applicant of the entry of judgment so as to permit enough time for filing of a notice of appeal (see Exhibit D). Indeed, Applicant was served with the order a whole year after it was entered by the Attorney General's Office and not PCR counsel. PCR counsel's gross inaction has functioned to deprive Applicant of his right to appeal the dismissal of his PCR, which was not waived but was vigorously and timely asserted once Applicant was notified of the judgment in April 2008 (see Exhibits C and E).

Since the relevant facts as presented in this Motion are indisputable and the law unequivocal on the issue of PCR counsel's duties in a PCR proceedings, Applicant seeks summary disposition of this matter without holding an evidentiary hearing. Applicant asserts that there is no material issue of fact that would necessitate a hearing and that the interests of justice and expedition would best be served by consideration of this Motion.

Conclusion

Wherefore having shown PCR counsel's negligence and satisfying the requisite burden of proof, Applicant asks this Court to grant Applicant a belated appeal of his PCR order and to transfer the case to the Office of Appellate Defense so that the proper assistance can be provided in perfecting Applicant's appeal.

Respectfully submitted,

Christopher Francis

Christopher Francis # 287847

ECL F5C217

610 Hwy 9 West

Bennettsville, SC 29512

I, Christopher Francis, declare that the above averments are true and that one (1) copy is being mailed to the Lancaster County Clerk of Court, including a PCR application, this motion, and Exhibits A-E on this day.

Christopher Francis

Sworn to and subscribed this 22
day of August, 2008

Notary Public

My Commission Expires: 08-06-2009

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2003-CP-29-500Christopher FrancisState of SC

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:Dated at LANCASTER, South Carolina, this _____ day of _____, 20____._____
PRESIDING JUDGEThis judgment was entered on the 25th day of April, 2007, and a copy mailed first class this 25th day of April, 2007 to attorneys of record or to parties (when appearing pro se) as follows:

William R Sims
P.O. Box 1645
Kershaw, SC 29067

S. Prentiss Counts
P.O. Box 11549
Columbia, SC 29211-11549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Matthew

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
IN THE SIXTH JUDICIAL CIRCUIT

Christopher Francis,

2003-CP-29-500

Applicant,

vs

CERTIFICATE OF SERVICE BY MAIL

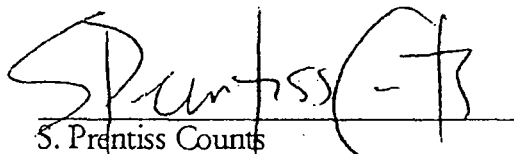
State of South Carolina,

Respondent.

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 Order of Dismissal in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Christopher Francis, SCDC No. 287847
Evans Correctional Institution
610 Highway 9 West
Bennettsville, South Carolina 29512

DATED this 22nd day of April, 2008.


S. Prentiss Counts
Assistant Attorney General

Mr. Sims,

Date: 4-28-08

I recieved my final order on my PCR, C/A 2003-CP-29-500 on 4/25/08. I need you to file my notice of appeal & order the PCR hearing transcript, along with the transcript tapes so that I can verify the accuracy of the transcript. I also need you to get the brief & exhibits (ie. two police incident reports, two GPS maps, & any other documents filed in connection with this case) that were put on the record in my case from the Lancaster County Clerk of Court's Office. Once you file the notice of appeals please inform me & when you get the transcript, tapes, the brief, & the exhibits please send them to me. I would appreciate your prompt action because, as you know, I can't file for any of these things myself. I hope to hear from you soon.

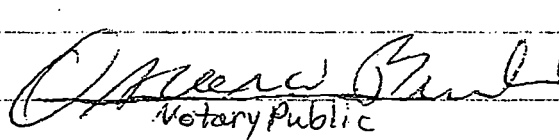
Sincerely,

Chi Francis

Date: 4-28-08

PROOF OF SERVICE

Deposited in the US Mail on 04-28-08


Notary Public

My Commission Expires: 08-06-2009

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
REQUEST TO STAFF MEMBER

TO: NAME:	TITLE:	DATE:
Mr. Bundy	Mail Room Clerk	8-13-08
INMATE'S NAME:	SCDC #:	
Christopher Francis	287847	
INSTITUTION:	LIVING QUARTERS:	
Evans CI	F5C217	

Mr. Bundy, did I receive any legal mail from William R. Sims 105 South Hampton St. PO Box 645 Kershaw, SC 29067 during the months of April and May 2007? Any information you may be able to provide will be greatly appreciated. Thanks for your time.

DISPOSITION BY STAFF MEMBER:

I CAN'T FIND ANYWHERE IN my LEGAL LOGS where you received ANY LEGAL MAIL IN APRIL OR MAY 2007

DATE:	SIGNATURE:
8-15-08	Oliver Paul

STATE OF SOUTH CAROLINA } APPEAL FROM LANCASTER COUNTY
IN THE SUPREME COURT } COURT OF COMMON PLEAS

Christopher Francis

2003-CP-27-500

Appellant

VS

MOTION FOR LEAVE TO

State of South Carolina

FILE PRO SE

Respondent

Appellant respectfully requests leave to file his notice of appeal and objection to the above-referenced proceeding pro se. Appellant has made a timely request for his attorney to file a notice of appeal and to obtain the transcript and transcript tapes however Appellant's attorney has neglected to do anything he is asked to do or is required to do for the past four years. In order to preserve his appeal rights Appellant wishes to file his timely notice of appeal pro se so as to avoid being procedurally barred from pursuing his claims.

Respectfully submitted,

Ch Francis

signed and mailed on 05-02-08

DW Bunt
Notary Public

My Commission Expires: 08-06-2008

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)
Christopher J. Francis, SCDC No. 287847,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

2008-CP-29-973

RETURN AND MOTION TO DISMISS

This matter comes before this Court by way of an application for post-conviction relief filed August 25, 2008.

I. 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 Lancaster County. The Applicant was indicted at the April 2002 term of the Lancaster Grand Jury for Armed Robbery (02-GS-29-562) and Possession of a Weapon During the Commission of a Violent Crime (02-GS-29-563). Ross Burton, Esquire, represented the Applicant. On October 9, 2002, the Applicant pled guilty to the indicted offenses. He was sentenced by the Honorable Kenneth G. Goode to confinement for a negotiated period of ten (10) years for Armed Robbery and five (5) years for Possession of a Weapon During the Commission of a Violent Crime.

The Applicant filed a notice of appeal on October 24, 2002. The Court of Appeals dismissed the appeal for failure to timely serve notice. The remittitur was issued on November 22, 2002.

The Applicant subsequently filed an application for post-conviction relief (PCR)

on May 22, 2003. An evidentiary hearing into the matter was convened on February 28, 2007 at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by William R. Sims, Esquire. The Respondent was represented by S. Prentiss Counts of the South Carolina Attorney General's Office. The Honorable Brooks P. Goldsmith denied and dismissed Applicant's application by written Order on April 20, 2007.

The Applicant filed a *pro se* notice of appeal from the order denying his first PCR, dated May 2, 2007. On July 25, 2008, the Supreme Court of South Carolina dismissed his appeal for failure to respond to the court's request for vital information. The remittitur was issued August 12, 2008.

Incorporated herein by reference are the records of the Lancaster County Clerk of Court regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; and the records from the Applicant's 2003 PCR.

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

1. Ineffective assistance of counsel; and
2. Counsel failed to file a notice of appeal from first PCR within 10 days.

II.

The Respondent submits the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief.

S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

The current allegation of ineffective assistance of counsel was raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448, 409 S.E.2d 392; Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834.

III.

The Respondent further submits this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on October 9, 2002. The Court of Appeals dismissed the appeal for failure to timely serve the Notice of Appeal. The Remittitur was issued on November 22, 2002. This Application was filed on August 25, 2008, well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the application for post-conviction relief should be summarily dismissed for failure to file within the time mandated by statute and for being successive.

The Applicant's allegation that counsel failed to file a notice of appeal following the dismissal of the initial PCR is without merit. Even if counsel had failed to file such appeal, the Applicant cannot show prejudice where the Applicant properly filed a *pro se* notice of appeal. The Supreme Court ultimately dismissed the appeal due to the Applicant's failure to respond to the court's request for vital information. As the Applicant's allegation pertains to his counsel's alleged failure to file a notice of appeal, prejudice has not been demonstrated and the Applicant failed to provide sufficient reason to justify a successive evidentiary hearing.

IV.

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

V.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations expired.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

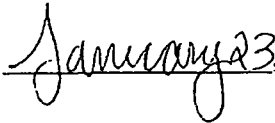
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MICHELLE J. PARSONS
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, S.C. 29211

 23, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)
)
Christopher J. Francis, SCDC No. 287847,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

2008-CP-29-973

**CONDITIONAL ORDER
OF DISMISSAL**

FILED
OFFICE OF THE CLERK
LANCASTER COUNTY, SC
AUG 26 2008

This matter comes before this Court by way of an application for post-conviction relief filed August 25, 2008.

I. PROCEDURAL HISTORY

4/24/08

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Applicant was indicted at the April 2002 term of the Lancaster Grand Jury for Armed Robbery (02-GS-29-562) and Possession of a Weapon During the Commission of a Violent Crime (02-GS-29-563). Ross Burton, Esquire, represented the Applicant. On October 9, 2002, the Applicant pled guilty to the indicted offenses. He was sentenced by the Honorable Kenneth G. Goode to confinement for a negotiated period of ten (10) years for Armed Robbery and five (5) years for Possession of a Weapon During the Commission of a Violent Crime.

The Applicant filed a notice of appeal on October 24, 2002. The Court of Appeals dismissed the appeal for failure to timely serve notice. The remittitur was issued on November 22, 2002.

The Applicant subsequently filed an application for post-conviction relief (PCR) on May 22, 2003. An evidentiary hearing into the matter was convened on February 28, 2007 at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by William R. Sims, Esquire. The Respondent was represented by S. Prentiss Counts of the South Carolina Attorney General's Office. The Honorable Brooks P. Goldsmith denied and dismissed Applicant's application by written Order on April 20, 2007.

The Applicant filed a *pro se* notice of appeal from the order denying his first PCR, dated May 2, 2007. On July 25, 2008, the Supreme Court of South Carolina dismissed his appeal for failure to respond to the court's request for vital information. The remittitur was issued August 12, 2008.

Att
Before this Court are the records of the Lancaster County Clerk of Court regarding the subject conviction; Applicant's records from the South Carolina Department of Corrections; Applicant's Application for Post-Conviction Relief dated August 25, 2008, and Respondent's Return to same; and the records from the Applicant's 2003 PCR.

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

1. Ineffective assistance of counsel; and
2. Counsel failed to file a notice of appeal from first PCR within 10 days.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on October 9, 2002. The Court of Appeals dismissed the appeal for failure to timely serve the Notice of Appeal. The Remittitur was issued on November 22, 2002. This Application was filed on August 25, 2008, well after the statutory filing period had expired.

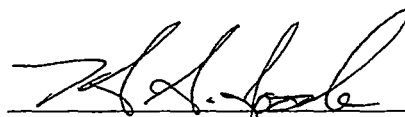
A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

This Court also finds the Applicant's allegation that counsel failed to file a notice of appeal following the dismissal of the initial PCR is without merit. Even if counsel had failed to file such appeal, the Applicant cannot show prejudice where the Applicant properly filed a *pro se* notice of appeal. The Supreme Court ultimately dismissed the appeal due to the Applicant's failure to respond to the court's request for vital information. As the Applicant's allegation pertains to his counsel's alleged failure to file a notice of appeal, this Court finds prejudice has not been demonstrated and the Applicant has failed to provide sufficient reason to justify a successive evidentiary hearing.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Lancaster County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Michelle Parsons, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 3 day of Apr, 2009.



The Honorable Kenneth G. Goode
Administrative Judge
Sixth Judicial Circuit

Winsted, South Carolina.

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF LANCASTER
2008-CP-29-00973

CHRISTOPHER J. FRANCIS

VS.

STATE OF SOUTH CAROLINA

LANCASTER, SOUTH CAROLINA

FEBRUARY 9, 2010

BEFORE THE HONORABLE BROOKS P. GOLDSMITH

APPEARANCES

FOR THE STATE: WHITE, ELLIOTT

FOR THE PETITIONER: CHARLES BROOKS

REPORTED BY: MICHAEL C. WATKINS

OFFICIAL COURT REPORTER

1	MOTION HEARING:	3
2	CERTIFICATE:	16
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1 MS. WHITE: This is the case of Christopher Francis,
2 it's 2008-CP-29-973. There actually has been an order of
3 dismissal and final order signed in this case and I believe
4 Mr. Brooks may have a motion addressing that.

5 THE COURT: Mr. Brooks?

6 MR. BROOKS: Beg the Court's indulgence.

7 (Break in proceedings.)

8 MR. BROOKS: Judge, my client -- basically my client
9 wants to address the Court about an issue and I would ask
10 for Your Honor's indulgence to allow him to do that.

11 THE COURT: All right, we'll do that.

12 THE APPLICANT: All right. Well, Your Honor, my
13 attorney, he's expressed to me that of course with the PCR
14 petition that I filed, sir -- well, my attorney has
15 informed me that as far as the situation with my PCR thing
16 that's not what this is, I have an amendment to that PCR
17 because I have a community supervision problem with my
18 sentence specifically, right? So I tried -- the Court
19 needs to see it. I have tried to raise this issue with the
20 South Carolina Supreme Court, they keep saying there's no
21 extraordinary reason to hear it, telling me to file it in
22 lower court. So my attorney was like, well, this
23 proceeding is not for that. But as far as my understanding
24 of reading the law under 17-27 I think 45B that I can raise
25 it in this proceeding and it's amendment challenges the

1 CSP. I don't expect the Court to give me relief, you can
2 deny it today, this issue just needs to be through the
3 proper procedure as far as the South Carolina Supreme
4 Court, that's what they told me to do. I have to raise
5 this here in order for it to go up to the South Carolina
6 Supreme Court. I have the amendment and arguments all
7 addressed I need that put on the record and the Court, you
8 can deny it today, it just needs to go up, it needs to go
9 up to the --

10 MR. BROOKS: He has already had a PCR hearing before
11 and the PCR was denied and there was no appeal of that
12 denial and obviously he has a right to have that PCR denial
13 heard on appeal. And I explained to him that, you know,
14 the State was aware of that right and he would get that as
15 soon as we put this on the record and we got an order from
16 the Court I would file a notice of intent to appeal and I
17 send it off to the Office of Appellate Defense like normal
18 standard operating procedure. What he's talking about is
19 he has an issue in regard to community supervision. He's
20 about to get out in six or seven months and he's going to
21 be on community supervision; isn't that correct?

22 THE APPLICANT: Supposed to be.

23 MR. BROOKS: Supposed to be on community supervision.
24 And he's got an issue that because there's been some case
25 law that has come out since he has been incarcerated that

1 says you can't be under any supervision or either
2 incarcerated for longer than what your original sentence is
3 and those are some issues that he wanted to put on record.
4 I explained to him that Your Honor couldn't change the
5 sentence, couldn't make him more eligible for parole
6 quicker or anything like that but he insists that he wants
7 to put his issue in regards to the McGrier case on the
8 record, if that kind of simplifies it for you, Judge.

9 THE COURT: Here is what I'm concerned about it, or
10 here is what the attorney general is getting ready to tell
11 me is that procedurally where are we? Procedurally there
12 is no post conviction application to amend, isn't that
13 right, Madam Attorney General, that the case is over with?

14 MS. WHITE: The case is over at this point.

15 MR. BROOKS: The only issue is he's never had an
16 appeal of that first PCR hearing, I believe that's the only
17 issue that the State is willing to concede.

18 MS. WHITE: Yes.

19 THE COURT: But didn't the order denying --

20 MS. WHITE: There was an order denying the post
21 conviction relief originally, which I believe is the
22 allegations I guess of the charges that he's addressing
23 regarding his community supervision as well today.
24 Obviously we also would say that any issues regarding
25 community supervision are going to be premature, he's not

1 even started that so I don't think there's any argument
2 that he's served any additional time at this point.

3 THE APPLICANT: As far as what she was saying, right,
4 I -- that's a future infringement, you know what I'm
5 saying, on my freedom. So -- and plus the McGrier case
6 came out in May of 2008 and under 17-27-45B you have a year
7 from the time a new ruling has been put down by the court
8 to file some type of action in regards to that ruling, it's
9 a one year statute of limitations, I addressed that on my
10 amendment also, that addresses that so it should be able to
11 get in under that. And seeing how this is -- I had to file
12 a PCR application to get here under Austin vs. State,
13 procedurally that's what the South Carolina Supreme Court
14 said. And under King also, King vs. State requires that
15 you file a PCR hearing. It's like a PCR hearing but the
16 only reason I brought this issue up is because I filed it
17 in August of '08 so it is within the time.

18 THE COURT: Hang on. That's what I'm missing. Wait a
19 minute, but that's the one the attorney general is
20 referring to that when she says that it has been dismissed.

21 THE APPLICANT: The first -- that's my first post
22 conviction relief hearing. In order to have this
23 proceeding here today I had to file another one and I had
24 to file it.

25 THE COURT: Have you got that? That's what I'm

1 missing then. All right. Let me see what Ms. White has to
2 say about that, maybe I am missing something.

3 MS. WHITE: He did file a second post conviction
4 relief application, Your Honor. And because it was
5 successive and out of time based on the statute of
6 limitations we filed a conditional order of dismissal which
7 was signed and then a final order was submitted which was
8 signed. However, in going back and reviewing the
9 information we received and in talking with Mr. Francis'
10 counsel, Mr. Brooks, we determined that the main issue in
11 that second successive PCR action was a belated PCR appeal
12 from his first, so therefore that is why we're here today.
13 I believe Mr. Brooks had a motion in regards to this final
14 order to reopen the case purely for the belated PCR appeal
15 issue.

16 MR. BROOKS: That's correct.

17 THE COURT: Are you saying -- maybe I'm missing
18 something -- are you saying that since July 28, 2009
19 there's been another application?

20 MS. WHITE: No, sir. There's not been another
21 application but there has been some communication received
22 on our behalf and it caused us to review what had been done
23 in this case previously and note that his allegation
24 actually was a belated Austin appeal and that therefore the
25 statute of limitations would not apply to that. And we

1 would agree that the order could be vacated and the case
2 reopened purely for the belated PCR appeal issue.

3 THE COURT: Okay.

4 MS. WHITE: If that makes sense, Your Honor.

5 THE COURT: So the attorney general agrees, I think.

6 MS. WHITE: Solely on the issue of the belated appeal
7 though, Your Honor, as that was the only issue in that
8 second PCR.

9 MS. ELLIOTT: Your Honor, I may be able to assist with
10 the McGrier unless it is going to make things more
11 convoluted. Mr. Aplin and I have been handling petitions
12 for writs of habeas corpuses that have been filed by
13 inmates after the McGrier decision asking for McGrier to
14 applied retroactively. And before -- we brought the action
15 in the original jurisdiction of the Supreme Court in the
16 Bennett case, and in that case the state supreme court said
17 yes, McGrier must be applied retroactively to inmates who
18 are currently incarcerated and pursuant to that probation
19 and parole and community services is now applying the
20 McGrier to everyone incarcerated. So he's only going to be
21 eligible for that portion of his sentence, that 15 percent.
22 If he is released at 85 percent of his sentence he will
23 only be eligible for 15 percent for community supervision
24 revocations if he doesn't comply. So McGrier will be
25 applied to his particular circumstance in the future when

1 he is released if that helps.

2 THE COURT: It does. And you think that what he's
3 asking the Court to do today is to find that rule, that
4 McGrier will apply to him?

5 MS. ELLIOTT: Yes, sir, which is not related to the
6 PCR. It's premature and the supreme court has already
7 addressed it and ordered probation and parole to do that
8 and they are doing that. We'll do that.

9 MR. BROOKS: What my client has indicated is that when
10 he had written the supreme court they told him he needed to
11 first file and have this addressed in the lower courts,
12 that's why he's trying to address these issues.

13 THE APPLICANT: Your Honor, what she said was correct,
14 I'm not challenging as far as the retroactive application
15 to me. I'm challenging that they are not -- that that
16 ruling can't be applied retroactive to me. I'm challenging
17 the decision in McGrier, that's what my petition is
18 challenging. I understand that you're not going to rule in
19 my favor, you're not going to -- you're not going to come
20 and say that I don't have to participate in community
21 supervision, I already understand that, but the issue needs
22 to be addressed by the higher court and I went directly to
23 them with this copy of a writ of mandamus, I went directly
24 to it and they denied it and told me to come back down
25 here.

1 THE COURT: I've got you, hang on. So what your
2 client is asking to do is to actually reopen or vacate the
3 order of July 28, 2009 which I understand is being done by
4 agreement of counsel but the attorney general agrees to it
5 only for the purpose of arguing that issue, right?

6 MS. WHITE: Yes, sir, Your Honor, the belated appeal
7 issue.

8 THE COURT: The belated appeal issue and that's the
9 order of the Court. Now, what your client wants to do now
10 since we've had this jurisdictional hurdle removed, he
11 wishes to argue that he shouldn't be required to
12 participate in community supervision at all, is that it?

13 THE APPLICANT: Yes, sir.

14 THE COURT: Attorney general says, in part, and I
15 don't want to speak for the attorney general, that that is
16 premature and that it is not ripe for the Court to rule on
17 that because he's not there yet. Is that correct,
18 Ms. Elliott, Ms. White?

19 MS. ELLIOTT: As to any argument that it's not --
20 McGrier won't be applied retroactively to him, my
21 understanding is since I've made my statement to the Court
22 he is now saying that he wants to challenge the
23 constitutionality of the CSP program period, that should
24 have been done at the time of the his sentencing and
25 certainly at the time of his first PCR proceeding and he's

1 out of time for that.

2 THE APPLICANT: I'm not challenging the
3 constitutionality of the CSP on its face, I'm challenging
4 the application of it from McGrier, the way McGreer applied
5 it, because before that it was a different structure, the
6 way it was set up. Nobody informed me of that or the CSP
7 period when I was getting sentenced. And once that ruling
8 came out I came upon that ruling by accident because we
9 don't have updated law books in the law library and I came
10 by this by accident and by reading that case I became aware
11 of it by me being convicted of a no-parole offense I would
12 have to serve some type of community supervision which was
13 never put on me by the Court. But the McGrier decision
14 with their reasoning I'm challenging that reasoning of that
15 court. I understand this Court doesn't have the
16 jurisdiction to actually overturn the McGrier decision, I
17 understand that, that's why I went to the South Carolina
18 Supreme Court first because they sent me back, I understand
19 that's backwards, I understand that. I went directly to
20 the source, they told me to come down here and so I have
21 argued. As far as -- I haven't -- the argument as far as
22 they're saying that I haven't got there yet, that's a
23 future impingement upon my freedom and so why wait until I
24 actually get violated on it or something to come back here
25 and then I could try to appeal that decision then it will

1 go up to the higher court.

2 THE COURT: Mr. Brooks, I've heard from your client.
3 I think that I now understand and I believe the attorney
4 general now understands what your client desires for this
5 Court to do or rule on. Is there anything else you wish to
6 say? I guess what I'm doing now is taking away from
7 Mr. Francis his ability to communicate with the Court and
8 putting it back in the hands of his attorney, or I guess it
9 should have been all along. But now, is there anything
10 else you wish to say?

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

12 THE COURT: Ms. White, Ms. Elliott?

13 MS. WHITE: If we are at the point now in regards to
14 this issue I think we're just ready to proceed on the
15 belated appeal issue if that's where we are now.

16 THE COURT: Is there any evidence you wish to submit
17 in the case or just the argument?

18 MR. BROOKS: In regards to the belated appeal? Just
19 to clarify, we just put on the record the motion to be able
20 to file the belated appeal because of the fact there was no
21 appeal done on his first PCR and I believe the State would
22 concede to that so that we could file the appeal. The
23 other issue in regards to the community supervision, like I
24 said, obviously, Judge, you heard from my client with
25 regards to that issue.

1 MS. WHITE: Your Honor, we do have his previous PCR
2 counsel here and I believe procedurally we can look at that
3 after the PCR, after the applicant received the order
4 denying his PCR he actually filed a pro se notice of appeal
5 so therefore Mr. Simms, as his PCR attorney, did not file
6 an appeal and we don't argue that issue. Because once he
7 filed the pro se notice of appeal that kind of started the
8 process, however I believe it was dismissed for failure to
9 respond to the Court's request for vital information. I
10 think there's some argument maybe as to the timing of it
11 and whether or not with him being a pro se applicant he
12 understood the information he had to provide but we're
13 willing to concede that an appeal was not filed on his
14 behalf after the PCR and allow him that right.

15 MR. BROOKS: Judge, basically -- of course, he was
16 obviously incarcerated, he didn't know the rules how to
17 file it, how to file a notice of appeal and how to do the
18 timing. It's my understanding it wasn't done, the notice
19 of appeal wasn't filed timely with all of the other things
20 that the court of appeals and the supreme court would
21 require to accompany those appeals, that wasn't done.
22 Obviously it is our position that my client did not have
23 that.

24 MS. WHITE: Your Honor, we would just say that we
25 would agree that he does have the right to appeal and that

1 we would certainly agree that he could vacate -- this final
2 order could be vacated on that grounds and a belated PCR
3 appeal granted.

4 THE COURT: The attorney general agrees. But as to
5 the collateral issue, which I think really is your client's
6 main issue in this case, and that is his desire that this
7 Court find that in his case McGrier should be -- that's not
8 exactly what he's asking, is it? He's asking for this
9 Court to determine that he should not be subjected to
10 community supervision; isn't that correct?

11 MR. BROOKS: That's correct.

12 THE COURT: Is that what you think he's talking about?

13 MS. ELLIOTT: Yes, Your Honor. And it is our position
14 that that would be -- that that's a successive claim and
15 out of time.

16 THE COURT: That's what he's asking for the Court to
17 do and the Court finds that the Court does not have
18 jurisdiction and will deny that, which is what he wanted
19 the Court to do.

20 MR. BROOKS: Correct.

21 THE COURT: Make sure I understand and then Mr.
22 Francis understands where we are. Is there anything else
23 from the applicant in this regard?

24 MR. BROOKS: No, sir.

25 THE COURT: Thank you so much.

1 MR. BROOKS: Thank you, Judge.

2 (END OF THE HEARING.)

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1 I, the undersigned, Michael C. Watkins, Official
2 Court Reporter for the Sixth Judicial Circuit of the State
3 of South Carolina, do hereby certify that the foregoing is
4 a true, accurate and complete transcript of record of the
5 proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Court of
7 Common Pleas for Lancaster County, South Carolina, on the
8 2nd day of February, 2010.

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

11

12

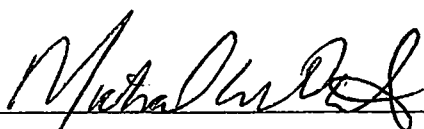
February 23, 2011.

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Michael C. Watkins
Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

2008-CP-29-0973

Christopher J. Francis, #287847,

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL WITH
PREJUDICE AND FINDINGS
PURSUANT TO AUSTIN V. STATE**

This matter comes before the Court by way of Post-Conviction Relief (PCR) application filed August 25, 2008. The State made its Return and Motion to Dismiss on January 23, 2009, requesting that the application be summarily denied and dismissed for successiveness and failure to file within the statute of limitations. This Court issued a Conditional Order of Dismissal, provisionally denying and dismissing this action, on April 3, 2009. Applicant filed his "Response to Conditional Order of Dismissal," on June 11, 2009, alleging that he is entitled to an evidentiary hearing on the issue of his right to a belated PCR appeal. This Court signed a Final Order of Dismissal on July 28, 2009. After reviewing the files and pleadings in this matter, which included a letter from Applicant's current PCR counsel requesting a hearing, the State set this matter for a hearing.

An evidentiary hearing was held on the matter on February 9, 2010, at the Lancaster County Temporary Judicial Center. The Applicant was present and represented by Charles T. Brooks III, Esquire. The Respondent was represented by Suzanne H. White, Esquire, of the Attorney General's Office. The Court had before it the PCR application, the State's Return and

Motion to Dismiss, the Conditional Order of Dismissal, the Final Order, records of the Lancaster County Clerk of Court, the guilty plea transcript, and 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 Lancaster County. The Applicant was indicted at the April 2002 term of the Lancaster Grand Jury for Armed Robbery (02-GS-29-562) and Possession of a Weapon During the Commission of a Violent Crime (02-GS-29-563). Ross A. Burton, Esquire, represented the Applicant. On October 9, 2002, the Applicant pled guilty to the indicted offenses. He was sentenced by the Honorable Kenneth G. Goode to confinement for a negotiated period of ten (10) years for Armed Robbery and five (5) years for Possession of a Weapon During the Commission of a Violent Crime.

The Applicant filed a notice of appeal on October 24, 2002. The Court of Appeals dismissed the appeal for failure to timely serve notice. The Remittitur was issued on November 22, 2002.

The Applicant subsequently filed an application for post-conviction relief (PCR) on May 22, 2003. An evidentiary hearing into the matter was convened on February 28, 2007 at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by William R. Sims, Esquire. The Respondent was represented by S. Prentiss Counts of the South Carolina Attorney General's Office. The Honorable Brooks P. Goldsmith denied and dismissed Applicant's application by written Order on April 20, 2007.

The Applicant filed a *pro se* notice of appeal from the order denying his first PCR, dated May 2, 2007. On July 25, 2008, the Supreme Court of South Carolina dismissed his appeal for

failure to respond to the court's request for vital information. The Remittitur was issued August 12, 2008.

At the hearing on February 9, 2010, the Applicant addressed the Court and requested to amend his PCR application to include an issue regarding the community supervision program, which the South Carolina Supreme Court refuses to hear. Applicant's counsel made a Motion to vacate the July 2009 Final Order, so that Applicant could pursue a belated PCR appeal. Counsel also stated that Applicant had never received an appeal from his previous PCR denial and had the right to a belated PCR appeal. Applicant's counsel stated that the Applicant is soon to be released on CSP and also has an issue based on the McGrier¹ decision. After Applicant addressed this Court regarding his CSP issues, this Court found that it did not have jurisdiction to determine Applicant's qualifications for or the constitutionality of the CSP program and agreed to vacate the July 2009 order to the extent it permits an Austin appeal.

Therefore, at the hearing on February 9, 2010, the Applicant proceeded solely on the allegation that he did not knowingly and voluntarily waive his right to appeal the dismissal of his first application. The State consented to allow the Applicant to pursue a belated Austin appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the evidence and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), the Court makes the following findings of fact and conclusions of law.

¹ State v. McGrier, 378 S.C. 320, 663 S.E.2d 15(2008).

Appeal

State law expressly authorizes the right to seek appellate review of the denial of post-conviction relief. See S.C. Code Ann. § 17-27-100 (1985). In the absence of an intelligent waiver by the applicant, counsel must advise the applicant of his appellate rights. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State. See King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).²

The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to appellate review. The Court concludes that the Applicant is entitled to a belated review of the denial of his first application. The Applicant's lack of a PCR appeal can be remedied by a petition for belated review pursuant to Austin v. State, Id. This court notes that it will be necessary for counsel for the Applicant to appeal this order to secure appropriate review pursuant to Austin.

CONCLUSION

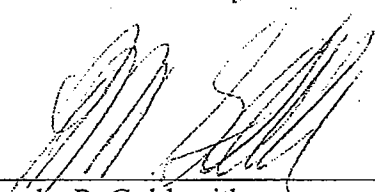
The Applicant has proven by a preponderance of evidence that his first post-conviction relief counsel failed to properly advise him of his appellate rights and that he is entitled to an appeal pursuant to Austin v. State.

² "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for... review (emphasis added)." Davis v. State, 288 S.C. 290, 291 at n. 1, 342 S.E.2d 60 (1986).

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is **DENIED AND DISMISSED WITH PREJUDICE.**
2. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's first post-conviction relief action. Counsel and the Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and South Carolina Appellate Court Rule 243 for the appropriate procedure for a belated appeal; and;
3. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED this 9 day of March, 2010.



 Brooks P. Goldsmith
 Presiding Judge
 Sixth Judicial Circuit

Laurie H., South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS

Christopher Francis

JUDGMENT IN A CIVIL CASE

CASE NO. 2003-CP-29-500State of SC

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:Dated at LANCASTER, South Carolina, this _____ day of _____, 20____._____
PRESIDING JUDGEThis judgment was entered on the 25th day of April, 2007, and a copy mailed first class this 25th day of April, 2007 to attorneys of record or to parties (when appearing pro se) as follows:
William R. Sims
P.O. Box 645
Kershaw, SC 29067

ATTORNEY(S) FOR THE PLAINTIFF(S)
S. Prentiss Counts
P.O. Box 11549
Columbia, SC 29211-1154

ATTORNEY(S) FOR THE DEFENDANT(S)
Jeff Hammond
 CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

)
) IN THE COURT OF COMMON PLEAS
) SIXTH JUDICIAL CIRCUIT

2003-CP-29-500

Christopher Francis, # 287847,
Applicant,

v.

State of South Carolina,
Respondent.

ORDER OF DISMISSAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 22, 2003. An evidentiary hearing into the matter was convened on February 28, 2007 at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by William R. Sims, Esquire. The Respondent was represented by S. Prentiss Counts of the South Carolina Attorney General's Office.

At the hearing, the Applicant and the Applicant's mother testified on his behalf. Testifying on behalf of the State was Ross Burton, Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Spartanburg County Clerk of Court, the Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Applicant was indicted at the April 2002 term of the Lancaster Grand Jury for Armed Robbery and Possession of a Weapon During the Commission of a Violent Crime (02-GS-29-562). He was represented by Ross Burton, Esquire. On October 9, 2002, the Applicant pled guilty to the indicted offenses. He was sentenced by

the Honorable Kerineth G. Goode to confinement for a negotiated period of ten (10) years for Armed Robbery and five (5) years for Possession of a Weapon During the Commission of a Violent Crime.

The Applicant filed a notice of appeal on October 24, 2002. The Court of Appeals dismissed the appeal for failure to timely serve notice. The remittitur was issued on November 22, 2002.

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

Applicant's Testimony

At the PCR evidentiary hearing the Applicant testified that he spoke to trial counsel three (3) times before he pled guilty. He stated that trial counsel did not file any pretrial motions. He testified that trial counsel did go over the mandatory minimum and maximum sentences he could receive.

The Applicant testified that trial counsel was ineffective for failing to object to the Solicitor's rendition of the facts during the plea. He stated that the Solicitor was twisting the facts in the incident report. The Applicant stated that the Solicitor said that the officers saw the Applicant leave the crime scene and they followed him. He believed that this implied that there was a high speed chase and trial counsel should have objected. He also testified that the Solicitor stated that the officers followed him but he does not believe that to be true because his house is eight (8) miles from the crime scene and no one approached the house for thirty (30) minutes after he got home.

The Applicant also testified that trial counsel was ineffective for failing to challenge his arrest. He stated that the officers did not have probable cause to arrest him until after he gave a full confession. He testified that the officers watched him go out and pull the tags off his car. He stated that the officers then approached him at his house and he was patted down and told they were investigating an armed robbery. He testified that shortly thereafter, five (5) more officers arrived on the scene. The Applicant stated that the description of the robber was vague. He admitted that his description was a black male with a white bandana driving a white Buick. The Applicant testified that he consented to have his white

Oldsmobile searched and in it the officers found a white bandana, two (2) guns, and a few hats. He testified that all this evidence was circumstantial and the officers did not have probable cause to arrest him.

The Applicant testified that trial counsel was ineffective for failing to move to suppress his statement. He said that his statement was taken during a custodial interview and a suspect cannot be interrogated without probable cause. He testified that the officer asking him to go to the station is an admission by law enforcement that he does not have probable cause for the arrest. He stated that once at the station he was read his Miranda rights, but that this cannot cure an unconstitutional seizure. The Applicant testified that his statement was a fruit of the poisonous tree.

The Applicant next testified that his trial counsel was ineffective for failure to move to suppress the money found in his room. He stated that his mother gave law enforcement her consent to search the house. He testified that she did not have authority to do this because, although she owned the house, she was not in control of the room.

The Applicant testified that he pled guilty because trial counsel told him he did not have any defenses to these crimes. He stated that if he had known he could suppress the evidence and his statement, that he would not have pled guilty. He said he would have wanted a jury trial and the trial would have received a directed verdict.

Applicant's Mother's Testimony

Mrs. Witherspoon testified that the Applicant has lived in her house his entire life. She stated that it was her house and that she respected his privacy.

She testified that she was at work when her mother called her and said the Applicant was in trouble. When she arrived at her house, law enforcement was there and told her that they had followed her son home. She stated that they asked her permission to search the house. She asked them what

they were looking for and they said "evidence." She testified that she consented to the search. She said that she did not feel threatened or coerced to consent to the search. She stated that they searched the living room and the Applicant's room. She said they found \$739 in cash under his bed.

Trial Counsel's Testimony

Trial counsel testified that he was appointed to represent the Applicant. He stated that the State offered the Applicant the ten (10) year minimum for Armed Robbery. He stated he thought it was in the Applicant's best interest to accept the offer. He stated that the victim of the robbery was a telephone company employee with no expectation of danger at her workplace. Trial counsel testified that he told the Applicant that it may have an affect on the Judge's sentence.

Trial counsel testified that he did not make any pretrial motions because they were not going to trial. He stated that if they had proceeded to trial he would have requested Jackson v. Deno hearing, but success in suppressing the statement would be unlikely because the Applicant was read his rights and consented. He testified that he also would have moved to suppress the money found, but he felt that motion would have also been unsuccessful because a homeowner can consent to the search of their own house.

Trial counsel testified that he did not see any problem with the search of the car, especially since the Applicant gave his consent. He also thought that law enforcement had probable cause for his arrest.

Trial counsel testified that he went over the evidence with the Applicant. He stated that he certainly went over his rights, although he did not have an independent recollection of doing this in the presence of the Applicant. He testified that it was his practice to go over his client's rights with them. He stated that he told the Applicant that he thought that he should accept the State's offer.

Trial counsel testified that he did not see any problem with the Solicitor's recitation of the facts. He also stated that he did not think that it would have mattered because he was pleading to the

minimum and, since it was a negotiated plea, it could have no affect in sentencing.

III. APPLICABLE LAW

Ineffective Assistance of Counsel

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

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

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

Consent to Search

Consent to search is valid when based upon apparent authority judged against an objective standard that the facts available to the officer would lead a person of reasonable caution to believe that the consenting party had authority over the premises. State v. Laux, 344 S.C. 374, 544 S.E.2d 276 (2001) [Court found girlfriend of defendant who had moved in a week before gave valid consent to search his apartment]. The test of whether a third party has sufficient status to consent to a search is whether the third party possesses common authority over or has some other sufficient relationship to the premises or effects searched. Id. A homeowner may grant consent to search the premises of which a criminal defendant resides if the homeowner possesses common authority over or sufficient relationship to the premises or effects to be inspected. State v. Flowers, 360 S.C. 1, 598 S.E.2d 725 (2004).

Probable Cause for Warrantless Arrest

Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested. State v. George, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996) [finding probable cause for warrantless arrest for murder]. Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal. Id. See also Beck v. Ohio, 179 U.S. 89, 91, 85 S. Ct. 223, 225, 13 L.E.2d 142 (1964) [holding a court must consider "whether, at the moment the arrest was made, the officers had probable cause to make it-whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [Appellant] had committed ... an offense."].

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed the

witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the probative evidence presented.

This Court finds trial counsel's testimony to be credible and the Applicant's to be incredible.

This Court finds that trial counsel was not ineffective for failing to object to the Solicitor's rendition of the facts. This Court notes that the Applicant was asked by Judge Goode if he agreed with the Solicitor's rendition and he was able to tell the Court with which points he disagreed. (Tr. Pg. 19, Ln. 21 - Pg. 23, Ln. 10). This Court also agrees with trial counsel that the Applicant was not prejudiced by any alleged discrepancies because the Applicant's plea was negotiated and the Judge did not have discretion with regards to sentencing once he accepted the plea. This Court denies and dismisses this allegation.

This Court finds that trial counsel was not ineffective for failing to challenge the validity of the arrest. When considering the totality of the circumstances, which includes the information the officers knew before arriving and observations they made at the scene, this Court finds that probable cause existed to arrest the Applicant. Law enforcement knew that they were looking for a black male driving a white Buick who had held up the telephone company with a rifle while wearing a white bandana. The Applicant had been seen driving away from the scene in a white Oldsmobile which is very similar to a white Buick. Upon arriving at the scene, the officers witnessed the Applicant rip the license tags off his car. Two (2) guns and a white bandana was found in the car after the Applicant consented to its search. This Court finds that there was probable cause for his arrest and denies and dismisses this allegation.

This Court finds that trial counsel was not ineffective for failing to suppress the Applicant's statement. Trial counsel testified that if the case had gone to trial, he would have requested a Jackson v. Deno hearing. This Court agrees with trial counsel's assessment that this motion to suppress the statement would not have been successful. The Applicant was read his rights and consented to the interrogation. No evidence of coercion, threats, or any wrongdoing by law enforcement has been presented and this Court denies and dismisses this allegation.

This Court finds that trial counsel was not ineffective for failing to move to suppress the money found in the Applicant's room. Trial counsel testified that he would have moved to suppress the money had the case gone to trial. This Court agrees with counsel's assessment that this motion would not have been successful. Mrs. Witherspoon was the owner of the house and would exert common authority over the home *and* sufficient relationship with the defendant to consent to the search of his room. With the facts available, law enforcement would be reasonable to believe that Ms. Witherspoon had authority over the premises. Therefore, this Court denies and dismisses this allegation.

This Court finds that the Applicant made a knowing and voluntary decision to pled guilty to receive the benefit of the minimum sentence he could get for his charge.

Therefore, this Court finds that the Applicant failed to carry his burden to show that trial counsel's representation fell below the standard of professional reasonableness for a criminal defense attorney in this regard. Strickland v. Washington; Cherry v. State. The Court finds that the Applicant cannot satisfy either requirement of the Strickland test.

CONCLUSION

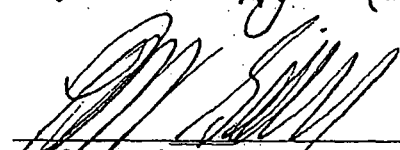
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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), SCRCR, 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. 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 this 20 day of April, 2007.


BROOKS P. GOLDSMITH
Presiding Judge
Seventh Judicial Circuit

Lancaster, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
IN THE SIXTH JUDICIAL CIRCUIT

Christopher Francis,

2003-CP-29-500

Applicant,

vs

CERTIFICATE OF SERVICE BY MAIL

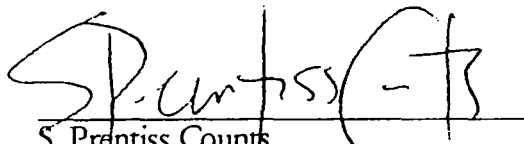
State of South Carolina,

Respondent.

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 Order of Dismissal in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Christopher Francis, SCDC No. 287847
Evans Correctional Institution
610 Highway 9 West
Bennettsville, South Carolina 29512

DATED this 22nd day of April, 2008.


S. Prentiss Counts
Assistant Attorney General

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No: 2008-CP-29-973

Christopher J. Francis.....Appellant
S.C.D.C. No.: 287847

v.
The State.....Respondent

PROOF OF SERVICE

The undersigned hereby certifies that on this 22nd day of March, 2010, I served the foregoing Notice of Appeal, Order of Dismissal with Prejudice and Findings Pursuant to Austin v State, Order of Dismissal for Prior PCR, as well as Proof of Service in this matter by depositing a true copy of it in the United States mail, postage pre-paid, on March 22, 2010, addressed to the following as indicated below.

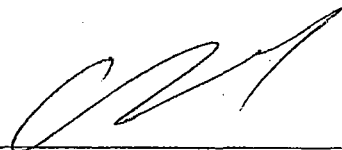
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina, 29211

Office of the Attorney General
Attn: Suzanne H. White, Esquire
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S. C. Office of Appellate Defense
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Dated: March 22, 2010


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